



## Chief Justice Lags Behind Peers on Conservatorship Reform

By Thomas F. Coleman  
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“Lagging” is defined as “falling behind in movement, progress, or development; not keeping pace with another or others.” That perfectly describes California Chief Justice Tani Cantil-Sakauye when it comes to conservatorships reform.

Despite having knowledge of major deficiencies with every part of the probate conservatorship system, the chief justice has remained silent on the plight of seniors and adults with disabilities who are targeted by these so-called protective proceedings. In contrast, she has been quite outspoken and proactive for other populations and for other areas of the law needing reform.

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Cantil-Sakauye has delivered 10 State of the Judiciary messages to the Legislature since she became the head of the judicial branch in California. She has used this platform to elevate issues such as immigration, sexual harassment, unconscious judicial bias, income inequality, bail reform, child care, discrimination, criminal justice, homelessness, addiction, mental illness, and foster care. In all these years, conservatorships have never been mentioned.

The chief justice has used the power of her office to convene panels to address issues she felt were worthy of such attention. In the last five years, she has empaneled four workgroups focusing on bias in the courts, homelessness, prevention of discrimination and harassment, and pretrial detention reform.

Her silence with respect to conservatorships is not due to ignorance.

Cantil-Sakauye was appointed to the position of chief justice in 2010. That year she and her peers received a warning from the Conference of Chief Justices that a silver tsunami was about to hit state court systems. A report from that body advised its members that a surge in Baby Boomers entering old age could impair the ability of courts to provide due process in state guardianship and conservatorship proceedings.

In the wake of this generic warning, Cantil-Sakauye has been made aware of many systemic flaws in California’s probate conservatorship system. No fewer than 14 communications about the conservatorship system have been sent to the chief justice between 2014 and 2021 (including several from my organization, Spectrum Institute). Some were directed to her in her capacity as the presiding judicial officer of the Supreme Court. Others reached out to her

as chairperson of the Judicial Council. All to no avail.

In addition to her lack of response to these letters and policy reports, the chief justice remained mute as she heard presentations by conservatorship reform advocates at several meetings of the Judicial Council.

The silence of the chief justice of California stands in stark contrast to proactive guardianship and conservatorship reform measures that have been taken by chief justices in more than 20 other states.

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In 2010, Arizona Chief Justice Rebecca White Berch issued an order establishing the Committee on Improving Judicial Oversight and Processing of Probate Matters. The committee issued a report the following year with recommendations to improve the conservatorship system in that state.

Also in 2010, Nebraska Chief Justice Michael Heavican formed a task force to identify problems with the state's guardianship system and recommend fixes. He told the media that the court's responsibility to protect seniors and people with disabilities is no different than its duty to protect children.

In 2012, Indiana Chief Justice Brent Dickson authorized the court's administrative staff to attend meetings of the Indiana Adult Guardianship Task Force. In 2013, he included more than \$500,000 in the court's budget for adult guardianship programs. The same year, an Adult Guardianship Office was created as an administrative function of the Supreme Court to serve as a resource for courts and the general public on all issues related to adult guardianship

In 2013, Colorado Chief Justice Michael L. Bender issued an order convening a Public Guardian Advisory Committee. After thorough research and extensive discussions, a report was issued a year later which recommended ways to improve public guardian services to seniors and other adults with disabilities.

In 2014, Alaska Chief Justice Dana Fabe convened an Elder Task Force. Building on the work of that group, the Supreme Court established a working group to address guardianship issues such as improved monitoring, data collection, and education of guardians and conservators.

In 2015, under the leadership of Chief Justice Mark S. Cady, the Iowa Supreme Court convened a Guardianship and Conservatorship Reform Task Force. The group studied the strengths and weaknesses of these systems and recommended ways to improve them.

Also in 2015, Nevada Chief Justice James Hardesty called for a statewide review of abuses occurring within the adult guardianship system. A task force report resulted in major legislation to revamp the system, with ongoing monitoring and accountability among the most important features of this reform.

The proactive steps taken by chief justices in many other states are too numerous to mention here. However, two of the more recent ones are worth highlighting.

In 2016, Florida Chief Justice Jorge Labarga created an ongoing guardianship workgroup under the court's Judicial Management Council. The workgroup examines judicial procedures and best practices pertaining to guardianship to ensure that courts are properly protecting the person, property, and rights of individuals who have been judged to be incapacitated.

In 2019, Michigan Chief Justice Bridget M. McCormick announced that the courts would work closely with an Elder Abuse Task Force convened by the attorney general to examine problems with the state's adult guardianship system. She stated: "Vulnerable Michigan residents and their families must have confidence that probate courts are following the law and taking appropriate steps to protect their rights."

*Will she follow the lead of her peers in other states and make conservatorship reform one of the things to be accomplished before she retires?*

If and when she decides to follow the lead of these and other chief justices, Chief Justice Cantil-Sakauye does not have to start from scratch. In addition to markers on the roadmap to reform sent to her over the past several years, she can build on dozens of proposals recommended by a Probate Task Force convened by then Chief Justice Ronald George in 2006.

Just two years ago, the chief justice and her colleagues on the California Supreme Court were advised in an *amicus curiae* brief that the problems with the conservatorship system are probably worse now than they were during the tenure of Chief Justice George.

In her State of the Judiciary message to the Legislature in 2014, the chief justice stated: "As a public official, I feel that it's important to regularly self-assess, 'Are we doing it right?' I firmly believe the status quo can always be improved." During last year's annual message, she proudly proclaimed: "As chief justice, I have spoken out when my conscience demanded it."

The chief justice recently told news reporters that she is still considering whether to seek reelection when her current term expires next year. She said there are things she'd like to accomplish before she retires.

These lofty pronouncements raise several important questions. Will her conscience ever be bothered by injustices in the conservatorship system? Will her philosophy of self-assessment ever be applied to this area of the law? Will she follow the lead of her peers in other states and make conservatorship reform one of the things to be accomplished before she retires?

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