Chief Justice Lags Behind Peers on Conservatorship Reform

By Thomas F. Coleman
Daily Journal / Dec. 15, 2021

"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.

To read the full article online on the Daily Journal website, click here. For a pdf version of the article, click here. For access to reader reactions and author responses, click here.

Reader Reactions	Author Responses
Wouldn't an encouraging rather than an accusatorial approach be more effective to get the attention of the judiciary? This chief justice is a bottom-up and not a top-down decision-maker. Have you worked with any of the advisory committees of the Judicial Council?	I understand your perspective. I have used the "encouraging" approach – time and time again. In addition to numerous communications directly to her over the years, I have communicated with the full court on several occasions, with the court administrator several times, appeared at Judicial Council meetings a few times, submitted reports to the full Judicial Council, appeared before the Probate and Mental Health Advisory Committee and communicated with its staff attorney for several years, met personally with the chair of the Rules and Projects Committee of the Judicial Council, and sent a report to the court's Judicial Ethics Advisory Committee. The Access and Fairness committee has shown no interest in justice for people with cognitive disabilities. I have also written to the Trial Court Presiding Judges Advisory Committee of the Judicial Council. I have also reached out to each of the 58 presiding judges on several occasions. Plus I have engaged in outreach to several divisions of the Court of Appeal. On top of that, I have been educating the judiciary through my op-ed articles in the Daily Journal. They have published 31 of them since 2015. I have tried the "encouraging" approach for more than seven years. From the top, bottom, and all sides. Through it all, the chief justice has been completely silent. Not one word has been spoken by her in her administrative capacity as the head of the judicial branch. I decided that given this history of gentle and professional approaches yielding no results, it was time use a different method of getting the attention of the leader of the judicial branch.

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Since the more gentle and professional approach has not nudged the judiciary into a reform mode, what method will work? Has anything in the past been effective?	One way to get their attention is through the legislature. AB 1194 did that. Now the judges, including appellate courts, can't use their "discretion" to deny counsel to conservatees and proposed conservatees. A case-by-case approach did not always work, plus it was too time consuming for this advocate (now 15,000 pro bono hours and counting on conservatorship reform advocacy). Another way is though federal intervention. Like when Spectrum Institute filed an ADA complaint against the judicial branch for injustly stripping thousands of conservatees of their right to vote. Once the U.S. Department of Justice opened a statewide investigation in 2015, with a letter to the chief justice and secretary of state, they could not move fast enough to correct the problem. The judiciary jumped on board the SB 589 bandwagon and the problem was solved in a matter of a few months. It think it was the concern over another DOJ intervention that caused the Judicial Council (not the chief justice but the full Judicial Council) to adopt an ADA grievance procedure for people to use if they thought the Judicial Council was itself violating the ADA. When I brought to their attention about three years ago that the Judicial Council was itself clearly in violation of federal law by not having such a grievance procedure in place (with an informational cc sent to the DOJ at the bottom of the letter), they moved at warp speed to adopt a procedure and put it on their website. This procedural fix occurred within four months. Bad press sometimes gets the attention of, and action by, the judiciary. It was the Los Angeles Times exposé in 2006 that caused then Chief Justice Ronald George to convene a Probate Task Force to identify flaws in the conservatorship system and to recommend fixes. ABC-10 television in Sacramento is working on an investigative series about the dysfunctional conservatorship system to air early next year. Maybe that will stir things up. Through thousands of hours of research, education, and advocacy, I have led a team of judicial horses to water. I have encouraged them to drink from the vast lake of solutions that I have provided. They are all standing at the edge of the water – apparently paralyzed in the status quo of systemic and systematic conservatorship injustices. Judicial officers are desperately in need of leadership – something that the chief justice could provide. Her peers in more than 20 states have done so. But up until now, when it comes to conservatorship reform she is not even willing to be a follower.

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Tom, your approach in the op-ed article was absolutely appropriate, factual and intellectually honest. You did the right thing. You have been laboring in this area for so long that an approach with kid gloves is fruitless. The judiciary plays a major role in perpetuating conservatorship abuse. If the truth offends them, they should be embarrassed because the system and the process they control has been the source of so much pain, hurt and abuse!	My approach with the judiciary in terms of addressing conservatorship injustices in individual cases and systemic flaws that adversely affect an entire vulnerable class has been from the bottom up and top down. I brought the systemic problems to the attention of the presiding judge of the probate division of the Los Angeles County Superior Court in 2014. I met with him for an hour to discuss the details of a memo I had submitted. Then he stopped communicating. I suspect that he knew that he would be moving in a year to become presiding judge of the juvenile court and that reform of the conservatorship mess would take years. So why bother. I met with the next presiding judge of the probate division too. She understood the problems and was sympathetic but did nothing. I suspect that she knew that she would be moving out of the probate court and on to the Court of Appeal. So why bother. I sent several communications to the presiding judge of the entire Los Angeles County Superior Court. My letters received no response. I met in person with the presiding judge of the Alameda County Superior Court. He promised to change a court rule that gave a monopoly on fee generating cases to a single law firm. But later he decided to do nothing. I filed an administrative complaint with the Sacramento County Superior Court for routinely failing to appoint attorneys for proposed conservatees, arguing that making them represent themselves violated the Americans with Disabilities Act. The court refused to change its ways. Now, only because the passage of AB 1194 will force them to do so, the judges will have to appoint attorneys for these cognitively disabled litigants. I sent a communication to the probate court judge in an individual case in Santa Barbara. He ignored it. The same for probate court judges in two cases in Los Angeles. My communication to the First District Court of Appeal pointing out the need for counsel to be appointed for a litigant with dementia was ignored. Now, due to AB 1194, appellate courts will be required to appoint counsel on appeal. The soft, professional, and incremental approach has been tried many times with judicial officers in California. All to no avail. Unfortunately, it appears that a highly visible and more adversarial approach may be the only way to get action.

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The chief justice is well aware of the problem since 2010 and has refused to do anything about it. The power coming out of the probate court is the tail wagging the dog and the dog is the Chief Justice. What makes you think she is going to do anything about it after 12 years of silence? The only redemption is if she decided to run for reelection and her campaign focused on reforming the probate conservatorship system. Maybe it makes sense to build a coalition to defeat her at the ballot box. The problems are so blatant and numerous that she does not deserve another term. If she runs on a platform for conservatorship reform and wins and then fails to do anything, then someone can start a recall campaign.	Judges are supposed to be nonpolitical. However, California does have a process in which justices of the Supreme Court and Court of Appeal must answer to the voters every 12 years in a retention election. I am intrigued by your suggestion that the dysfunctional and abusive conservatorship system be made an issue if the chief justice decides to seek another term in office next year. The systematic denial of access to justice for tens of thousands of seniors and other adults with mental or developmental disabilities would be a legitimate issue to raise in an election. "The buck stops here" is a phrase that was popularized by President Harry Truman. Truman felt that as president, he had to take responsibility for problems facing the nation. The same philosophy should apply to the head of the judicial branch of government in terms of a duty to tackle systemic problems that impair access to justice for segments of the population. Tani Cantil-Sakauye has not tried to pass the buck to others on language-access or income-inequality problems depriving litigants of access to justice. She has taken the lead on these issues. But for some reason, she has a blind spot when it comes to flaws in the probate conservatorship system. A retention election for the position of chief justice would legitimately place at the doorstep of Cantil-Sakauye's chambers the failure of the judiciary to address these flaws during her entire 12-year term as head of the judicial branch. Although it would be a long shot to defeat her at the ballot box, unseating a supreme court justice is not unheard of. Chief Justice Rose Bird and two associate justices lost their retention elections in 1986. However, even if she were to win the election, a statewide conversation about conservatorship injustices could help stimulate the passage of needed reforms. Considering the high visibility that Britney Spears' case gave to conservatorship abuses during the past few years – causing public demonstrations, ongoing media attention, and statements from celebrities – it is possible that conservatorship abuse could gain traction as an issue in a retention election. Win or lose, months of public attention to systemic flaws in the conservatorship system could give a boost to the conservatorship reform movement – especially if Britney Spears, her celebrity friends, and her fan base weighed in on the issue.

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At least you got some good press in the Los Angeles Daily Journal. We have been fighting with the courts for the last five years as they continue to deny a conservatee his constitutional rights. These include: 1. Failure of judge to provide statutory advisements; 2. Failure to inquire whether proposed conservatee understood the advisements; 3. Judges order creating conservatorship included statement that conservatorship was created pursuant to a stipulation where there was no such stipulation. Presumably, the statement of a stipulation was to correct the judicial error. 4. The hearing on the general conservatorship was pursuant to shortened time contrary to statute. 5. Court preventing conservatee from having his own private counsel (this can be corrected as of January 1, 2022.) 6. Denial of conservatee's request for a jury trial. The conservatee has been denied due process with the blessings of the Fourth District Court of Appeal. Justice is dying if not already deceased.	I am fortunate that the Daily Journal has provided a platform to address flaws and offer solutions regarding the judicial system in general and the conservatorship system in particular. The paper has published more than 30 of my commentaries since 2015. Your five year struggle with the conservatorship process is not uncommon. I have been informed of many situations like yours. Theresa Jankowski (an 84-year-old woman) and Elizabeth H. (a young woman with Down syndrome in her twenties), were denied the right to counsel of their choice – just like Britney Spears. In Los Angeles, judges push cases through a warp speed. Often, a temporary conservator is appointed which gives the petitioner an ally to overpower the proposed conservatee. The right to a jury trial is a theoretical right that almost never becomes a reality. The attorneys appointed to represent proposed conservatees never, or almost never, demand a jury. For example, in Alameda County there ha not been a jury trial in 10 years. Probably longer, but that is as far back as I researched. In Los Angeles County, over the past 12 years the court has processed about 24,000 conservatorship cases. Only two of those proposed conservatees were given a jury trial. I am curious to learn whether the conservatee in your case was given an attorney on appeal. Until I intervened in two cases about three years ago, the Second District Court of Appeal had never appointed an attorney. When I discovered a case in the First District where the conservatee in an appeal has no attorney, I reminded the appellate court of its duty to appoint counsel as an ADA accommodation to ensure the litigant with cognitive disabilities had meaningful participation in the appeal. The court ignored the reminder and the appeal was processed without the conservatee having counsel on appeal. One of the issues was the failure of the conservatee to have counsel in the trial court. Due process meant nothing to the appellate court in this case. Yes, justice is an illusion for most conservatees.

The comments that appear below were reactions to the responses of the author to the reactions of the readers posted above.	
Highly instructive discussion, Tom. Thanks for sharing your process and strategy. It's beautiful, and WILL get results.	I decided to post reader reactions and my responses as a teaching tool. I hope that people will share with others the commentary as well as the reactions and responses. Although I get frustrated by the lack of failure of most officials to take any action to improve the conservatorship system, the enactment of AB 1194 gives me a bit of hope for the future.
ABSOLUTELY BRILLIANT. Your responses are powerful. I especially loved the first one. You get smarter and smarter all the time. You are the world's greatest spokesperson for the rights of vulnerable people!!!	Thank you for the compliments. The more I research the conservatorship system and all of its moving parts, the better I am at identifying specific defects, corresponding solutions, and who has the authority to implement a particular remedy. I am honored to be a spokesperson for a vulnerable population who, due to the nature of their disabilities, generally lack the ability to fight back individually or push collectively for reform. They must rely on surrogate advocates and I am pleased to be able to have such a role.