



Disability and Guardianship Project

1717 E. Vista Chino A7-384, Palm Springs, CA 92262
(818) 230-5156 • www.spectruminstitute.org

July 1, 2020

Hon. Tani Cantil-Sakayue
Chief Justice of California / Chairperson of the Judicial Council
350 McAllister Street
San Francisco, CA 94102

Re: *Capacity Assessments in California Conservatorship Proceedings*
A Report to the Chief Justice, Governor, and Legislature

Dear Chief Justice / Madam Chairperson:

The enclosed report is being sent to you in your administrative capacity as Chief Justice of the California Supreme Court and as Chairperson of the California Judicial Council. Please share this report with members of both of these entities since some of its recommendations are directed to each of them.

The people of the State of California will be celebrating Independence Day on July 4. Independence has great meaning not only for a nation such as the United States of America, but also for the individuals who collectively form and govern it. Having said that, there are tens of thousands of seniors and people with developmental and other disabilities in California who are not in a position to celebrate their independence. These individuals lost their personal autonomy when superior court judges entered orders taking away many of their freedoms. Thousands of others whose cases are in pre-adjudication stages also have no grounds for celebration. Their cherished liberties have been placed in jeopardy with no guarantee they will receive access to justice during the legal process.

The issue of legal capacity for decision-making forms the very foundation on which the probate conservatorship system rests. Unfortunately, the enclosed report – based on 15 months of analysis of constitutional requirements, statutory standards, and judicial, legal, and professional practices – shows this foundation to be fundamentally flawed. Current capacity assessment standards and practices need a thorough review by officials in all three branches of state government.

Recommendations in the report have been made to guide state officials on ways to bring this foundational aspect of the conservatorship system into conformity with the requirements of due process and the mandates of state and federal nondiscrimination laws. We urge you, the governor, and leaders in the legislative branch to take the necessary actions to bring about such a result.

Respectfully,

Thomas F. Coleman
Legal Director

cc: Governor Gavin Newsom
Assembly Speaker Anthony Rendon; Senate President Pro-Tem Toni Atkins