



Disability and Guardianship Project
Disability and Abuse Project

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November 12, 2018

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

Re: Administrative Steps to Improve California's Probate Conservatorship System

Dear Chief Justice / Madam Chairperson:

I am writing to you on behalf of the tens of thousands of Californians who are living under orders of probate conservatorship, as well as the 5,000 or more who, as recipients of court-issued citations, become unwilling participants in such conservatorship proceedings each year.

For the past several years, I have devoted my professional life to advocating for the rights of adults with cognitive disabilities and, in particular, for comprehensive reform of California's probate conservatorship system. Unfortunately, my efforts have been met with indifference from most of the elected officials approached – including those within the state judiciary.

In contrast, many nations abroad have decided to change the way in which the government interacts with this class of vulnerable adults. This shift is due in large part to the provisions of the United Nation's Convention on the Rights of Persons with Disabilities (CRPD) – a treaty ratified by most nations throughout the world. Section 12 of the Convention requires a complete revamping of adult guardianship systems – eschewing the antiquated model of substituted decision-making for a new paradigm of supported decision-making.

I have recently returned from Seoul, Korea where I participated in the Fifth Annual World Congress on Adult Guardianship. I was invited to speak to 400 delegates from dozens of nations on more than five continents. It was very unpleasant for me to inform the assembly of delegates from across the globe how the rights of elders and other vulnerable adults in California are disregarded by our conservatorship system. It saddened me to report that many county courts do not even appoint an attorney to represent proposed conservatees, thus requiring people with serious cognitive and communication disabilities to represent themselves in these complex proceedings.

During the conference, I was privileged to hear from and exchange views with judges, government administrators, professors, and advocates about the progress each of their countries is making in modernizing their guardianship systems. Significantly, some countries have completely replaced the guardianship system with a more sophisticated assisted decision-making model.

As I listened to presentations at the conference, I began to realize the world is passing us by. Despite having a rich history of innovation and leadership, California is still operating a conservatorship system that does not reflect the principles of the CRPD, much less conform to and incorporate the access-to-justice requirements of the Americans with Disabilities Act (ADA).

My experiences at the World Congress have given me new hope for the possibility of progress in California. In that spirit, I urge you as Chief Justice of the Supreme Court and as Chairperson of the Judicial Council to initiate several actions to improve the probate conservatorship system in this state. Such actions will help bring California into compliance with the requirements of Title II of the ADA and, ultimately, closer to being in conformity with the principles enshrined in the CRPD.

I encourage you, as *Chief Justice of the Supreme Court*, to: (1) convene a task force on alternatives to conservatorship; (2) request the State Bar to adopt performance standards for attorneys who represent proposed conservatees; and (3) ask the Supreme Court to modify the Code of Judicial Ethics as requested in the recent report of Spectrum Institute (which has been referred to the Supreme Court's Advisory Committee on the Code of Judicial Ethics).

I also encourage you, as *Chairperson of the Judicial Council*, to ask that body to: (1) modify Rule 1.100 of the California Rules of Court to clarify the *sua sponte* duties of judges under the ADA to modify court policies and practices to accommodate the special needs of persons with *known* disabilities even absent a specific request; and (2) conduct a survey of the policies and practices of probate judges throughout the state to generate a centralized administrative awareness of the manner in which probate conservatorship cases are being processed in all 58 counties.

Further details regarding the above requests are contained in the enclosure: *Administrative Steps To Improve California's Probate Conservatorship System*. Implementing these actions will demonstrate a commitment by the Judicial Branch to ensure access to justice for people with disabilities and will show that California embraces the human rights principles adopted by the international community.

Finally, Spectrum Institute offers its assistance to the Supreme Court, Judicial Council, State Bar, and any of their advisory committees in whatever actions may be taken to reform and improve the state's probate conservatorship systems.

The next World Congress will be held two years from now in Argentina. I hope that when I attend, I will be able to report the progress that California has made in the interim.

Respectfully,



Thomas F. Coleman
Legal Director

Enclosure: *Administrative Steps to Improve California's Probate Conservatorship System* • www.spectruminstitute.org/steps

cc: Hon. Harry E. Hull; Hon. John H. Sugiyama; Hon. Richard D. Fybel; Ms. Leah T. Wilson