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November 17, 2014

Hon. Tani G. Cantil-Sakauye  
Chief Justice of California  
350 McAllister Street  
San Francisco, CA 94102

Re: Task Force on Limited Conservatorships

Dear Chief Justice:

Many months ago I wrote to you with a request for the Judicial Council to convene a statewide Task Force to review systemic and operational deficiencies in the Limited Conservatorship System and to make recommendations for improvement to that system. You referred our request to Justice Harry Hull, Chair of the Rules and Projects Committee. He referred it to the Probate and Mental Health Advisory Committee:

Our proposal came before the Advisory Committee at a public meeting on November 14. At that meeting, and in the many months preceding it, no one has disputed the validity of our complaints, the accuracy of our factual assertions, or the need for such a Task Force. The concern that was raised at the committee meeting last Friday was that of funding and staffing.

We believe that the Judicial Council can obtain all or a large portion of the funding needed to operate the Task Force from several sources, including: the State Bar Foundation, Cal OES, the federal Administration on Developmental Disability, and the federal Office for Victims of Crime. We are willing to discuss funding ideas with the Judicial Council. As I said at the committee meeting, "Where there's a will, there's a way."

The Judicial Council has had the will to create task forces in other important areas, including: a Family Law Task Force, a Children in Foster Care Task Force, a Domestic Violence Task Force, a Probate Task Force (for seniors in general conservatorships), a Language Access Task Force, and a Task Force on Self Represented Litigants. The dysfunction of the Limited Conservatorship System rises to the same level of importance and need.

Just as the family law system was found to provide substandard justice as compared to civil law, the same can be said about limited conservatorship proceedings. Just as children in foster care are a vulnerable class in need of special attention, adults with developmental disabilities also have special needs in terms of the administration of justice. Just as language access barriers prevent many people from receiving equal justice, the same is true for disability access barriers – obstacles to communication and understanding. The overwhelming majority of petitioners in limited conservatorships represent themselves, and this aspect of the system needs attention. When problems with general conservatorship proceedings were exposed by the media, seniors got immediate attention with the formation of the Probate Task Force.

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As Dr. Nora Baladerian told the committee at the meeting last week, the question is not whether a Limited Conservatorship Task Force should be convened, but how soon it can be done. Each day of delay is another day that large numbers of people with developmental disabilities are being denied justice.

Progress can be made while the Judicial Council seeks funding for the Task Force. The Rules and Projects Committee can create a Limited Conservatorship Survey Workgroup which can do some preliminary research into all working components of the Limited Conservatorship System in each county.

A workgroup of three people would be sufficient, along with a staff person to assist in the distribution of the surveys and receipt of the responses. I would be willing to serve as a member of the workgroup. Perhaps Judge Sugiyama would be willing to work with me, with Mr. Miller as the staff member. Just one other person would be needed and the work of the group could begin. The surveys would ask the Presiding Judge of the Probate Court in each county to have staff gather some information, answer some questions, and assemble some documents. That information would then be sent to the office of the staff person where it would be available for analysis. Using such a workgroup process would allow the Task Force to have a running start when it is created.

A workgroup of this nature is certainly within "judicial purview." The California Constitution gives the Judicial Council authority to survey judicial business. Processing limited conservatorship cases, and the activities of all of the participants in such cases are clearly judicial business.

The many essays and reports I have written in recent months document the urgent need for review of the Limited Conservatorship System. This system has operated for more than 30 years without being reviewed. It has no checks and balances built into it. The time for a comprehensive review is long overdue. That review can begin with a small workgroup conducting surveys. I am sure there are people, myself included, who would be eager to review the survey responses and documents submitted by the probate courts in each county. The surveys and preliminary analysis would serve as the foundation for the broader review by the Task Force.

I am willing to meet in person with you, Justice Hull, and/or Judge Sugiyama to discuss these ideas further and to move forward with a measured plan to implement them in phases. As I told the committee last week, let's follow the Nike motto and "Just Do It."

I look forward to your reply and to meeting with you or the appropriate members of the Judicial Council in the very near future.

Very truly yours,

THOMAS F. COLEMAN  
Legal Director