

Access to Justice for the Disabled

By Thomas F. Coleman
Los Angeles Daily Journal
January 11, 2018

Over her lifetime, Theresa, now 84, was able to accumulate enough assets to finance a comfortable lifestyle in her golden years. She hired a financial consultant to help her invest the money. When the time came, Theresa moved into an independent living center in Los Angeles County where she made new friends. Theresa has no relatives.

The financial consultant introduced Theresa to a fiduciary. Theresa was asked to sign papers, which she did. Theresa later became aware that the papers gave the fiduciary a financial power of attorney. When she realized this, Theresa revoked the document – an action the fiduciary refused to accept.

The fiduciary went on the offensive by filing a petition to have Theresa placed under an order of conservatorship, asking that the fiduciary be appointed as conservator. The result would be ongoing fees paid to the fiduciary out of Theresa's sizeable estate.

Theresa demanded that her bank release her funds so she could open new accounts elsewhere. Caught between the competing demands of Theresa and the fiduciary, the bank would only give her a small amount of money – enough for Theresa to move to a new independent living center in Orange County.

With the help of an interested and friendly attorney, Theresa was able to make the move.

In response to the conservatorship petition, the Los Angeles County Superior Court appointed an attorney to represent Theresa in the proceedings. Unfortunately, the attorney aligned himself with the goals of the petitioner and has been actively advocating that his client be placed under an order of conservatorship. This was done despite recommendations to the contrary from a psychologist who examined

Theresa, a police detective specializing in elder abuse, and an elder care service provider. The attorney apparently believed that he knew what was best for Theresa, regardless of her wishes and despite ample evidence that she is competent.

Had Theresa's appointed attorney chosen to advocate for his client's right to make her own decisions, he would have had plenty of evidentiary ammunition.

After evaluating Theresa on multiple occasions, a neuropsychologist concluded that she "does not need to be conserved." Her declaration warned that Theresa may be a victim of financial abuse. The attorney's response? According to the psychologist's sworn statement: "He was angry, aggressive, and hostile. . . . He did not want to hear anything that did not involve [her] being put into a conservatorship."

As for possible financial abuse, a police detective who investigated the matter reported: "I have personally spent time interviewing Theresa . . . and found her to be attentive, understood my questions, and was able to carry on a conversation. She also had logical reasoning for her past financial decisions. It's my opinion, she did not appear dependent and had a clear understanding of the wrong doing she is receiving at the hands of others." The detective's opinion was ignored by Theresa's appointed attorney.

The senior housing consultant who helped Theresa find the new place in Anaheim gave examples of how Theresa was making good financial decisions "based on reasonable risks vs. rewards analysis." That too was rejected.

Fortunately for Theresa, the friendly attorney who assisted her in moving to Orange County, continues to take an interest in her case. He and another legal

A core promise
of the Americans
with Disabilities
Act is access to
justice for people
with disabilities.

colleague have been helping Theresa fight to keep her rights. Although they have appeared with Theresa in court, the judge has not yet recognized their role as her legal advocates. Instead, Theresa is stuck paying the fees of a court-appointed lawyer – someone who is arguing against her wishes.

I am not surprised by Theresa's story. This case is an acute example of chronic dysfunction in a legal services program that all too often finds court-appointed attorneys advocating against their clients wishes or failing to do any meaningful advocacy at all.

My audits of dozens of conservatorship cases reveal a pattern and practice of appointed attorneys actively denying their clients access to justice.

Last year, my organization, the Spectrum Institute, wrote to the California Supreme Court to oppose a new rule proposed by the State Bar regarding lawyer-client communications – a rule that fails to even mention the Americans with Disabilities Act. That matter is still pending.

We met with the director of the Department of Fair Employment and Housing last March. DFEH has authority to investigate complaints against public entities that violate the ADA. State courts are such public entities. We were told they lack the resources to open a system-wide investigation but to bring them individual cases. This is such a case.

We made a presentation to the Probate and Mental Health Advisory Committee of the Judicial Council in 2014 and submitted a report to them in 2015. We documented proof of deficiencies in conservatorship policies and practices and asked for new rules to require ADA-compliant advocacy services by court-appointed attorneys. A two year-project by the committee on this subject is in its final phase.

The Judicial Council will soon release proposed new court rules on this subject for public comment. These rules will specify the duties of court-appointed attorneys who represent respondents in conservatorship proceedings.

Current court rules are vague and flimsy. It is time for the Judicial Council to flex its rule-making muscles and protect vulnerable litigants in these proceedings – proceedings in which their life-long assets and cherished personal liberties are threatened.

At the core of a constellation of legal rights that should protect these litigants is the promise of the ADA that people with disabilities should receive access to justice. This goal would be advanced through the adoption of ADA-compliant standards of practice, mandatory training programs, and effective mechanisms to monitor the performance of court-appointed attorneys in conservatorship cases.

As for Theresa, her case has a hearing scheduled in the coming weeks. But the stress of knowing that her appointed attorney is advocating against her has already taken a toll.

Theresa recently had a heart attack and is currently in a rehabilitation facility. She attributes the stress to the betrayal of her court-appointed attorney and the fear of having her freedom taken away and control of her life and her assets given to complete strangers.

The court should immediately remove the appointed attorney. Theresa should be allowed to have the legal team of her choice represent her – lawyers whom she trusts will use available evidence to support her right to manage her own life. To do otherwise would deny Theresa access to justice and would constitute a judicially-inflicted ADA violation of the highest order. ♦♦♦

Thomas F. Coleman is legal director of Spectrum Institute – a nonprofit organization advocating for reforms in California's conservatorship system and in state guardianship systems throughout the nation. Spectrum has filed class-based complaints with state and federal officials, asking them to correct continuing violations of the Americans with Disabilities Act by the conservatorship system in Los Angeles County and statewide.

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Thomas F. Coleman
Attorney at Law

May 23, 2018

Hon. Mary Thornton House
Superior Court
111 N. Hill Street
Los Angeles, CA 90012

Re: Conservatorship of Theresa M. Jankowski, 17STPB06469
Statement of Concern – Rule 7.10 (c) California Rules of Court

Dear Judge House:

I am writing to alert you to the fact that substantial evidence exists that Theresa Jankowski has not been receiving effective assistance of counsel from her court-appointed attorney, Robert L. Risley. Available evidence shows that Mr Risley has violated ethics, professional standards, and constitutional mandates. It further shows that he has had a conflict of interest throughout the time he has represented Ms. Jankowski. (i.e., his “dual role” under Rule 4.125)

Judge Maria Stratton, former Presiding Judge of the Probate Division, once instructed attorneys that if we observe ethical violations by a PVP attorney we should advise the judge presiding in the case and report them to the presiding judge as well. The PVP reports filed by Mr. Risley, in and of themselves, provide evidence of ethical violations by Mr. Risley. I am therefore alerting you to the existence of such evidence – evidence which you may use to remove Mr. Risley as court-appointed counsel in this case. (People v. Marsden (1970) 2 Cal.3d 118; Conservatorship of David L. (2008) 164 Cal.App.4th 701, 712; People v. Hill (2013) 219 Cal.4th 646) Due to her unawareness of the law, or due to her disabilities, or both, Ms. Jankowski may not be able to raise the issue of ineffective assistance of counsel on her own. But as the Court of Appeal once noted, someone must be able to raise the issue or else the right to effective assistance would be meaningless. (Michelle K. v. Superior Court (2013) 221 Cal.App.4th 409) Since I have knowledge of this matter, I am raising the issue pursuant to Rule 7.10.

I have been monitoring the proceedings in this case for some time now. I wrote a commentary about it which was published a few months ago in the Daily Journal. (Enclosed) More recently, I read the three reports filed by Mr. Risley with this court. I am appalled by the brazen manner in which he flagrantly violated his ethical duty of confidentiality by what he disclosed in the report and his duty of loyalty by arguing in favor of an order of conservatorship.

Whether or not the extent of any disabilities Ms. Jankowski may have will ultimately warrant an order granting a conservatorship is irrelevant at this point. She is entitled to due process of law – an integral part of which is effective representation of counsel. She is also entitled to an attorney who adheres to ethical duties of loyalty and confidentiality.

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Thomas F. Coleman

Letter to Hon. Mary Thornton House

May 23, 2018

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In his reports, Mr. Risley has relayed to the court and to petitioner various confidential communications he has had with his client. He also has been disloyal to his client by sharing information that may be adverse to his client retaining some or all of her decision-making rights. Although he did relay to the court his client's desire not to be conserved and not to have petitioner as her conservator, he undercut her communication by injecting his own opinion to the contrary.

As a person with disabilities, Ms. Jankowski is entitled to the protections of the Americans with Disabilities Act. The court is a public entity bound by the mandates of Title II of that Act. As a recipient of federal funds, the superior court is also bound by the mandates of Section 504 of the Rehabilitation Act of 1973. Knowing that Ms. Jankowski has disabilities, the court and court-appointed counsel are required to take steps to ensure that she has effective communication with the court. She is entitled to meaningful participation in her case. Meaningful participation and effective communication are foreclosed when an appointed attorney is disloyal to a client, and weakens her views by injecting his own contrary views.

Mr. Risley's conduct not only violates Rule 3-110 of the California Rules of Professional Conduct (intentional failure to act competently), not only violate his client's rights under the ADA, not only violate his client due process right to effective representation, but also constitute discrimination on the basis of disability under the Unruh Civil Rights Act. (Civil Code Section 51)

By failing to recognize her chosen attorneys as her attorneys of record, and by foisting on her appointed-counsel whose performance is influenced by the "dual role" conferred on him by local rule 4.125 – which attorneys have been instructed in PVP trainings as requiring them to be the "eyes and ears of the court" – the court is itself engaging in discrimination on the basis of disability in violation of Government Code Section 11135. In proceedings that do not involve litigants with disabilities, there is no way that any attorney would dare to be public with his disloyalty, or to blatantly violate rules of confidentiality. There is no way a judge would allow such ethical and constitutional violations to occur. It is only because Ms. Jankowski, like others who find themselves as respondents in conservatorship proceedings, has disabilities, that an appointed attorney, and the court that appointed him, would participate in such discriminatory conduct.

The court, on its own motion, should strike the PVP reports from the record, remove Mr. Risley as attorney of record, and recognize Ms. Jankowski's chosen attorneys she will have an attorney not influenced by Rule 4.125 (which only applies to PVP attorneys). It would also be appropriate for the court to refer the matter to the State Bar for an investigation of Mr. Risley for potential violations of ethics and professional standards. Rule 7.10(c)(2)(D) authorizes the court to make a referral to a licensing agency under these circumstances.

Very truly yours,



Thomas F. Coleman
Attorney at Law

cc: Hon. David J. Cowan



CHAMBERS OF
The Superior Court
LOS ANGELES, CALIFORNIA 90012
MARY THORNTON HOUSE, JUDGE

DEPARTMENT 29
TELEPHONE
(213) 633-0291

June 8, 2018

Thomas F. Coleman
Attorney at Law
Spectrum Institute
1717 E. Vista Chino A7-667
Palm Springs, CA 92262

Re: May 23, 2018 Letter Concerning Conservatorship of Theresa M. Jankowski

Dear Mr. Coleman:

Thank you for your above-referenced correspondence. I have reviewed your letter and the supporting materials. As you have requested, a hearing pursuant to California Rule of Court 7.10(c) will be conducted in the near future.

Very truly yours,


MARY THORNTON HOUSE
Superior Court Judge

MTH:sw

cc: Judge David Cowan

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

**Probate Division
Stanley Mosk Dept. - 3**

17STPB06469

In re: Jankowski, Theresa M. - Conservatorship

June 11, 2018

1:30 PM

Honorable David J. Cowan, Judge

Erick Amaya, Judicial Assistant

Not Reported, Court Reporter
Joseph L Emmert, Deputy Sheriff

NATURE OF PROCEEDINGS: Non-Appearance Case Review

The following parties are present for the aforementioned proceeding:

No appearances.

Out of the presence of the court reporter, the Court makes the following findings and orders:

The Court sets a hearing, pursuant to California Rules of Court Rule 7.10(c)(2)(F), to address a letter from Thomas F. Coleman to Judge Mary Thornton House, dated May 23, 2018, a copy of which is attached, on August 20, 2018 at 8:30 a.m. In order to address the issues raised therein, the Court orders Theresa M. Jankowski, herself, to attend, as well as her PVP attorney, Robert Risley, as well as counsel Albert J. Rasch, Jr. and Brook Jon Chongala. All responses to the issues identified in the letter shall be filed and served no later than August 10, 2018.

The Court Clerk is to notify all these persons of the hearing, as well as Lauriann Wright, counsel for proposed conservator.

**CLERK'S CERTIFICATE OF MAILING/
NOTICE OF ENTRY OF ORDER**

I, SHERRI R. CARTER, Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the Notice of Entry of the above minute order of June 11, 2018 upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States Mail at the courthouse in Los Angeles, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

Dated: June 11, 2018

By: /s/ Erick Amaya
Erick Amaya, Deputy Clerk

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Thomas F. Coleman
Attorney at Law

August 21, 2018

Hon. David Cowan
Probate Presiding Judge
Superior Court
111 N. Hill Street
Los Angeles, CA 90012

Re: Conservatorship of Theresa M. Jankowski, 17STPB06469
Follow up to Original Statement of Concern – Rule 7.10 (c) California Rules of Court

Dear Judge Cowan:

On May 23, 2018, I sent a letter and supporting materials to Judge Mary Thornton House pursuant to Rule 7.10 of the California Rules of Court. In that letter, I shared facts that had come to my attention – through reports I had read that were filed by attorney Robert Risley in the case of Theresa Jankowski – raising serious concerns about conduct of Mr. Risley that violated ethical rules, due process protections, and state and federal disability rights laws.

I specifically mentioned that Mr. Risley was playing a “dual role” in the case and that by acting as the “eyes and ears of the court” as PVP attorneys have been instructed to do, and that he was violating professional standards, ethical rules, constitutional protections, and disability discrimination protections that apply to litigants such as Ms. Jankowski.

Judge House responded on June 8, 2018, informing me in a letter that based on my correspondence, “A hearing pursuant to California Rule of Court 7.10(c) would be conducted in the near future.”

Apparently, Judge House transferred the case to you, presumably as presiding judge of the probate division, for further proceedings, since you entered a minute order in the case on June 11, 2018. The minute order scheduled a hearing under Rule 7.10(c) to address the issues raised in my letter to Judge House. The hearing was set for August 20, 2018. The court ordered Theresa Jankowski, Robert Risley, Albert Rasch, and Brook Chongala to attend the hearing. I was not invited by you or otherwise requested to attend the hearing. You set August 10, 2018 as the date by which any responses to the issues raised in my letter had to be submitted to the court.

Although I am not a party or represent any party in the case, I had given thought to attending the hearing as an observer. I thought that if I were present in court, that I could offer legal argument should you want to ask me any questions. However, over the past several weeks I have experienced significant medical problems that have caused me to go several times to the hospital emergency room in Palm Springs where I live. The most recent ER visit was last Saturday. I therefore ultimately decided that a trip to court in Los Angeles was not medically advisable at this time.

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Despite the fact that I am not a party nor an attorney for a party, and was not invited to attend the hearing, I was informed that you had quite a lot to say about my absence in the courtroom on August 20. I was informed that you indicated on the record that, due to my absence, you were inclined to ignore the issues that had been raised in my statement of concern and to cancel the hearing scheduled under Rule 7.10(c).

In the event that those matters will eventually be considered and ruled upon by the court, I believe that it is imperative for me to share some additional concerns with you and Judge House. Had she been aware of these matters at the time she transferred the case to you, or had you considered the implications of what I am about to share, the case may have been transferred by her or by you to another judge – a judge who can be impartial in ruling on the alleged impropriety of Mr. Risley's conduct in this case.

The heart of the issues I raised is that in his reports to the court, Mr. Risley has been arguing against his client's stated wishes. Her wishes are to oppose the conservatorship and to oppose the person nominated to be conservator should the petition be granted. Through his reports to the court, Mr. Risley has acted as the primary witness against his client. He has aligned himself with the petitioner. He is acting more as a guardian ad litem or a court investigator than an advocacy and defense attorney for Ms. Jankowski. My letter to Judge House specifically characterized his conduct as acting as the "eyes and ears of the court."

To rule on the issues raised in my letter – which were also argued by Ms. Jankowski's chosen attorneys (who have been labeled by the court as her "personal representatives") – the court will have to decide whether being the "eyes and ears of the court" and acting in a dual role, is lawful or not. May a court-appointed attorney share information with the court as a defacto guardian ad litem and thereby disregard legal ethics which require loyalty and confidentiality? Does due process and prohibitions on conflicts of interest, prohibit an attorney from advocating for what he considers to be in the client's best interests, even though his opinion on this matter is in direct opposition to his client's stated wishes? These are the issues that need to be ruled on.

Unfortunately, you have already expressed a position on these matters. You did so in 2014 at a PVP training seminar when you instructed PVP attorneys to act as the "eyes and ears of the court." You did so against in 2016 at a similar seminar when you gave the same directive.

At the 2014 seminar, attorneys were told that court investigators were not being used at the time, and therefore they were supposed to act as a substitute for the court investigator. Thus, they were instructed to serve in a dual role. It is noteworthy that the 2016 revised edition of the "Handbook for Conservators" published by the Judicial Council specifically refers to court investigators as the "judge's eyes and ears."

It is common knowledge in legal and judicial circles throughout the nation that the phrase "eyes and ears of the court" refers to people who work for the court or are appointed by the court and whose loyalty is to the court and who are acting as investigators and not advocates. For example, the Conference of State Court Administrators refers to guardians ad litem as "the eyes and ears of the court." The Chicago Bar Foundation does the same. As do Illinois appellate decisions. The same is true of courts in New Jersey.

Some courts have made it clear that an attorney who serves a dual role like this has “a per se conflict of interest.” (People v. Austin M. (Ill. 2012) 975 N.E.2d 22; Accord: In Re Fagan (Iowa App. 2017) 2017 Iowa App. LEXIS 1156)

Other courts have ruled that it is a violation of due process for an attorney to serve as an advocacy attorney at a guardian ad litem in an adult guardianship proceeding. (In Re Sonny E. Lee (Md.Ct.Spec.App. 2000) 754 A.2d 426)

Once this case was transferred by Judge House for a hearing by a different judge, and once the case file reached you and you became aware of the issues that would need to be ruled on, the requirements of the California Code of Judicial Ethics should have caused you to recuse yourself from the case.

You have made statements, other than in a court proceeding, judicial decision, or opinion, that a person aware of the facts might reasonably believe commits you to reach a particular result with respect to the legality of an attorney serving in a “dual role” or acting as “the eyes and ears of the court.” As a probate judge in 2014, you instructed attorneys at a PVP seminar to act in such a manner. As the probate presiding judge, you did the same at a seminar in 2016. These were not off the cuff remarks in a social setting. These were formal educational sessions, for MCLE credit, to attorneys whom you knew would be likely to follow your instructions. You were speaking from a position of authority – especially in 2016 when you were the administrative judicial officer who supervised the probate division and the PVP panel of attorneys.

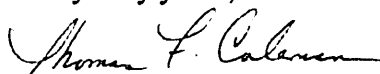
Canon 3(E)(3) indicates that a judge who has made such statements should disqualify himself from a case in which such issues need to be ruled on. Furthermore, under Canon (3)(E)(2), you should have disclosed to the parties to the case that you had taken a formal and public position on the “dual role” and “eyes and ears” issues in 2014 and again in 2016.

Public confidence in the impartiality of the judiciary (Canon 2(A)) is undermined when a judge makes statements that commit a judge to a particular outcome on issues that are likely to come before the court.

A person aware of these facts might reasonably entertain a doubt that you are able to be impartial in ruling on the Rule 7.10(c) matters, as well as the motion made by Ms. Jankowski to remove and disqualify Mr. Risley as her court-appointed attorney. The same issues will also arise in her opposition to Mr. Risley’s claim for fees. Therefore, for that additional reason, you should have recused yourself. (Code of Civ. Pro. Section 170.1)

Perhaps you did not think about these matters at or prior to the August 20 hearing. However, they have now come to your attention. If you have already ruled on any of these issues, you can correct the error by rescinding the ruling for the reasons stated above. If you have not yet so ruled, you can transfer the case back to Judge House or to another bench officer for further proceedings.

Very truly yours,



Thomas F. Coleman
Attorney at Law

cc: Hon. Mary Thornton House
Enclosures

Declaration of Thomas F. Coleman

I, Thomas F. Coleman, declare:

1. I am an attorney licensed to practice law in the State of California.
2. On May 23, 2018, I wrote a letter to Judge Mary Thornton House in the case of Theresa Jankowski, LASC Case No. 17STPB06469. A copy of the letter and supporting materials that accompanied such letter were sent to Judge David Cowan in his capacity as presiding judge of the probate division.
3. When I learned that the issues raised in my letter had been scheduled for a hearing on August 20, 2018, I had originally intended to attend the hearing as an observer and to make myself available to the court for questions regarding the legal authorities I had cited in my materials.
4. Over the past few weeks I have had several visits to the hospital emergency room in Palm Springs – the area in which I live. The most recent ER visit was on August 18. As a result of my health condition, I decided not to drive to Los Angeles since I thought the trip would be too stressful and therefore not good for my medical condition.
5. In my recent letter to Judge Cowan, dated August 21, 2018, I mentioned two PVP training sessions in Los Angeles – one in 2014 and the other in 2016 – in which he instructed the attorneys to act as “the eyes and ears of the court” in cases on which they had been appointed. I was present at those seminars and noted those statements by Judge Cowan when they were made.
6. I will be sending a courtesy copy of the August 21 letter, this declaration, and supporting materials to the attorneys for the parties to this case via email on August 23, 2018.
7. I have sent a courtesy copy of this letter and materials to Judge House on today’s date.

I declare under penalty of perjury that the foregoing is true and correct. Executed at Cathedral City, California on August 21, 2018.



THOMAS F. COLEMAN
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CALIFORNIA CODE OF JUDICIAL ETHICS

“Impartial,” “impartiality,” and “impartially” mean the absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as the maintenance of an **open mind** in considering issues that may come before a judge.

CANON 2

A. Promoting Public Confidence

A judge shall respect and comply with the law* and shall act at all times in a manner that promotes public confidence in the integrity* and impartiality* of the judiciary. A judge **shall not make statements, whether public or nonpublic, that commit the judge with respect to cases, controversies, or issues that are likely to come before the courts** or that are inconsistent with the impartial performance of the adjudicative duties of judicial office. (Emphasis added)

CANON 3

E. Disqualification and Disclosure

(2) In all trial court proceedings, a judge **shall disclose** on the record as follows:

(a) Information relevant to disqualification

A judge shall disclose information that is **reasonably relevant** to the question of disqualification under Code of Civil Procedure section 170.1, **even if the judge believes there is no actual basis for disqualification.**

(3) A judge shall **disqualify himself** or herself in accordance with the following:

(a) Statements that commit the judge to a particular result

A judge is disqualified if the judge, while a judge or candidate for judicial office,* **made a statement**, other than in a court proceeding, judicial decision, or opinion, that a person aware of the facts might **reasonably believe commits the judge to reach a particular result** or rule in a particular way in a proceeding. (Emphasis added)

Subject: Recusal of Judge Cowan for instructing attorneys to be "eyes and ears of the court"

Recusal for judicial instruction to attorneys which casts doubt on impartiality

Code of Civil Procedure

Section 170.1

- (a) A judge shall be disqualified if any one or more of the following are true:
- (6) (A) For any reason:
 - (i) The judge believes his or her recusal would further the interests of justice.
 - (ii) The judge believes there is a substantial doubt as to his or her capacity to be impartial.
 - (iii) A person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial.

Section 170.2.

It shall not be grounds for disqualification that the judge:

- (b) Has in any capacity expressed a view on a legal or factual issue presented in the proceeding, except as provided in paragraph (2) of subdivision (a) of, or subdivision (b) or (c) of, Section 170.1.

Judge Cowan did not just express a view on the subject of "dual role" but rather he instructed PVP attorneys that they should engage in a dual role. Therefore, his statement rise above a mere statement of a view, but amounts to direction of attorney to do so – attorneys over whom he will preside in cases and for whom he will rule on fee claims and whether to make future appointments of cases. Therefore, the exception off 170.2(b) does not apply and instead the general rule of 170.1(a)(6)(A)(iii) does apply.

Section 170.3(c)(2)

Without conceding his or her disqualification, a judge whose impartiality has been challenged by the filing of a written statement may request any other judge agreed upon by the parties to sit and act in his or her place.