

Briefing Doc: The Case of Theresa M. Jankowski and the Issue of Fiduciary Appointment

Main Theme: This briefing document analyzes the case of Theresa Jankowski, an 84-year-old woman who was placed under a conservatorship despite evidence suggesting she was competent to make her own decisions. The document focuses on concerns raised by the Spectrum Institute regarding the actions of the appointed attorney and the presiding judge, highlighting potential ethical and legal violations related to fiduciary appointment processes and the rights of individuals with disabilities.

Key Facts & Ideas:

- **Questionable Conservatorship:** Theresa Jankowski, deemed capable of managing her finances earlier in life, hired a financial consultant who subsequently petitioned for and received fiduciary control over her assets. Concerns arose due to the consultant's lack of transparency and potential exploitation of Ms. Jankowski.
- "The financial consultant asked to sign papers, which she did. Theresa later realized that the papers gave the fiduciary a financial power of attorney. When she became aware of this, Theresa revoked the document by an action the fiduciary refused to accept."
- **Inadequate Legal Representation:** The court-appointed attorney representing Ms. Jankowski allegedly disregarded her wishes and aligned himself with the fiduciary, raising concerns about conflict of interest and violation of her right to effective counsel.
- "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."
- **Judge's Role in Question:** The presiding judge, David Cowan, is implicated for previously instructing attorneys in Probate Volunteer Panel (PVP) training to act as the "eyes and ears of the court," raising concerns about impartiality and undue influence on appointed attorneys.
- "At the 2014 seminar, attorneys were told that when you act as the 'eyes and ears of the court,' you therefore were supposed to act as a substitute for the court investigator."
- **Violation of Rights:** The Spectrum Institute argues that the actions of the appointed attorney and the judge's instructions violate Ms. Jankowski's rights under the Americans with Disabilities Act (ADA) and the California Rules of Professional Conduct.
- "A core premise of the Americans with Disabilities Act is access to Justice for people with disabilities."
- **Call for Reform:** The document urges the court to remove the appointed attorney, allow Ms. Jankowski to choose her own representation, and implement stronger safeguards within the conservatorship system to protect the rights of vulnerable individuals.
- "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."

Quotes from Sources:

- **On the Importance of Access to Justice:** "A core premise of the Americans with Disabilities Act is access to Justice for people with disabilities."
- **On the Attorney's Actions:** "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)."

- **On the Judge's Instructions:** "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 rises 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 of 170.2(b) does not apply and instead the general rule of 170.1(a)(6)(A)(iii) does apply."

Conclusion:

The Jankowski case highlights significant concerns about the potential abuse of conservatorships and the lack of adequate protection for the rights of individuals with disabilities. The actions of the appointed attorney and the judge's prior instructions raise serious ethical and legal questions that warrant further investigation and potential disciplinary action. This case underscores the urgent need for reform in the conservatorship system to ensure that vulnerable individuals have access to justice and their rights are protected.