Supreme Court Can Fix Conservatorship Lawyering Mess

By Thomas F. Coleman
Daily Journal / July 20, 2021

Last month, fans of Britney Spears listened intently as the pop star spoke quite emotionally at a hearing in her conservatorship case. What they heard was like a canary chirping in a coal mine – a subtle warning that there is something quite amiss with the court-appointed counsel program operated by the Los Angeles County Superior Court.

Court records obtained by the New York Times a few weeks earlier revealed that in 2016 and again in 2019, Spears informed court investigators that she wanted the conservatorship to be terminated. Yet her appointed attorney, who presumably read these same reports when they were filed, never submitted a termination petition. In fact, Spears told the judge that attorney Sam Ingham III had never advised her that she could petition the court to terminate the conservatorship.

Legal precedents give proposed conservatees the right to retain an attorney to defend against a conservatorship petition. But when a private attorney for Spears showed up at the very first court hearing some 13 years ago and announced he was representing her, the judge refused to recognize him as her legal counsel. Instead, Ingham was handpicked by the judge to represent Spears.

Ingham's first action as a court-appointed attorney was an act of disloyalty to his captive client. He filed a report arguing that Spears lacked the capacity to retain a private attorney.

Observers at the recent hearing also heard Spears complain of years of abusive conservatorship conditions. She said her every move was watched by body guards who prevented her from communicating with friends or associates. She was forced to take unwanted mind-altering drugs. Visitation with her children was threatened unless she worked excessive hours. She was not allowed to remove an intrusive contraceptive device from her body.

All this time, Ingham had ongoing and unfettered access to Spears. Yet he never once filed a document with the court seeking an order to stop these alleged abuses.

After Spears recently told the judge of her desire to end the conservatorship, what did Ingham do? File a termination petition? No. He resigned from the case. Apparently her court-ordered payments to him of some $7 million in legal fees over the years was not sufficient to buy his loyalty.

For those of us who have been closely studying the probate conservatorship system and monitoring court-appointed counsel programs, Ingham's apparent misdeeds and omissions were not a surprise. Our studies have documented that the right to effective assistance of counsel is an unfulfilled promise for most conservatees and proposed conservatees in California.

Whether someone targeted by a conservatorship petition or trapped in an ongoing conservatorship has money or not is irrelevant. Whether the system for delivering legal services to vulnerable adults in these cases is provided through a public defender's department, a county-contracted law firm, or an appointed-counsel panel operated by a court, is also largely irrelevant. The system for delivering legal services in conservatorship proceedings is badly broken and in need of major repairs.

Spears is the tip of an iceberg of legal malpractice that, one way or another, has affected many of the 70,000 adults currently living under an order of

conservatorship or the 7,000 more adults who are served with conservatorship petitions annually in California.

There are a variety of problems that plague the legal services programs that are supposed to help these involuntary litigants have access to justice in this complicated conservatorship maze.

Here are some of them: failure of judges to appoint counsel for many litigants with known cognitive disabilities; inadequate and misleading training programs for court-appointed counsel; judicial ethics violations by court-managed legal services programs; local court rules that create an ethical conflict of interest for appointed counsel; lack of accessibility for conservatees to the complaint and discipline system of the State Bar; lack of performance standards for court-appointed counsel; failure to appoint counsel on appeal for litigants with known cognitive disabilities; no quality assurance controls or monitoring of the performance of court-appointed attorneys; failure of attorneys to comply with the Americans with Disabilities Act; huge caseloads for public defenders; and a pattern and practice of ineffective assistance of counsel for indigent litigants.

These problems have been brought to the attention of superior court presiding judges, the Judicial Council, the State Bar, a state civil rights enforcement agency, and the United States Department of Justice – all to no avail.

It is time to approach the officials with ultimate responsibility over legal ethics and the delivery of competent legal services. The California Supreme Court.

The Supreme Court has the authority to regulate the practice of law by attorneys who appear in California's courts. The State Bar issues ethics opinions, adopts rules of professional conduct, certifies education programs, and administers a complaint and discipline system. But since the State Bar is an "arm of the Supreme Court," all of these functions must receive the approval of the state's top court.

If the adverse effects of conservatorship malpractice will ever end, it is up to the Supreme Court to step in to clean up the mess of bad lawyering in conservatorship proceedings. A good start would be for the full court, or the chief justice, to convene a Workgroup on Conservatorship Right to Counsel Standards.

The workgroup would address the pervasive violations of the right to counsel occurring on a regular basis. The blue ribbon panel would issue a report to the court with recommendations for the establishment of standards to protect the right to effective assistance of counsel for conservatees and proposed conservatees.

The seven justices collectively or the chief justice individually sometimes convene workgroups to study pressing issues. The court convened a Jury Selection Workgroup last year and a California Attorney Practice Analysis Working Group three years ago. The chief justice has convened four workgroups since 2016: Bias in Court Proceedings; Homelessness; Prevention of Discrimination and Harassment; and Pretrial Detention Reform.

Convening a Workgroup on Conservatorship Right to Counsel Standards will not only help identify ways to strengthen the right to counsel for seniors and people with disabilities, it will send a signal to the public that leaders in the judicial branch are committed to improving the administration of justice in probate conservatorship proceedings.

Now that she was recently given permission to hire her own attorney, the ongoing conservatorship nightmare of Britney Spears may soon be coming to an end. Remedial action by the Supreme Court to strengthen the right to counsel for everyone would give hope to thousands of other conservatees – who don't have unlimited funds or a protesting fan base – that regaining their freedom is not just a pipe dream.

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