

Spears Conservatorship Shows Need for Stronger Right to Counsel

By Thomas F. Coleman
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What happened to Britney Spears in her conservatorship case is a perfect example of why laws in California that theoretically protect the right to counsel have too many loopholes. These laws need to be strengthened.

Current law supposedly gives proposed conservatees the right to counsel of their choice to defend against a petition that is trying to take away their decision-making rights. It also says that persons placed under an order of conservatorship supposedly have the right to retain an attorney of their choice if they want to challenge allegedly abusive conditions or to terminate a conservatorship so they can regain their freedom.



The word “supposedly” is used advisedly because what statutes and case law say are something quite different than what can occur in the courtroom. Just ask 39-year-old Spears.

Probate Code Section 1823 requires the court clerk to issue a citation directed to the proposed conservatee. The citation must inform the individual of the “right to choose and be represented by legal counsel.” Pursuant to this legislative directive, the Judicial Council has created form GC-320 to be served on proposed conservatees. It states in no uncertain terms: “You have the right to appear at the hearing and oppose the petition. You have the right to hire

an attorney of your choice to represent you.”

A conservatorship petition asks a judge to strip a proposed conservatee of the freedom of choice with respect to decisions on medical care, finances, residence, travel, sexual relations, social interactions, and marriage. As one legal commentator has noted, convicted felons often have more rights than a person ordered into a conservatorship. Another has called a conservatorship a form of “civil death.”

Probate Code Section 810 states that all persons are presumed to have capacity to make decisions. Therefore, when the conservatorship petition was filed against Spears, the law presumed that she had the capacity to hire an attorney to defend her.

Spears had her constitutional and statutory rights violated from the get go. As the petitioner, Spears’ father asked the court to waive the necessity of serving her with the citation. Despite the law stating that the clerk “shall” issue the citation to the target of the proceeding, Judge Reva Goetz granted the request. Therefore, Spears was never advised in writing of her right to chosen counsel.

Perhaps because someone may have tipped her off that a conservatorship was in the offing, attorney Adam Streisand appeared in court at the first hearing and announced that he was repre-

senting Spears. That should have been the end of the matter. Everyone knew that Spears had sufficient funds to hire an attorney. The law said she had a right to do so. And yet, the process was manipulated by the judge to deprive her of that right.

Just as the outcome of a surgery may depend on the competence and care of a surgeon, the result of a legal proceeding may hinge on the competence and loyalty of the attorney representing a litigant. The outcome of Spears' case was predetermined the moment the judge refused to allow Streisand to represent his client.

The judge appointed attorney Sam Ingham III to represent Spears. Streisand was not allowed to participate in, much less even hear, what was going on in the judge's chambers. Spears' fate was sealed when Ingham filed a report with the court advising the judge that Spears lacked the capacity to retain an attorney. That disloyal act violated one of the most fundamental rules of legal ethics.

Included in the attorney-client relationship is the duty of undivided loyalty and fidelity to the client. *Allow v. State Bar* 3 Cal.3d 924 (1971). It is a violation of the duty of loyalty for an attorney to advance a position that is adverse or antagonistic to the client. *Day v. Rosenthal*, 170 Cal.App.3d 1125, 1143 (1985).

Spears wanted to oppose the conservatorship. She wanted an attorney whom she trusted to represent her. She wanted an attorney whose sole loyalty was to her. Not a "court insider" who was dependent on the court for a steady stream of income from court appointments to lucrative conservatorship cases.

Ingham had a conflict of interest. As a court-appointed attorney, his loyalty was compromised by Local Rule 4.125 which told him to represent his client but at the same time to help the court resolve the matter before it. In Spears' case, the

immediate matter before the court was whether she had the capacity to retain an attorney. Instead of citing the presumption of capacity and demanding an evidentiary hearing at which the petitioner would have to prove otherwise, Ingham filed a report in which he essentially testified against his client.

From that moment forward, the conservatorship railroad was in motion. The court immediately granted an order of temporary conservatorship. No witnesses were called. No evidence in support of Spears was presented by Ingham. He surrendered her rights. Spears became a conservatee in a flash.

It is noteworthy that Ingham met with his client, for the first time, two days *after* the conservatorship was granted.

The fact that Spears was a conservatee, however, did not erase her right to retain her own attorney to challenge the conditions of the conservatorship, any abusive practices that might occur, or to petition to terminate the conservatorship due to changed circumstances.

Probate Code Section 1872 states that a conservatee shall not be denied "the right to enter into transactions to the extent reasonable to provide the necessities of life to the conservatee." As a basic principle, legal services have been held to constitute a "necessary of life." *In re Marriage of Pallesi*, 73 Cal.App.3d 424, 428 (1977) "There is no doubt that legal services rendered an incompetent in proceedings looking toward restoration to capacity are necessities, and a contract to pay the reasonable value thereof will be implied by law and may be enforced in suitable proceedings." *Stone v. Conkle*, 31 Cal.App.2d 348, 351 (1939)

This statute and these court decisions are protecting the constitutional right of an individual to be represented by retained counsel in civil actions. *Roa v. Lodi Medical Group, Inc.*, 37

Cal.3d 920, 925 (1985) The right to retain one's own attorney is especially important in conservatorship proceedings where the positions of the conservatee and the conservator are in conflict.

In a masterful and thorough piece of investigative reporting, lead author Ronan Farrow explains how Spears tried on several occasions to have an attorney of her choice represent her in the conservatorship proceedings which have so far continued for some 13 years. "Britney Spears's Conservatorship Nightmare," *The New Yorker* (July 3, 2021).

After she was conserved, Spears asked attorney Jon Eardley to represent her. He wanted to move the case to federal court. Eardley advised the superior court that Spears had a due process right to be represented by counsel of her choice. He asked that she be brought to court where she could testify that she hired him. The request was denied. Eardley was pushed out.

Then came Jon Anderson, an attorney who Spears later hired. He notified all of the attorneys in the case that he would be filing a petition asking the court to recognize Spears' authority to retain independent counsel. The same day, after hearing from attorneys for the conservators, Anderson withdrew from the case without explanation.

The case of Spears is the tip of the iceberg in terms of violations of the right to counsel in conservatorship proceedings. It happened a few years ago to then 84-year-old Theresa Jankowski in the same court. It happened to a 24-year-old woman with Down syndrome in Solano County last year. A whistle blower report from the Alta Regional Center in Sacramento reveals over the years about 80% of their clients have been denied the right to counsel.

SB 724, a bill by Senator Ben Allen, would strengthen the right to counsel for conservatees and proposed conservatees. While Spears' case

was the original impetus for the bill, it has been expanded to help thousands of others who become targets of conservatorships. Allen says he will bring the bill up for a vote on the floor of the Senate in January 2022.

In the meantime, Spears needs relief now. On her own motion, Judge Brenda Penny should schedule the case for what is called a "Marsden hearing" to inquire into the violations of Spears' right to counsel of choice, the apparent ethics violations by Ingham, his failure to advise her of her right to petition the court to terminate the conservatorship, and his failures over the years to alert the court to the numerous abuses his client disclosed in open court just a few days ago. *People v. Marsden*, 2 Cal.3d 118 (1970); *Conservatorship of David L.*, 164 Cal.App.4th 701, 712 (2008).

If any of these allegations are found to be true, the judge may remove Ingham from the case and refer the matter to the State Bar for investigation. California Rules of Court, Rule 7.10(c). The court would also have authority to order Ingham to repay Spears some or all of the nearly \$7 million he has been paid out of her assets during the time he was violating the Rules of Professional Conduct. *Sheppard, Mullin, Richter & Hampton, LLP v. J-M Mfg. Co.*, 6 Cal.5th 59 (2018).



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