

## A Role for Social Workers in Supported Decision-Making

An order of conservatorship may not be granted unless the court finds that conservatorship is the least restrictive alternative to protect a proposed conservatee who lacks capacity to provide for his or her own basic needs or is not capable of resisting undue influence in financial matters. (Probate Code [Section 1800.3](#))

If a person can manage his or her life safely with the assistance of others, a court may not impose a conservatorship. The failure to explore such an option or to make an express finding that less restrictive alternatives are not available can invalidate an order of conservatorship. ([Conservatorship of Early](#) (1983) 35 Cal.3d 244)

A petitioner must allege and produce evidence that no less restrictive alternative is available. The petition must state that alternatives to conservatorship were considered and explain why those alternatives are not available. ([Section 1821\(a\)\(3\)](#))

A proposed conservatee may lack the capacity to manage healthcare decisions or finances on his or her own without assistance. But with [supported decision-making](#) arrangements in place, the individual may have capacity to handle such matters without the need for a court-supervised conservatorship. In order to comply with the “least restrictive alternative” requirement of the Probate Code, there should be a thorough investigation into the availability of such supports and services and their viability for the individual in question. Assessment of capacity and the evaluation of supported decision-making options are [linked](#).

Petitioners may not have the ability or resources to explore the supportive services available in the community in which the proposed conservatee lives. They may also have personal reasons for wanting a conservatorship and not wanting other options. That is why it is important to have an assessment of capacity, done by a neutral and qualified professional, that fully explores supported decision-making arrangements.

Court investigators do not have the time, and often lack the expertise, to research supports and services available in the community that would enable a proposed conservatee to survive outside of the context of a formal conservatorship. Clinical social workers are qualified not only to evaluate a proposed conservatee in terms of capacities for decision-making and managing affairs, they are also qualified to research supports and services in the local community that are available and which could make a conservatorship unnecessary.

The practice of social work applies a special knowledge of social resources and human capabilities to help people achieve more adequate, satisfying and productive lives. (Business and Professions Code [Section 4996.9](#)) Social workers provide and make referrals for social and health services. These are exactly the types of services that may enable someone to avoid a conservatorship.

Assuming an attorney has been appointed to represent a proposed conservatee, the attorney can ask the court to appoint a social worker to make an evaluation of the viability of a supported decision-

making arrangement as a less restrictive alternative to conservatorship. The court can appoint experts to assist in the evaluation of a conservatee or proposed conservatee. ([Conservatorship of Scharles](#) (1991) 23 Cal.App.3d 1334; Evidence Code [Section 730](#))

Social workers are recognized by the Legislature as having qualifications to evaluate proposed conservatees. (Health and Safety Code [Section 416.8](#)) Unfortunately, it appears their professional services are hardly ever used in conservatorship proceedings.

[Trainings of attorneys](#) who represent seniors and people with disabilities in probate conservatorship proceedings should encourage attorneys to ask for Section 730 appointments for the purpose of evaluating supported decision-making arrangements as a less restrictive alternative to a conservatorship. When performance standards are eventually formulated by the State Bar for such attorneys, the use of social workers should be required as a component of an attorney's investigation and advocacy of less restrictive alternatives.