

#FreeBritney Movement Calls for Conservatorship Reforms

By Thomas F. Coleman
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According to Rolling Stone magazine, Britney Spears is “one of the most successful artists of all time.” Millions of her fans would agree.

Spears is rich. Super rich. She reported more than \$59 million in assets at the end of 2018. However, since 2008 when she was involuntarily placed into a probate conservatorship in California, she has not been able to control her own assets. A court placed control of her finances with Britney’s father and a professional fiduciary.

Many of Britney’s fans believe the conservatorship order should be lifted. They argue that the emotional and psychological problems that prompted judicial intervention some 12 years ago no longer exist. They want the restrictions on her financial and personal life to end.

To bring public attention to their cause – one that also seeks broad conservatorship reforms – the #FreeBritney movement is staging a rally outside of the Stanley Mosk Courthouse in downtown Los Angeles on November 10 at 12:30 p.m. Perhaps as they come and go during the lunch hour, some of the probate court judges who control the lives of more than 15,000 conservatees in Los Angeles County will notice the protest and learn of its demands.

What injustices do these supporters say their pop star idol has endured? For starters, the #FreeBritney movement’s website articulates the incongruity of Britney’s abilities and work ethic with the harsh restrictions that have been placed on her freedom.

The website notes: “Since the beginning of the conservatorship, Britney Spears has recorded 4 albums and performed in 4 world tours in addition to a 4-year Las Vegas residency.” And yet, despite her ability to function at such a high level, the website states: “Under the conservatorship, Britney Spears has been denied the freedom to make phone calls,

operate a motor vehicle, send and receive mail, and access her finances.”

In addition to judicially imposed restrictions of Britney’s freedoms, the website lists the types of civil rights violations and injustices that are occurring to tens of thousands of other conservatees in California. It is estimated that more than 60,000 adults currently have open conservatorship cases in the state and more than 5,000 new cases are filed each year.

The #FreeBritney movement’s website complains that too many of these vulnerable adults have been “denied due process, deprived of property, deprived of liberty, denied right to confront accusers, denied right to trial, denied right to counsel, unlawfully confined and isolated, and unlawfully chemically restrained.”

A review of court records in Britney’s case shows a number of such violations, especially the violation of her right to counsel. Had she been represented by an attorney of her own choice, perhaps many of the other violations would not have occurred, or if they had happened, they would have

been challenged on appeal.

When her conservatorship proceeding was initiated in 2008, Britney wanted to be represented by her own lawyer. The court would have none of it. Her chosen lawyer was summarily dismissed and replaced by a court-appointed lawyer selected by the judge presiding in her case. This ruling caused the first civil rights domino to fall, resulting in future violations of her rights, such as Britney’s court-appointed lawyer sometimes arguing against her rights.

Forcing a litigant to accept a court-appointed lawyer in a conservatorship proceeding violates many aspects of due process. Among them is the right to have an attorney who does not have a conflict of interest.

The court-appointed attorney assigned to the case had



dual loyalties. He was supposed to represent Britney but he also had a duty to assist the court in the resolution of the matter to be decided. (Local Rule 4.125.) This local court rule creates a potential, if not actual, conflict of interest because it gives an appointed attorney two people to satisfy – the client and the judge. Furthermore, once an attorney is appointed, no other attorney may represent a conservatee or proposed conservatee. This undermines the right of a litigant to be represented by counsel of choice. (Local Rule 4.126.)

Britney Spears, and other proposed conservatees like her, have a right to a lawyer who will advocate for their stated wishes and defend their constitutional rights. Having a court-imposed lawyer who is dependent on a judge for fee authorizations in the instant case and appointments in future cases undermines the prospect of zealous advocacy. It is hard for an attorney to challenge judicial actions when the attorney is thinking about a stream of income that depends on the judge in the case at hand.

An attorney has duties “as a zealous advocate and as protector of his client’s confidences.” *California State Auto Association v. Bales*, 221 Cal.App.3d 227 (1990). Case law speaks of “an attorney’s duties of loyalty, confidentiality, and zealous advocacy.” *In re Zamer G*, 153 Cal.App.4th 1253, 1267 (2007).

The judge in Britney’s case grounded her decision to dismiss Britney’s chosen attorney and replace him with a court-appointed attorney by finding that Britney lacked the capacity to retain counsel. The problem with this conclusion is the manner in which it was reached.

The court did not afford Britney an evidentiary hearing on her capacity to retain counsel. The matter was decided behind closed doors, without Britney being present and without allowing her chosen attorney to present evidence in Britney’s favor or to cross-examine the doctor whose declaration the court relied on for her decision. This procedure was rife with due process violations.

An individual who is the target of a conservatorship petition has the right to due process throughout the proceeding. *Conservatorship of Sanderson*, 106 Cal.App.3d 611 (1980). The Due Process in

Competence Determinations Act creates a presumption that every adult has the capacity to make decisions, including the capacity to contract. Probate Code Section 810. The mere fact that an individual has a mental disability does not negate this presumption.

The Legislature has clarified the right of proposed conservatees to retain private counsel. “The proposed conservatee has the *right to choose* and be represented by legal counsel.” Probate Code Section 1823(b)(iv)(6). (Emphasis added.)

The constitutional right to counsel of one’s choice was affirmed long ago by the California Supreme Court. “Although the right to be represented by retained counsel in civil actions is not expressly enumerated in the federal or state Constitution, our cases have long recognized that the constitutional due process guarantee does embrace such a right.” *Roa v. Lodi Medical Group, Inc.*, 37 Cal.3d 920, 925 (1985).

“The right to present evidence is, of course, essential to the fair hearing required by the Due Process Clause.” *Jenkins v. McKeithen* (1969) 395 U.S. 411, 429. So is the right to cross-examine hearsay declarants such as the medical doctor who submitted a capacity declaration in Britney’s case. *In re Lucero* 22 Cal.4th 1227, 1244 (2000).

The judge in Britney’s case surely was not trying to protect Britney’s assets when she appointed counsel in the case. That attorney, with court approval, has been paid millions of dollars in legal fees in this case over the years. Last year alone, the court authorized payment to him of more than \$500,000.

The #FreeBritney movement raises some legitimate concerns about Britney’s case – concerns that arise from systemic flaws in the conservatorship system. The question is whether anyone in power is listening.

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