



SENATE JUDICIARY COMMITTEE

Hearing: April 13, 2021

Senate Bill 724: Letter in Support

The passage of SB724 would protect the right to counsel for seniors and people with disabilities in several significant ways:

Counsel of Choice. SB724 would require the court to allow a conservatee or proposed conservatee to be represented by the attorney of their choice. The bill implements the due process right of a civil litigant to be represented by a privately retained attorney. The bill is consistent with the legislative intent manifest in various sections of the probate code. The need for this bill is evidenced by the wrongful denial of counsel of choice to people such as Britney Spears, Theresa J. Elizabeth H., and Bradford Lund. For reference materials on the right to counsel of choice, go to: <https://disabilityandguardianship.org/counsel-of-choice.pdf>

Counsel for All. Most conservatees and proposed conservatees are not able to retain counsel for various reasons. However, due to the nature of their disabilities, they need an attorney in order to have effective communication and meaningful participation in these proceedings. Appointment of an attorney for such individuals is required as a matter of constitutional due process as well as by the mandates of Title II of the Americans with Disabilities Act. And yet, in many cases people with serious disabilities are not represented by counsel. SB724 will bring the practices of the superior courts into compliance with the mandates of due process and the ADA by requiring appointment of counsel for those who cannot hire their own. For reference materials on the denial of counsel to people with disabilities, go to: <https://disabilityandguardianship.org/counsel-for-all.pdf>

Role of Counsel. Everyone with an attorney is entitled to have counsel be a zealous advocate defending their rights and promoting their stated wishes. Unfortunately, that often does not happen. In many cases, courts instruct appointed counsel to act as “the eyes and ears of the court” and to advocate for what counsel believes is in the client’s best interests – even if this requires counsel to be disloyal to the client or violate their right to confidentiality. In places such as Los Angeles, local court rules such as Rule 4.125 give appointed counsel a dual role. Attorneys are told to represent the client but also to help the court resolve the case. SB724 would remove this ethical tension by clarifying that counsel has one duty: to be a zealous advocate. People such as Theresa J. or Gregory D. would no longer have an attorney who argues against their clearly stated wishes. For reference materials on the role of counsel, go to: <https://disabilityandguardianship.org/role-of-counsel.pdf>

Counsel on Appeal. Just as people with serious disabilities cannot be expected to represent themselves in the trial court, they also need an attorney in order to have effective communication and meaningful participation in the appellate process. People like Olivia B., Ashley E., Betty R., or Catherine D. should not have to rely on the intervention of advocacy organizations just to have counsel appointed. SB724 will solve this problem by making such appointments routine. Appeals in probate conservatorship cases are infrequent, so the cost of this segment of SB724 will not be significant. For reference materials on the right to appointed counsel on appeal, go to: <https://disabilityandguardianship.org/counsel-on-appeal.pdf>



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<https://spectruminstitute.org/>

<https://disabilityandguardianship.org/sb724.pdf>