



Disability and Guardianship Project

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February 21, 2020

Hon. Bob Wieckowski
California State Senate
Sacramento, CA 94249

Re: Proposed Amendments to [Senate Bill 1016](#)

Dear Senator Wieckowski:

On February 14, 2020, you introduced Senate Bill 1016 relating to conservatorships. The bill has two objectives: (1) to clarify that the role of appointed counsel for a proposed limited conservatee is to advocate for the expressed interests of the client; and (2) to require that counsel state on the record any reasons why alternatives to conservatorship that have been tried in the past are not appropriate.

The motives for these provisions in the bill appear to be laudable. Proposed conservatees need an attorney in court to advocate for *their* wishes and to defend their rights. They do not need a “best interests” de-facto social worker with a law degree. They also need an attorney to advocate for a less restrictive alternative to conservatorship, such as supported decision-making, when such an alternative is feasible. People with developmental disabilities should be receiving this type of legal advocacy under current state law. (<https://spectruminstitute.org/Sacramento/access-to-courts.pdf>) Unfortunately, they are not. Thus there is a need for new legislation to emphasize these rights.

As currently written, SB 1016 does not effectively advance these two objectives for *all* proposed conservatees with developmental disabilities. In terms of how probate conservatorship proceedings are actually operating in California, the first provision makes unwarranted assumptions and the second provision does not effectively advance the goal of promoting alternatives to conservatorship. The bill should be amended to address these two areas of concern.

The Role of Counsel

Investigations by Spectrum Institute reveal that many attorneys appointed to represent adults with developmental disabilities in conservatorship proceedings do not understand that they should be acting as a true legal advocate for their clients expressed wishes and defending their client’s substantive and procedural rights in the proceeding. (<https://spectruminstitute.org/doj/>) Many are advocating for what they personally believe is in the client’s best interest even if that undermines fundamental rights of the client or contradicts what the client wants.

The intent of this bill is to clarify the role of appointed counsel so that a proposed conservatee has a legal advocate to promote his or her expressed interests. Because the bill narrowly focuses on limited conservatorship proceedings, it appears that it is intended to protect the right of adults with developmental disabilities to receive true legal advocacy services. Unfortunately, as presently worded, many proposed conservatees with developmental disabilities will not benefit from this portion of the bill. That is because many such individuals do not have an attorney appointed to

advocate for them in a conservatorship proceeding. *That's right, they must represent themselves.*

You may wonder how adults with developmental disabilities can be denied counsel in probate conservatorship proceedings since Probate Code section 1471(c) requires the appointment of counsel for proposed conservatees in any proceeding to establish a *limited* conservatorship.

Whistle-blower complaint. Staff at a regional center in Northern California reported that judges are not appointing attorneys to represent many regional center clients in conservatorship proceedings because of a tactic used by petitioners to initiate a *general* conservatorship proceeding instead of petitioning for a limited conservatorship. (<https://disabilityandabuse.org/alta-letter.pdf>) This tactic creates two adverse consequences for regional center clients. First, the appointment of an attorney in a general conservatorship proceeding is not mandatory. An investigation of this matter by Spectrum Institute revealed that when petitioners do not check the “limited conservatorship” box on a petition, judges are not appointing attorneys for proposed conservatees in many of these cases. Because this practice deprives adults with developmental disabilities access to justice and meaningful participation in their cases, Spectrum Institute filed a complaint with the Sacramento Superior Court (<https://spectruminstitute.org/Sacramento/01-complaint-idd.pdf>) and with the Fair Employment and Housing Department (<https://spectruminstitute.org/Sacramento/dfeh-inquiry-letter.pdf>) Second, petitioning for a general conservatorship avoids the mandatory regional center evaluations and reports that are statutorily required to be done in limited conservatorship proceedings.

Proposed Amendment #1. Defining the role of an appointed attorney in a limited conservatorship proceeding does nothing to protect the rights of adults with developmental disabilities to “access to courts” and “advocacy services” in probate conservatorship proceedings (17 CCR § 50510) when petitioners use this tactic and judges do not appoint counsel.

To plug this loophole, SB 1016 should amend subdivision (c)(1) of Section 1471 to read: “In any proceeding to establish a conservatorship under the probate code in which the proposed conservatee is an adult with a developmental disability, if the proposed conservatee has not retained legal counsel and does not plan to retain legal counsel, the court shall immediately appoint the public defender or private counsel to represent the proposed conservatee.” Subdivision (c)(2) should be amended to replace the phrase “proposed limited conservatee” with “proposed conservatee with a developmental disability” whenever that phrase is used.

These changes to the bill would have the effect of mandating the appointment of counsel for all adults with developmental disabilities involved in probate conservatorship proceedings regardless of whether the petitioners initiate a limited conservatorship proceeding or a general conservatorship proceeding. Without these changes, many adults with developmental disabilities will not receive the benefit of the provision of SB 1016 requiring appointed counsel to advocate for their expressed interests.

Alternatives to Conservatorship

Current law already requires the petitioner to allege that alternatives to conservatorship are not feasible and for the judge to make a finding on this issue. The apparent intent of the second provision in SB 1016 is to require that more serious consideration be given to such alternatives by the parties to the case and by the court. However, as currently worded, SB 1016 does little to advance that objective. In fact, the provision may be harmful to the right of adults with developmental disabilities to have appointed counsel thoroughly investigate viable alternatives and to advocate for such in a probate conservatorship proceeding regardless of whether it is labeled a “limited conservatorship.”

Research conducted by Spectrum Institute indicates that counsel appointed to represent adults with developmental disabilities in conservatorship proceedings are not investigating potential alternatives to conservatorship as they should be doing. A proper investigation of alternatives, such as supported decision-making, would require counsel either to ask the court to appoint an expert such as a social worker under Evidence Code section 730 or to request a regional center to initiate an Individual Program Plan (IPP) review process focusing on alternatives to conservatorship. If the IPP approach were to be used, appointed counsel should request the regional center to include a qualified professional with expertise on supported decision-making as a member of the IPP review team. (<https://spectruminstitute.org/ipp-by-pvp.pdf>) An audit of dozens of limited conservatorship cases in Los Angeles revealed that alternatives to conservatorship are not on the menu of services now being provided by appointed attorneys. (<https://spectruminstitute.org/amicus/efficiency-vs-justice.pdf>)

Proposed Amendment #2. Section 3 of SB 1016 would add the following sentence to section 1828.5 of the Probate Code regarding what alternatives have been tried and for how long: “Counsel shall state on the record any reasons why the alternatives are not appropriate.” To which attorney is this referring? Counsel for petitioner? Counsel for the proposed conservatee? Both?

A review of court records in Los Angeles County done by Spectrum Institute documented that petitioners in about 90% of limited conservatorship proceedings are not represented by counsel. Therefore, in the vast majority of cases this provision will not require any representations to be made to the court by pro per petitioners about the non-viability of alternatives to conservatorship.

If this provision refers to counsel for the proposed conservatee, it seems to be counter productive and potentially unethical. Appointed counsel should be investigating and arguing FOR potential alternatives to conservatorship, not stating on the record “any reasons why the alternatives are not appropriate.” Obeying this mandate may require appointed counsel to disclose to the court and opposing counsel adverse information obtained by the attorney in the course of an investigation. Such a disclosure could violate an attorney’s ethical duties of confidentiality and loyalty.

The sentence should be amended to replace the word “counsel” with the word “petitioner” as follows: “In any conservatorship proceeding involving a proposed conservatee with a developmental disability, the petitioner shall state on the record any reasons why alternatives to conservatorship are not appropriate.” An additional sentence should be added to clarify the role of an appointed attorney. “Appointed counsel for a proposed conservatee with a developmental disability shall thoroughly investigate alternatives to conservatorship and in doing so may request the appointment of an expert under Evidence Code section 730 or may request the regional center to initiate an Individual Program Plan (IPP) review process, including participation in the review team by a qualified professional with expertise on supported decision-making, to explore any viable alternatives to conservatorship.”

Please strengthen SB 1016 by incorporating these suggested amendments into the bill.

Respectfully,



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cc: Senate Judiciary Committee
Assembly Select Committee on Intellectual and Developmental Disabilities