

# Toxic: Changes in Conservatorship Law Since Britney Spears

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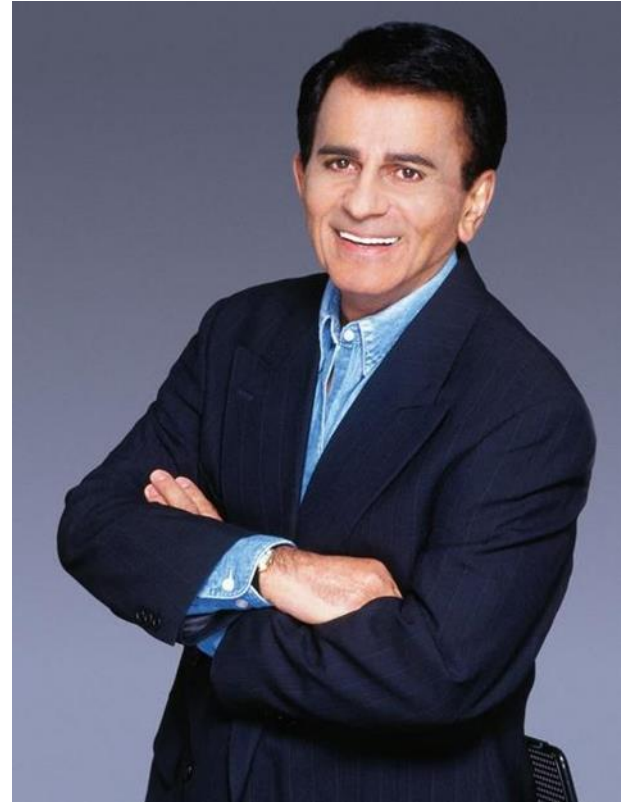
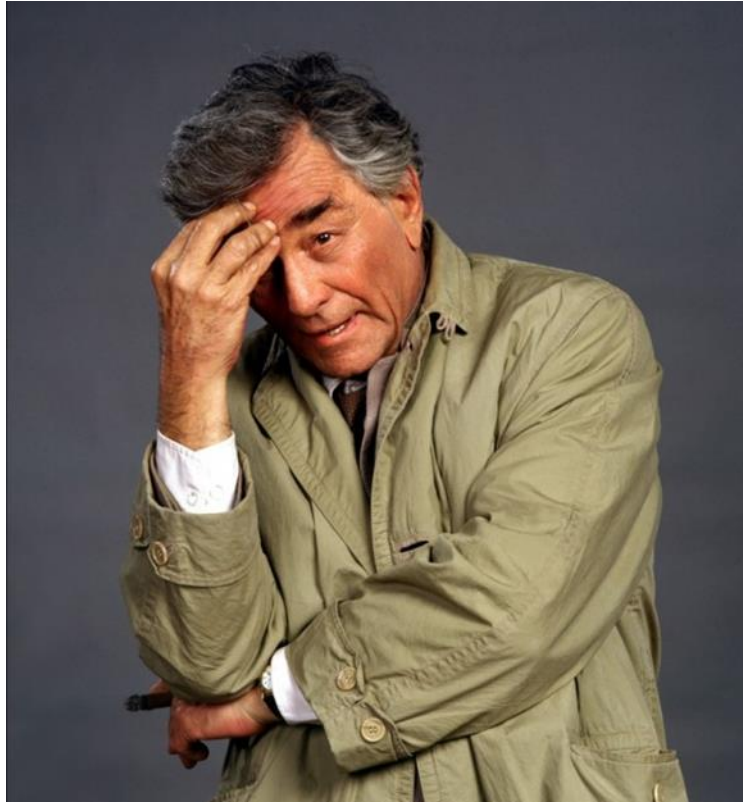


# Examples of Conservatorship Matters

Mildred – 90 year old widow suffering from dementia



# Examples of Conservatorship Matters



# Why Britney?



# Why Britney?

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Britney Spears

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## Why does Britney Spears still have a conservator? Legal expert says her case file suggests answers

[Maria Puente](#) USA TODAY

Oct. 24, 2019 | Updated Oct. 25, 2019, 9:53 a.m. ET

[FACT CHECK](#)

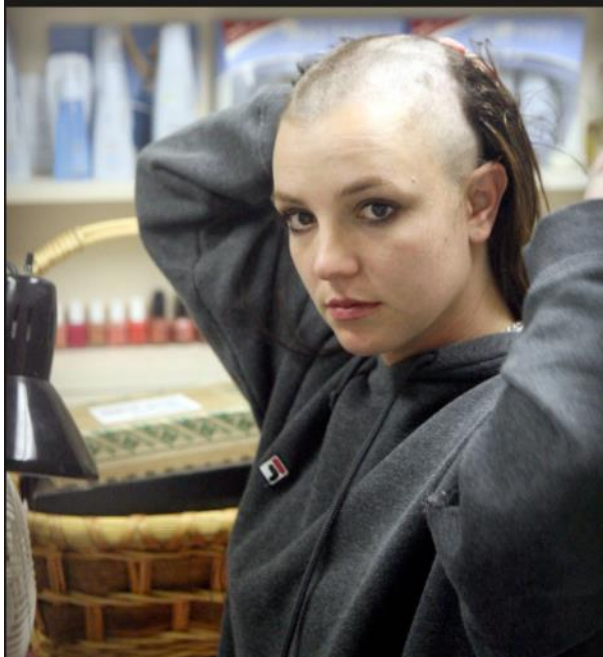
fact-checking

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## Fact check: Britney Spears' 12-year-long conservatorship is not taking advantage of her



# Why Britney?



# Why Britney?



# Why Britney?

S. Hrg. 117-850

TOXIC CONSERVATORSHIPS:  
THE NEED FOR REFORM

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HEARING  
BEFORE THE  
SUBCOMMITTEE ON THE CONSTITUTION  
OF THE  
COMMITTEE ON THE JUDICIARY  
UNITED STATES SENATE  
ONE HUNDRED SEVENTEENTH CONGRESS  
FIRST SESSION

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# How did this statement age?

"Everybody looks at the conservatorship as a terrible thing foisted on her. I look at it as a success story," Martin says. "Britney was in a downward spiral, there were 5150s (involuntary temporary psychiatric holds) filed on her as a possible danger to herself or others. Her life was a wreck. ... By all appearances, things are a heck of lot better now than they were in 2008."

Source: "Why does Britney Spears still have a conservator? Legal expert says her case file suggests answers", USA Today, Oct. 24, 2019



# How did this statement age?



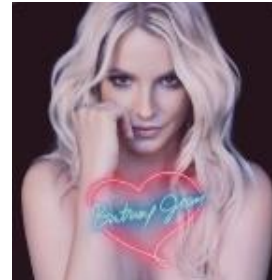
# How did this statement age?



Circus (2008)



Femme Fatale (2011)



Britney Jean (2013)



Glory (2016)



# What is a conservatorship?

A legal proceeding used to protect vulnerable people by appointing someone to manage their financial and medical affairs.

The conservator is required to be bonded

There is court supervision

Conservator must account to the court annually or biannually

Interested parties are required to get notice of the accounts and have the opportunity to object

Court sends investigator to interview the conservatee on a periodic basis



# Standards for Conservatorships

It is not competence – the statute never uses the term

Prob. Code 1801

A conservator of the person may be appointed for a person who is unable to provide properly for his or her personal needs for physical health, food, clothing, or shelter

A conservator of the estate may be appointed for a person who is substantially unable to manage his or her own financial resources or resist fraud or undue influence.



# Standards for Conservatorships

Burden of proof – clear and convincing evidence

Must establish that a conservatorship is the least restrictive means.

Other common means of protecting a person

Power of Attorney

Trust

Supported Decision Making



# Effect of a conservatorship

The conservatee is deemed to be incompetent and unable to bind the conservatorship for any contracts.

Prob. Code 1872

This can be limited by court order.

Prob. Code 1873

“A conservator shall accommodate the desires of the conservatee, except to the extent that doing so would violate the conservator's fiduciary duties to the conservatee or impose an unreasonable expense on the conservatorship estate.”

Prob. Code 2113



# Effect of a conservatorship

“The wages or salaries for such employment are not a part of the estate and the guardian or conservator is not accountable for such wages or salaries.”

Prob. Code 2601



# Effect of a conservatorship

“The appointment of a conservator of the person or estate or both does not affect the capacity of the conservatee to marry or to enter into a registered domestic partnership.”

Prob. Code 1900

“The Legislature recognizes that the right to exercise choice over matters of procreation is fundamental and may not be denied to an individual on the basis of disability.”

Prob. Code 1950



# Effects of a conservatorship

“A ward or conservatee shall not be placed in a mental health treatment facility under this division against his or her will.”

Prob. Code 2356



# When does a conservatorship end?

“A conservatorship continues until terminated by the death of the conservatee or by order of the court”

Prob. Code 1860

“If the court determines that the conservatorship is no longer required or that grounds for establishment of a conservatorship of the person or estate, or both, no longer exist, the court shall make this finding and shall enter judgment terminating the conservatorship accordingly.”

Prob. Code 1863



# #freebritney law

Changes in law:

1. Privately Retained Attorneys and Clarification of Duties
2. Increased Voice for Conservatees
3. Lesser Restrictive Alternatives
4. Termination Hearings
5. Punishing Fiduciaries



# Privately Retained Attorneys and Clarification of Duties

(d) If a conservatee, proposed conservatee, or person alleged to lack legal capacity expresses a preference for a particular attorney to represent them, the court shall allow representation by the preferred attorney, even if the attorney is not on the court's list of court-appointed attorneys, and the attorney shall provide zealous representation as provided in subdivision (e).

(e) The role of legal counsel of a conservatee, proposed conservatee, or a person alleged to lack legal capacity is that of a zealous, independent advocate representing the wishes of their client, consistent with the duties set forth in Section 6068 of the Business and Professions Code and the California Rules of Professional Conduct.”

Amended Prob. Code 1471



# Increased Voice for Conservatees

- (c) Provide that the periodic review of conservatorships by the court investigator shall consider the best interests *and expressed wishes* of the conservatee; *whether the conservatee has regained or could regain abilities and capacity with or without supports; and whether the conservatee continues to need a conservatorship;*
  
- (h) *Ensure, to the greatest extent, that the conservatee is able to understand, make, and communicate their own, informed, choices while under conservatorship.*

Amended Prob. Code 1800.3



# Increased Voice for Conservatees

*A conservator shall accommodate the desires of the conservatee, except to the extent that doing so would violate the conservator's fiduciary duties to the conservatee or impose an unreasonable expense on the conservatorship estate. **To the greatest extent possible, the conservator shall support the conservatee to maximize their autonomy, support the conservatee in making decisions, and, on a regular basis, inform the conservatee of decisions made on their behalf. In determining the desires of the conservatee, the conservator shall consider stated or previously expressed preferences, including preferences expressed by speech, sign language, alternative or augmentative communication, actions, facial expressions, and other spoken and nonspoken methods of communication.***

Amended Prob. Code 21113



# Least Restrictive Means

- (b) A conservatorship of the person or of the estate shall not be granted by the court unless the court makes an express finding that the granting of the conservatorship is the least restrictive alternative needed for the protection of the conservatee.
  
- (c) *In determining whether a conservatorship is the least restrictive alternative available, and whether to grant or deny a conservatorship petition, the court shall consider the person's abilities and capacities with current and possible supports, including, but not limited to, supported decisionmaking agreements, as defined in Section 21001 of the Welfare and Institutions Code, powers of attorney, designation of a health care surrogate as set forth in Section 4711, and advance health care directives.*

# Termination Hearings

- (a) Every superior court shall provide all conservators with written information concerning a conservator's rights, duties, limitations, and responsibilities under this division.
- (b) The information to be provided shall include, but need not be limited to, the following:
  - (8) Procedures to petition to terminate or modify the conservatorship.

Amended Prob. Code 1835



# Termination Hearings

Prior Prob. Code 1850

Court investigator must conduct an investigation after the first year.

Court has discretion to order that court investigator investigations occur bi-annually instead of annually.

If the investigator finds that the conservatorship is still warranted and the conservator is acting in the best interests of the conservatee, the court is not required to have a hearing.



# Termination Hearings

“One year after the initial appointment of the conservator and annually thereafter, the court investigator shall, as provided in Section 1851, visit the conservatee, conduct an investigation, and report the findings of the investigation to the court. On receipt of the investigator's report, the court shall consider terminating the conservatorship at a hearing pursuant to Section 1863 and take any other appropriate action.”

Amended Prob. Code 1850



# Termination Hearings

"Unless the court determines, on the record and by clear and convincing evidence, that (1) the conservatee still meets the criteria for appointment of a conservator of the person under subdivision (a) of Section 1801, a conservator of the estate under subdivision (b) of Section 1801, or both; and (2) a conservatorship remains the least restrictive alternative needed for the conservatee's protection, as required by subdivision (b) of Section 1800.3, the court shall enter judgment terminating the conservatorship."

Amended Prob. Code 1863



# Termination Hearings

“If the court investigator determines that the conservatee still meets the criteria for appointment of a conservator under Section 1801, the investigator shall determine if the terms of the appointment order should be modified to reduce or expand the conservator's powers and duties to ensure that the conservatorship is the least restrictive alternative needed for the conservatee's protection.”

Amended Prob. Code 1851



# Termination Hearings

“If the court determines, by clear and convincing evidence, that the conservatee meets the criteria for appointment of a conservator of the person under subdivision (a) of Section 1801, a conservator of the estate under subdivision (b) of Section 1801, or both, the court shall determine whether to modify the existing powers of the conservator to ensure that the conservatorship remains the least restrictive alternative needed for the conservatee's protection and shall order the conservatorship to continue accordingly. If the court modifies the existing powers of the conservator, new letters shall issue.”

Amended Prob. Code 1863



# Punishing Fiduciaries

Mandatory sanctions against a professional fiduciary found to have:

- (A) Breached a legal or fiduciary duty to a client and thereby caused financial or physical harm or mental suffering to the client.
- (B) Abused an elder or a dependent adult client, as defined in Section 15610.07 of the Welfare and Institutions Code.
- (C) Violated a statute or regulation related to this chapter.

Amended Bus. & Prof Code 6581



# Punishing Fiduciaries

If the court removes a professional fiduciary as guardian or conservator for cause, the court shall report that determination and the basis for removal to the Professional Fiduciaries Bureau. If the court reports an action taken under this section, the court shall provide the bureau, at no charge, with access to the information, including confidential information, regarding its investigation of the professional fiduciary contained in court records. The bureau shall maintain the confidentiality of the information, as required by paragraph (4) of subdivision (a) of Section 6580 of the Business and Professions Code or any other applicable state or federal law.

Amended Prob. Code 2653



# Punishing Fiduciaries

- (1) Notwithstanding subdivision (b), the guardian or conservator shall not be compensated from the estate for any costs or fees that the guardian or conservator incurred in unsuccessfully defending ***their fee request petition***, opposing a petition, or ***any*** other ***unsuccessful*** request or action made by, or on behalf of the ward or conservatee.
- (2) ***If the court determines, by clear and convincing evidence, that the defense, opposition, or other action described in paragraph (1) was made in good faith, was based upon the best interest of the ward or conservatee, and did not harm the ward or conservatee, the court may reduce the compensation awarded for the costs or fees incurred instead of denying it completely. The court shall state the reasons for its determination in writing or on the record.***



# Revised Capacity Declaration

## Revised GC-335

1. Increased from 4 to 10 pages with attachment.
2. Adds section discussing whether patient is likely to regain capacity.
3. Includes section to describe basis for opinion.
4. Includes sections regarding ability to give consent to medications and placement.

## New GC-335A

1. Assessment of ability to participate in Activities of Daily Living



# Why is this toxic?



# Update




KasemCares.org

# Update

“The Legislature finds and declares that every adult in this state has the right to visit with, and receive mail and telephone or electronic communication from, whomever he or she so chooses, unless a court has specifically ordered otherwise.”

Legislative notes to Prob. Code 2351

“[T]he guardian or conservator, but not a limited conservator, has the care, custody, and control of, and has charge of the education of, the ward or conservatee. This control shall not extend to personal rights retained by the conservatee, including, but not limited to, the right to receive visitors, telephone calls, and personal mail, unless specifically limited by court order. The court may issue an order that specifically grants the conservator the power to enforce the conservatee’s rights to receive visitors, telephone calls, and personal mail, ***or that directs the conservator to allow those visitors, telephone calls, and personal mail.***”



# Update

The Legislature finds and declares that one way perpetrators of domestic violence, including elder and dependent adult abuse, are able to continue with their abuse is by preventing trusted friends and family members from seeing or contacting a vulnerable adult. As the vulnerable adult is isolated, it becomes more and more difficult for others to identify signs of abuse. The isolation also allows the perpetrator to potentially take over finances and hide any indications that they are doing so. The pandemic and resulting stay-at-home orders, as well as older adults' vulnerability to COVID-19, have amplified the need for additional protections, as well as creative ways to ensure older adults remain connected to their communities. A court order is not required for an elder or dependent adult to engage in visitation from anyone from whom the elder or dependent adult desires visitation.

# Update

- (i) Subject to clause (ii), if the petition alleges abuse of an elder or dependent adult in the form of isolation, the term “other person legally authorized to seek the relief” as used in subparagraph (A) includes an interested party as defined in paragraph (3) of subdivision (b).
  - (ii) Clause (i) shall apply only for the purpose of seeking an order enjoining isolation under subparagraph (E) of paragraph (5) of subdivision (b).
- (b)(3) “Interested party” means an individual with a personal, preexisting relationship with the elder or dependent adult. A preexisting relationship may be shown by a description of past involvement with the elder or dependent adult, time spent together, and any other proof that the individual spent time with the elder or dependent adult.