



Court of Appeal

FOURTH DISTRICT, DIVISION ONE
750 B STREET, SUITE 300
SAN DIEGO, CALIFORNIA 92101-8196

CHAMBERS OF
JUDITH McCONNELL
PRESIDING JUSTICE

April 13, 2007

Elaine A. Alexander
Executive Director
Appellate Defenders, Inc.
555 W. Beech St., Ste. 300
San Diego, California 92101

Re: Implementation of *Conservatorship of Ben C.* (2007) 40 Cal.4th 529, 544 and footnote 6

Dear Ms. Alexander:

The Supreme Court in *Conservatorship of Ben C.*, *supra*, 40 Cal.4th at page 535, summarized its holding that neither the federal nor California Constitution requires *Anders/Wende* procedures in an appeal from the imposition of a conservatorship under the Lanterman-Petris-Short Act (Welf. & Inst. Code, § 5000 et seq.) and that it declined to extend the procedures under its inherent authority. However, the Court provided the following guidance for the Courts of Appeal:

"If appointed counsel in a conservatorship appeal finds no arguable issues, counsel need not and should not file a motion to withdraw. Instead, counsel should (1) inform the court he or she has found no arguable issues to be pursued on appeal; and (2) file a brief setting out the applicable facts and the law. [Fn. 6 omitted.] Such a brief will provide an adequate basis for the court to dismiss the appeal on its own motion. [Fn. omitted.]

Dismissal of an appeal raising no arguable issues is not inconsistent with article VI, section 14 of the California Constitution requiring that decisions determining causes 'be in writing with reasons stated.' [Fn. omitted.]

Nothing is served by requiring a written opinion when the court does not actually decide any contested issues." (*Conservatorship of Ben C.*, *supra*, 40 Cal.4th at p. 544.)

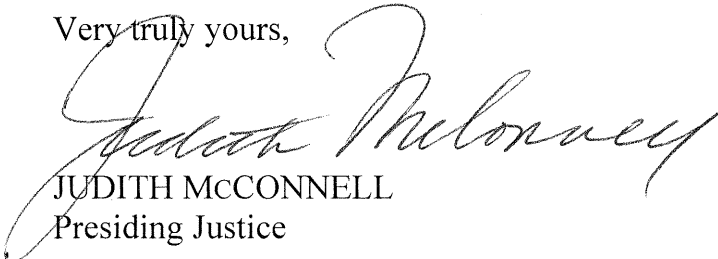
Elaine A. Alexander
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April 12, 2007
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In footnote 6, the Court states: "The conservatee is to be provided a copy of the brief and informed of the right to file a supplemental brief." (*Ibid.*)

In order to implement the above language and the requirement in footnote 6 that the conservatee be provided a copy of the brief and informed of the right to file a supplemental brief, the Court requests Appellate Defenders, Inc. to essentially follow the existing procedure in *Wende*, so that appellant's counsel should attach a declaration to the *Ben C.* brief stating that counsel has advised the conservatee that a brief on his/her behalf raising no arguable issues has been filed pursuant to the guidance provided in *Conservatorship of Ben C.*, *supra*, 40 Cal.4th at page 544; a copy of the brief will be provided to the conservatee; and that the conservatee has the right to personally file a supplemental brief (*id.* at fn. 6). Counsel should further advise the conservatee that counsel will forward a copy of the appellate record to him/her should the conservatee advise counsel of the intent to file a supplemental brief, and the declaration should so recite.

Upon receipt of a *Ben C.* brief, this Court will file an order similar to a *Wende* order (orqq (29-9)), stating: "Counsel for appellant has filed a brief stating no arguable issues can be found. The conservatee personally is granted 30 days to file any supplemental brief deemed necessary. (*Conservatorship of Ben C.* (2007) 40 Cal.4th 529, 544, & fn. 6.)" Should the conservatee not file a supplemental brief, the Court will dismiss the appeal as abandoned. (*Id.* at p. 544, fn. 8.) Should the conservatee file a supplemental brief, the Court will decide on its own motion whether any reasonably arguable issues have been raised by the conservatee. If so, then counsel will be requested to supplementally brief them. If not, the Court will dismiss the appeal as abandoned because no reasonably arguable issues have been presented.

Very truly yours,



JUDITH MCCONNELL
Presiding Justice

JM/jp

cc: Associate Justices Benke, Huffman, Nares, Haller, McDonald, McIntyre, O'Rourke, Aaron and Irion; Steve Kelly and Buzz Kinnaird