

Conservatorship & Alternatives

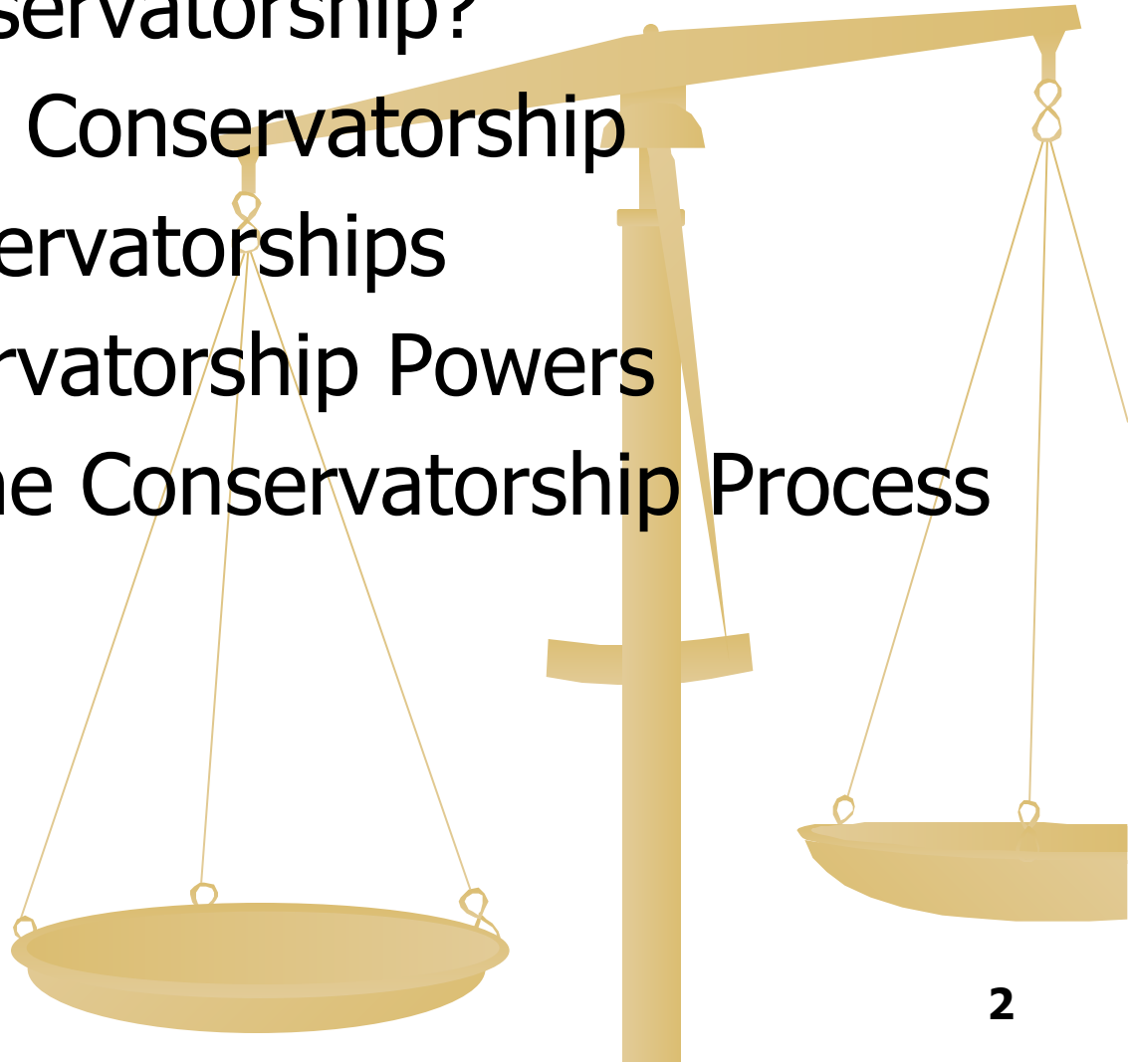


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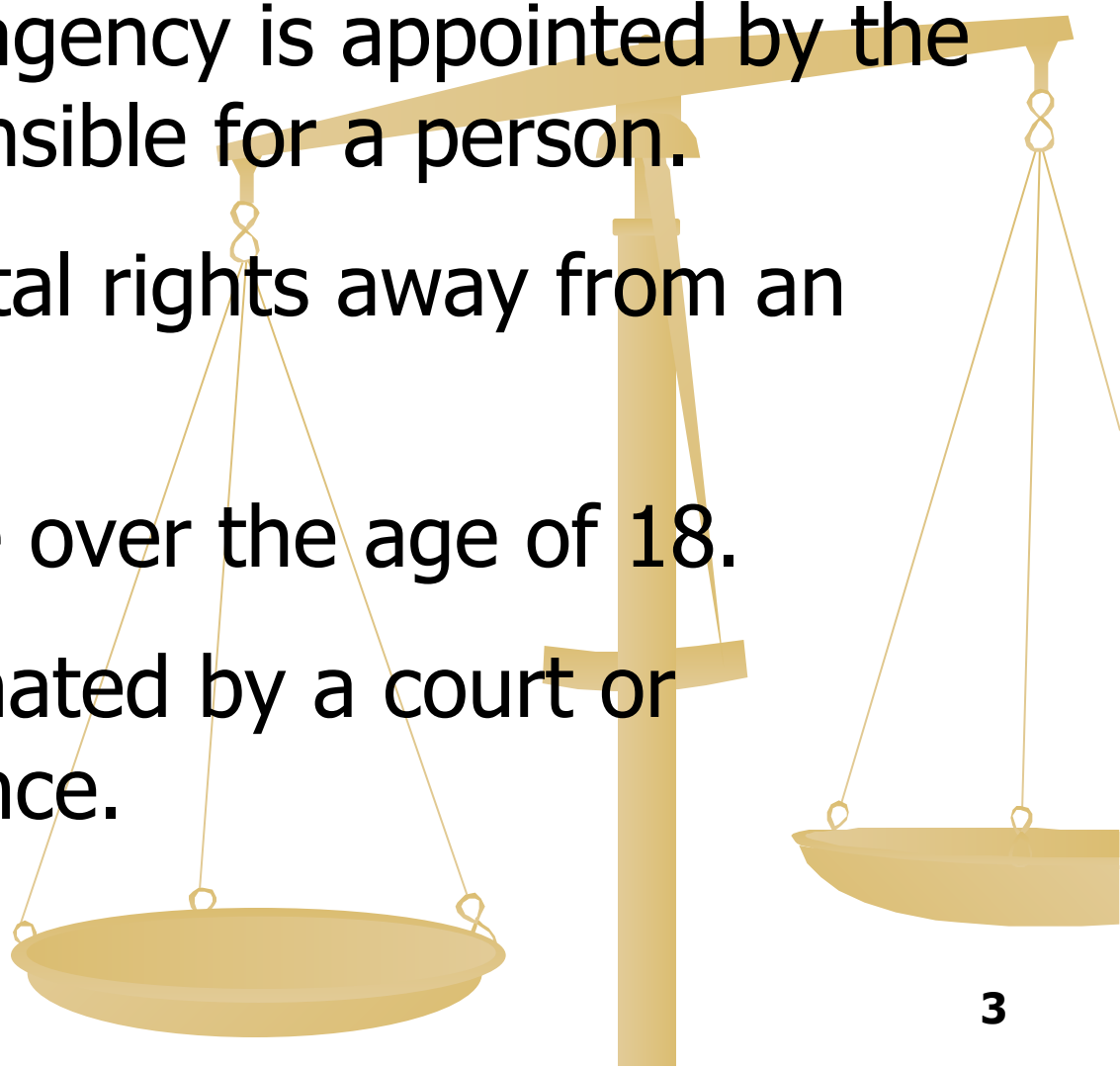
AGENDA

1. What is a Conservatorship?
2. Alternatives to Conservatorship
3. Types of Conservatorships
4. Limited Conservatorship Powers
5. Overview of the Conservatorship Process



What is a Conservatorship?

- An individual or agency is appointed by the court to be responsible for a person.
- Takes fundamental rights away from an individual.
- Applies to people over the age of 18.
- Lasts until terminated by a court or statutory occurrence.

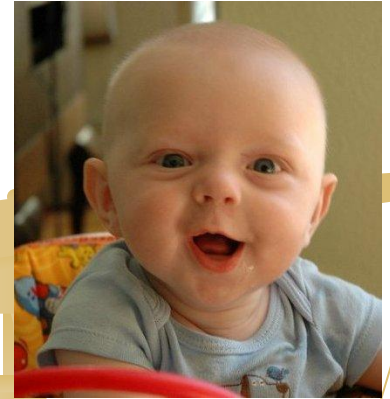


Terminology

-Conservatorship vs. Guardianship in California

- Guardianship is for minors
- Conservatorship for adults

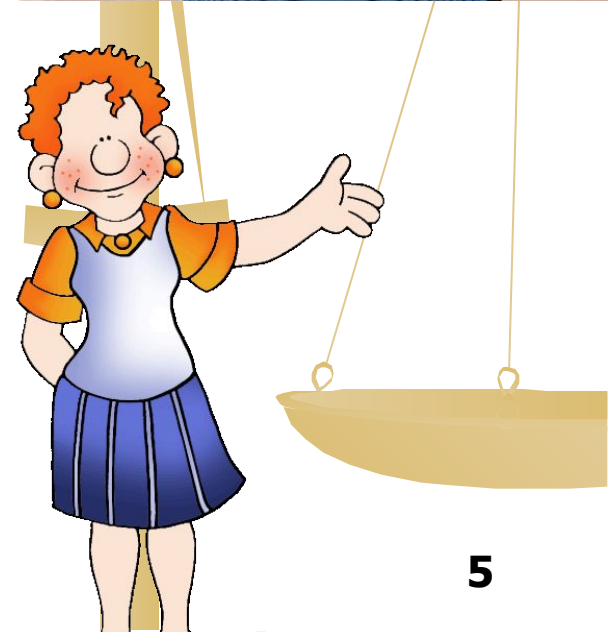
-Letters of Conservatorship – papers the court issues when granting a conservatorship



Terminology

-Conservatee: a person with a disability who is the subject of a conservatorship or is "conserved."

-Conservator: the person a court appoints to make certain decisions for the conservatee.



Alternatives to Conservatorship





Understanding Supported Decision Making
<https://www.youtube.com/watch?v=XIVeOImwdzA>

Alternatives to Conservatorship

Supported Decision-Making:

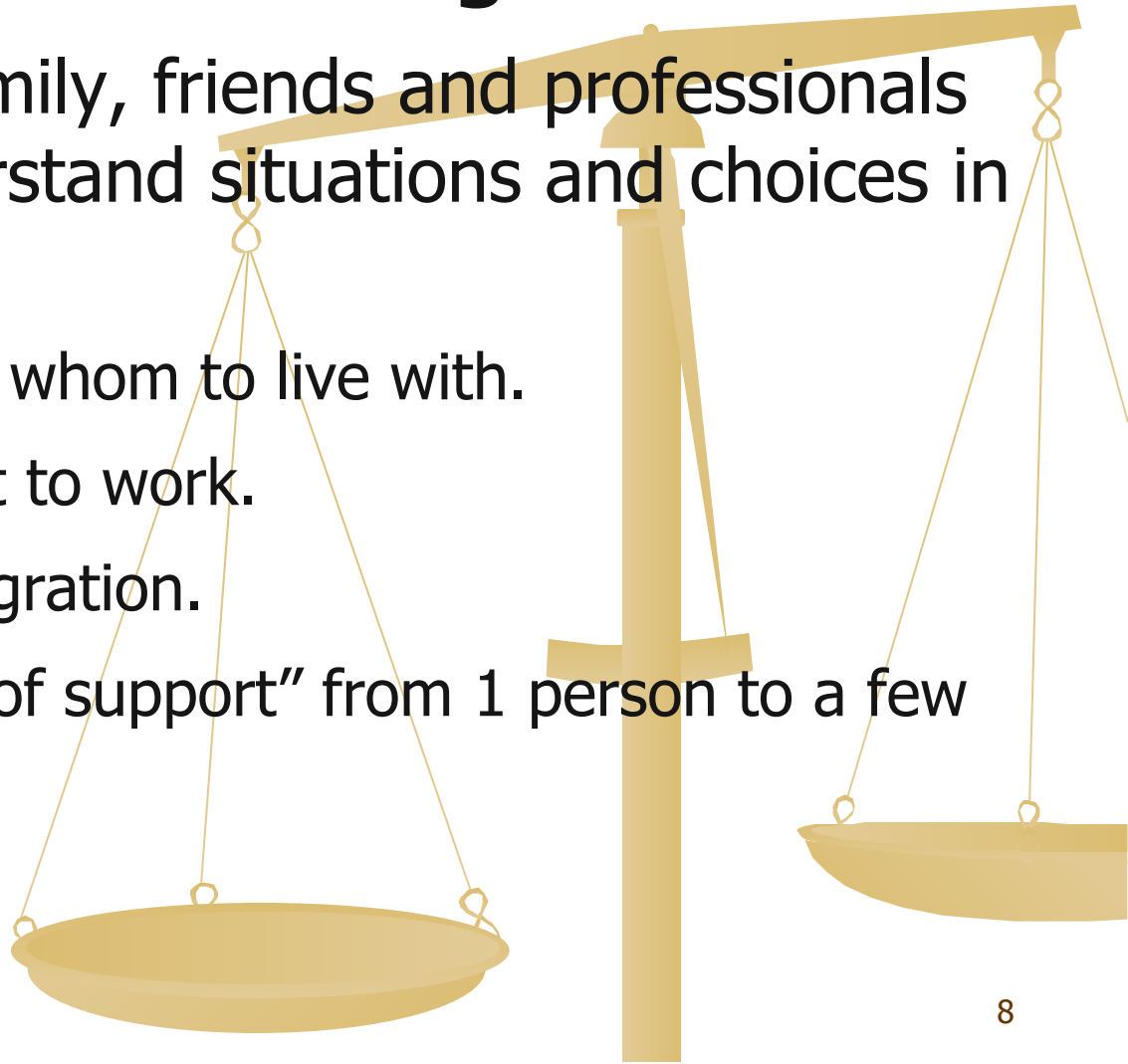
-Using trusted family, friends and professionals to help you understand situations and choices in your life.

-Where and with whom to live with.

-Where you want to work.

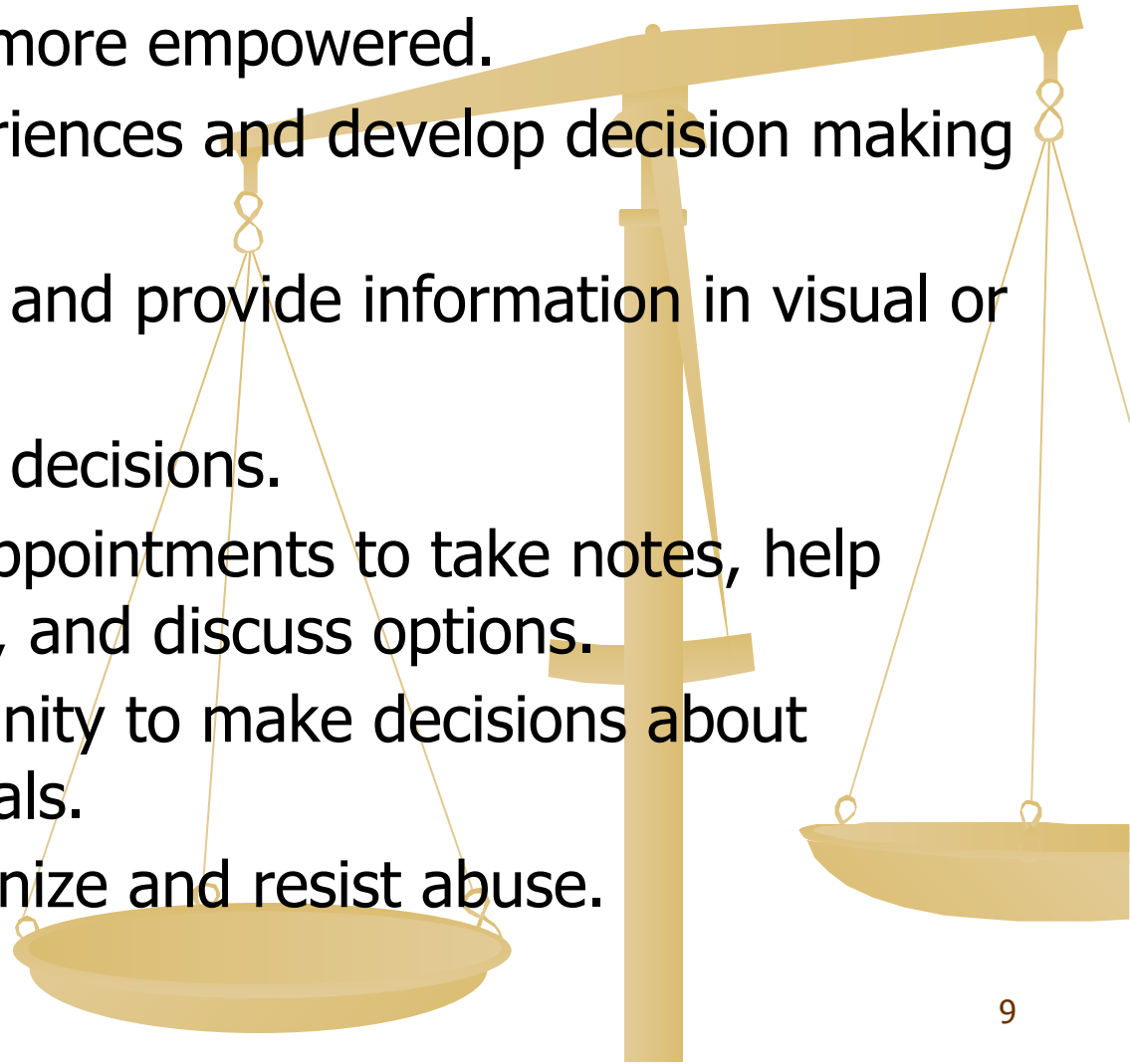
-Community integration.

-Expands "circle of support" from 1 person to a few or several.



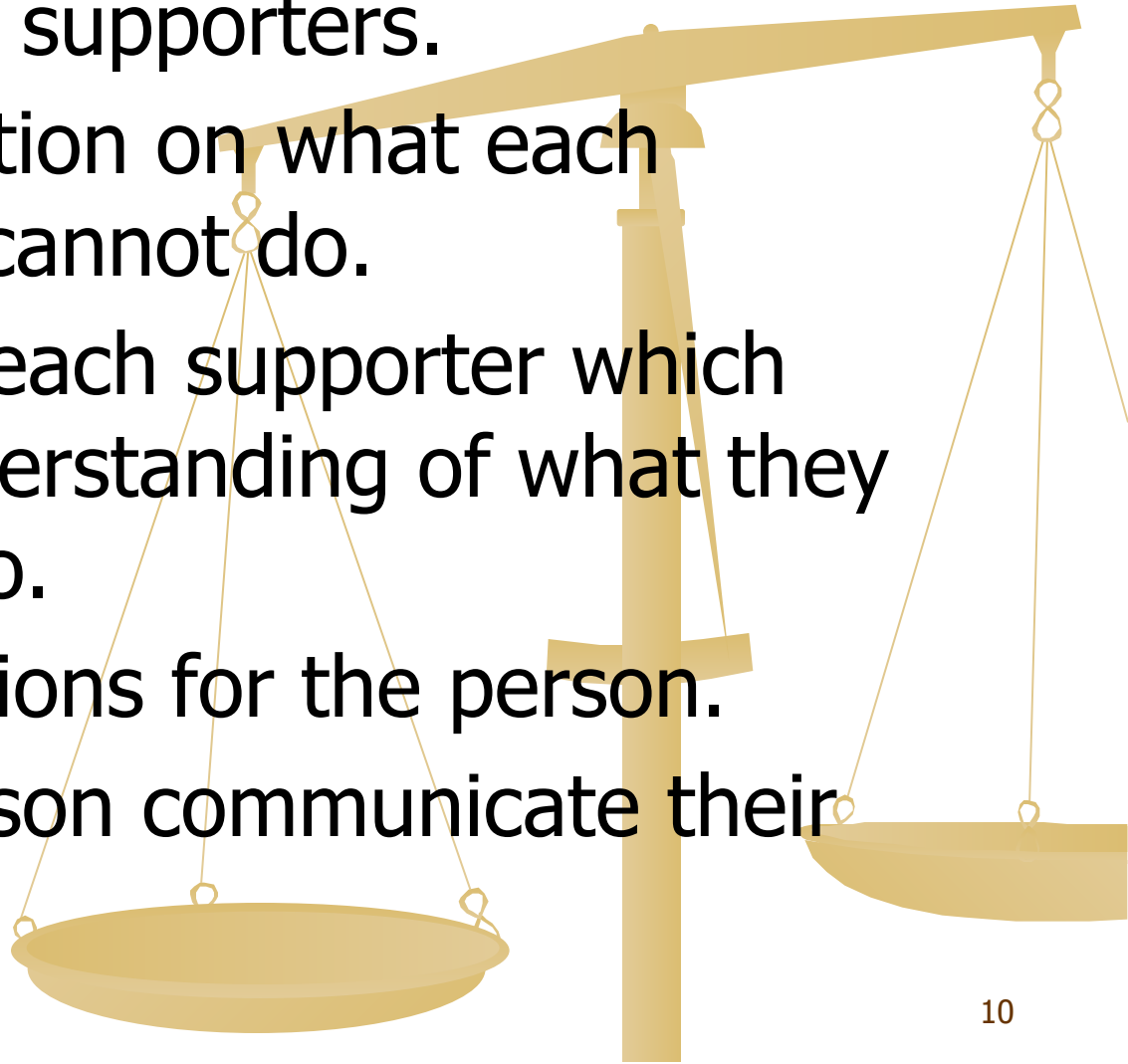
Supported Decision-Making Cont.

- Provides a more positive quality of life.
 - Happier, healthier, more empowered.
 - Learning from experiences and develop decision making abilities.
 - Use plain language, and provide information in visual or audio form.
 - Allow extra time for decisions.
 - Bring someone to appointments to take notes, help person to remember, and discuss options.
 - Provides an opportunity to make decisions about service plans and goals.
 - Better able to recognize and resist abuse.



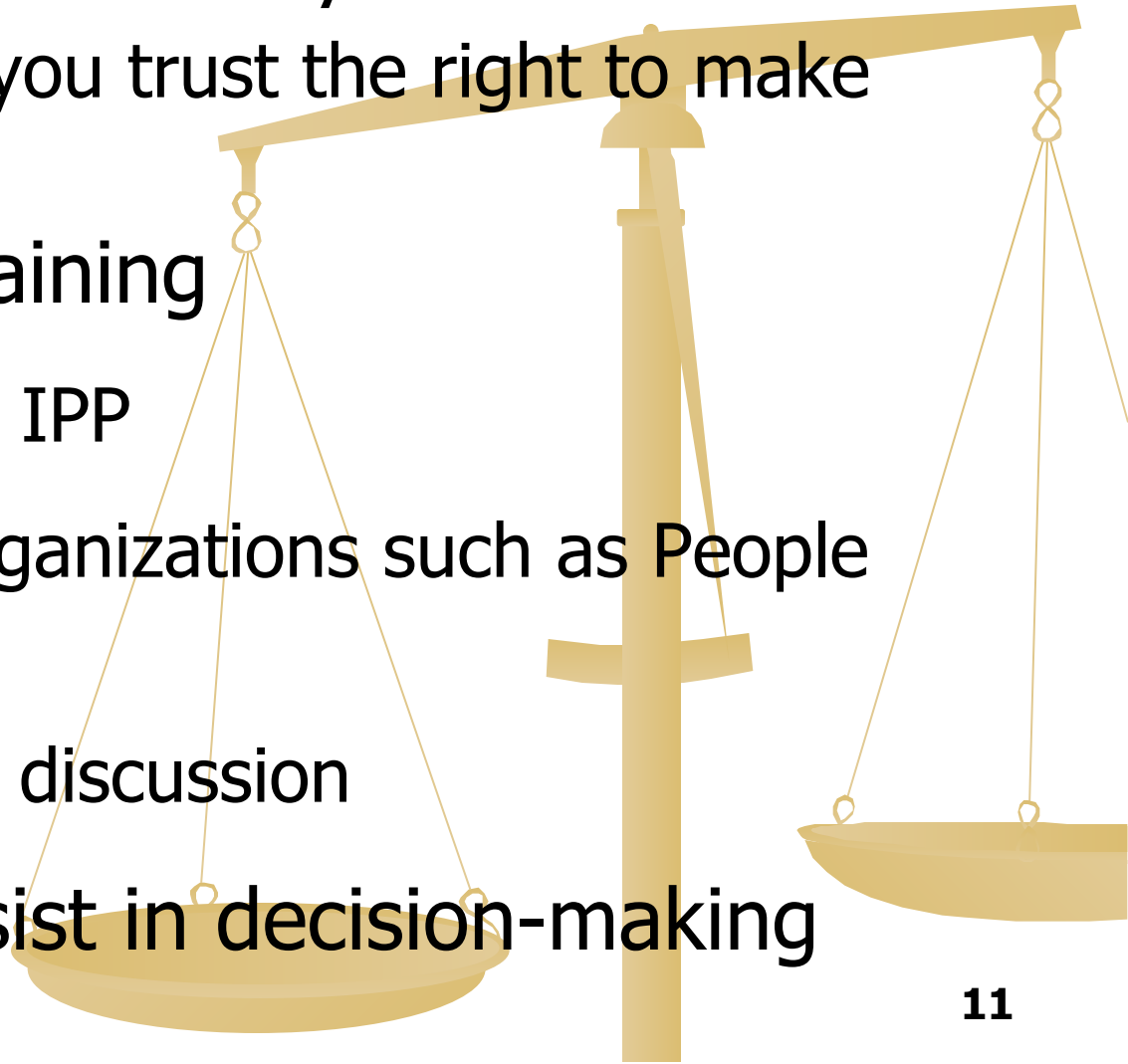
Supported Decision-Making Agreements

- Names individual supporters.
- Provides information on what each supporter can or cannot do.
- Signatures from each supporter which explains their understanding of what they can and cannot do.
- Can't make decisions for the person.
- Can help the person communicate their wishes.



Alternatives to Conservatorship

- Durable Power of Attorney
 - Giving someone you trust the right to make some decisions.
- Self Advocacy Training
 - Write into IEP or IPP
 - Self-advocacy organizations such as People First
 - Role playing and discussion
- Facilitators to assist in decision-making



Alternatives: Advocating for Services

- Regional center service coordinator as advocate
- Family input into regional center programs
- Consumer's right to invite people to IPP
- Client's Rights Advocate
- Trained advocate/facilitator



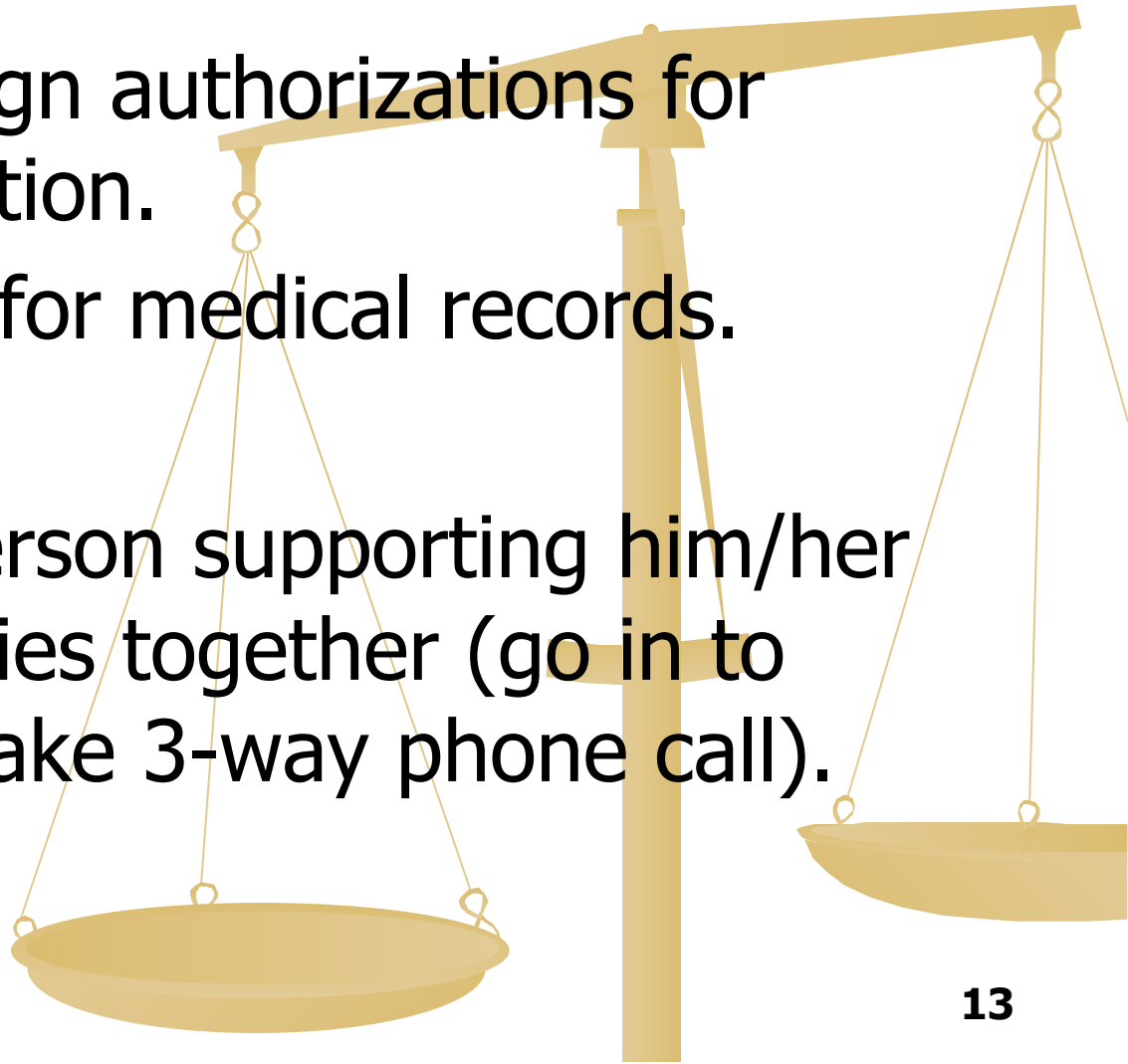


Alternatives: Access to Records and Information

-Consumer may sign authorizations for release of information.

-HIPAA release for medical records.

-Consumer and person supporting him/her can contact agencies together (go in to office together, make 3-way phone call).

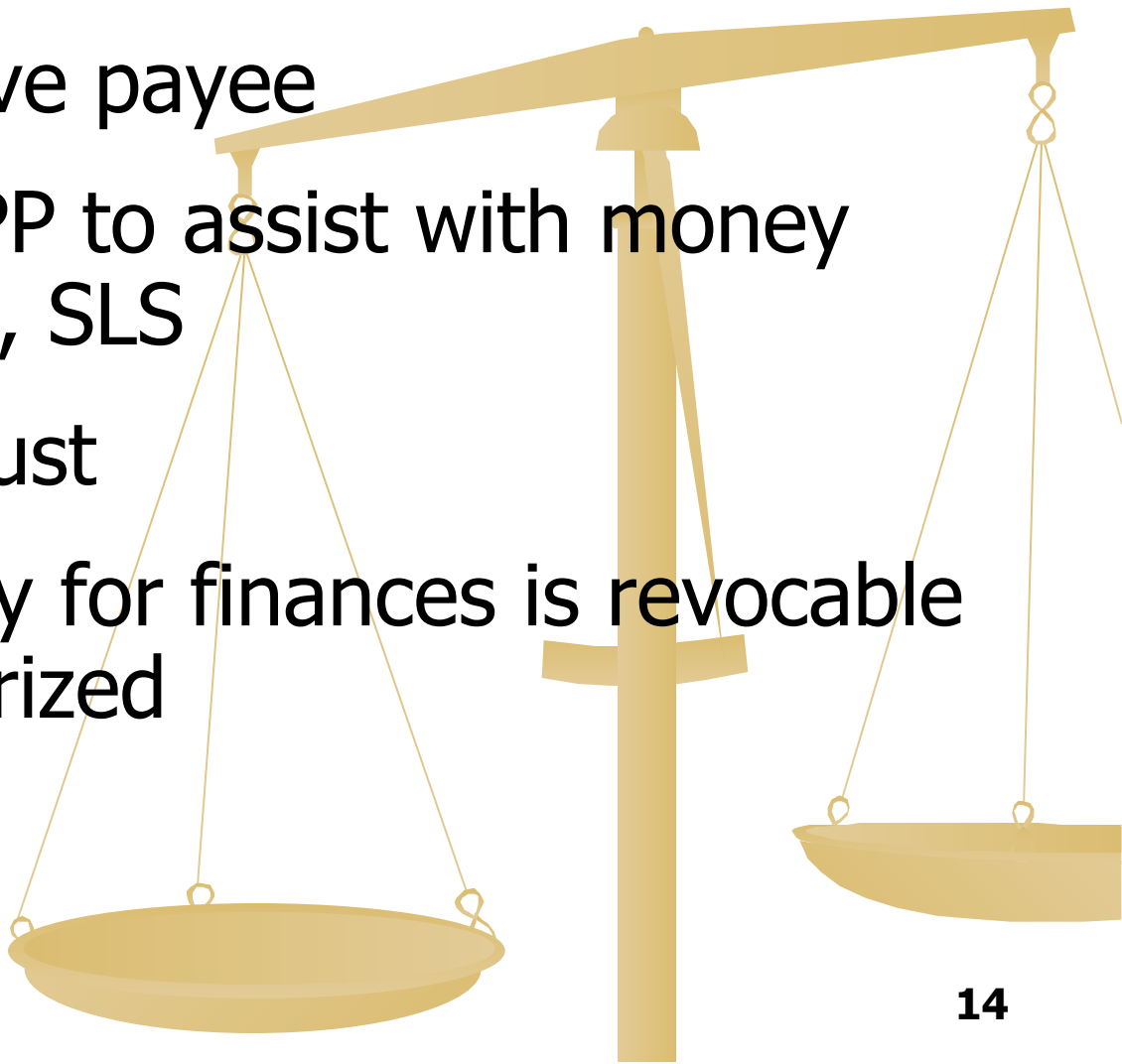




Alternatives: Finances



- SSI Representative payee
- Services in the IPP to assist with money management: ILS, SLS
- Special Needs Trust
- Power of Attorney for finances is revocable and must be notarized



Additional Protections: Finances

-ABLE Account

-Joint bank accounts

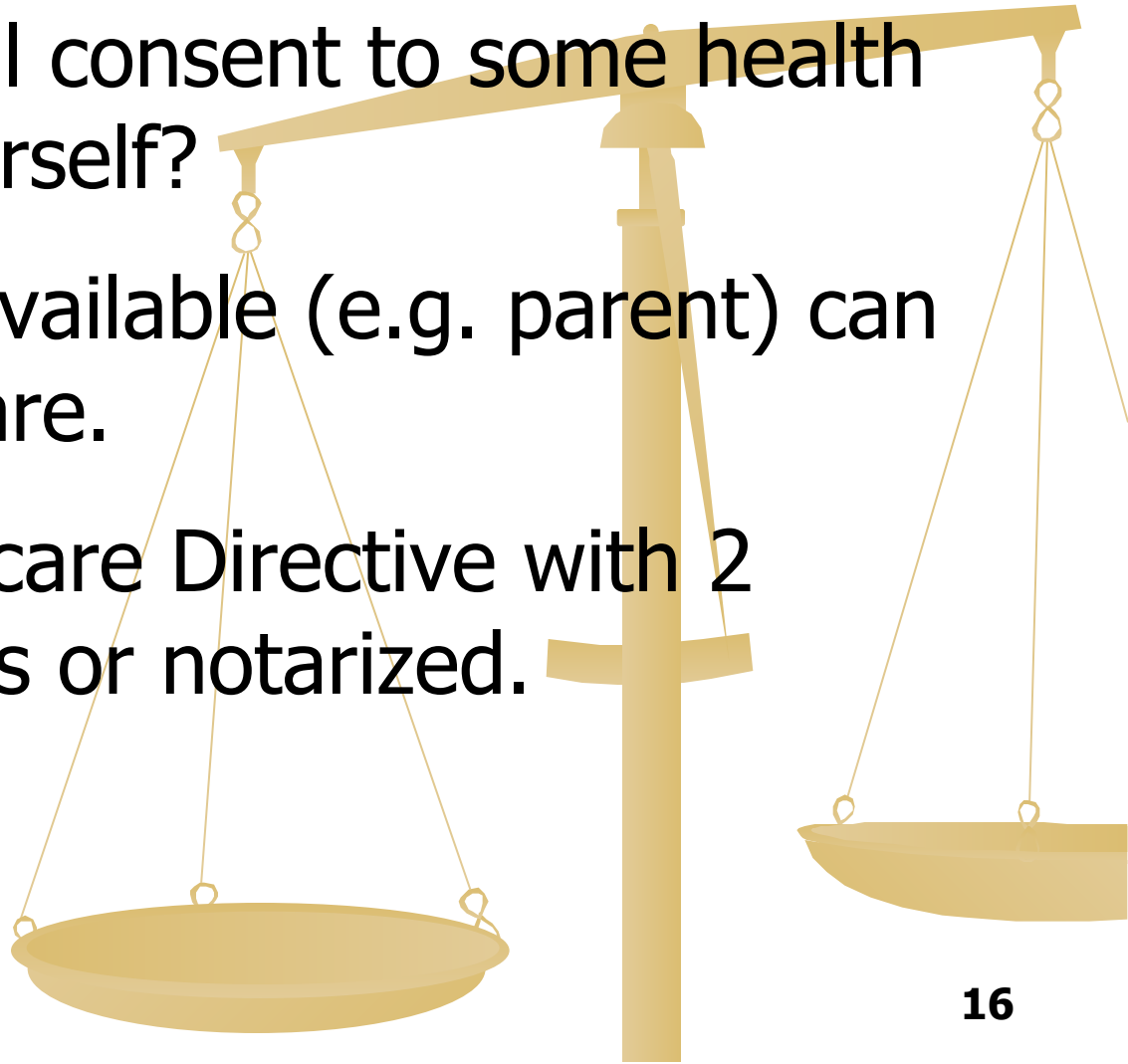
-Non-Garnishment of SSI and SSDI





Alternatives: Health Care

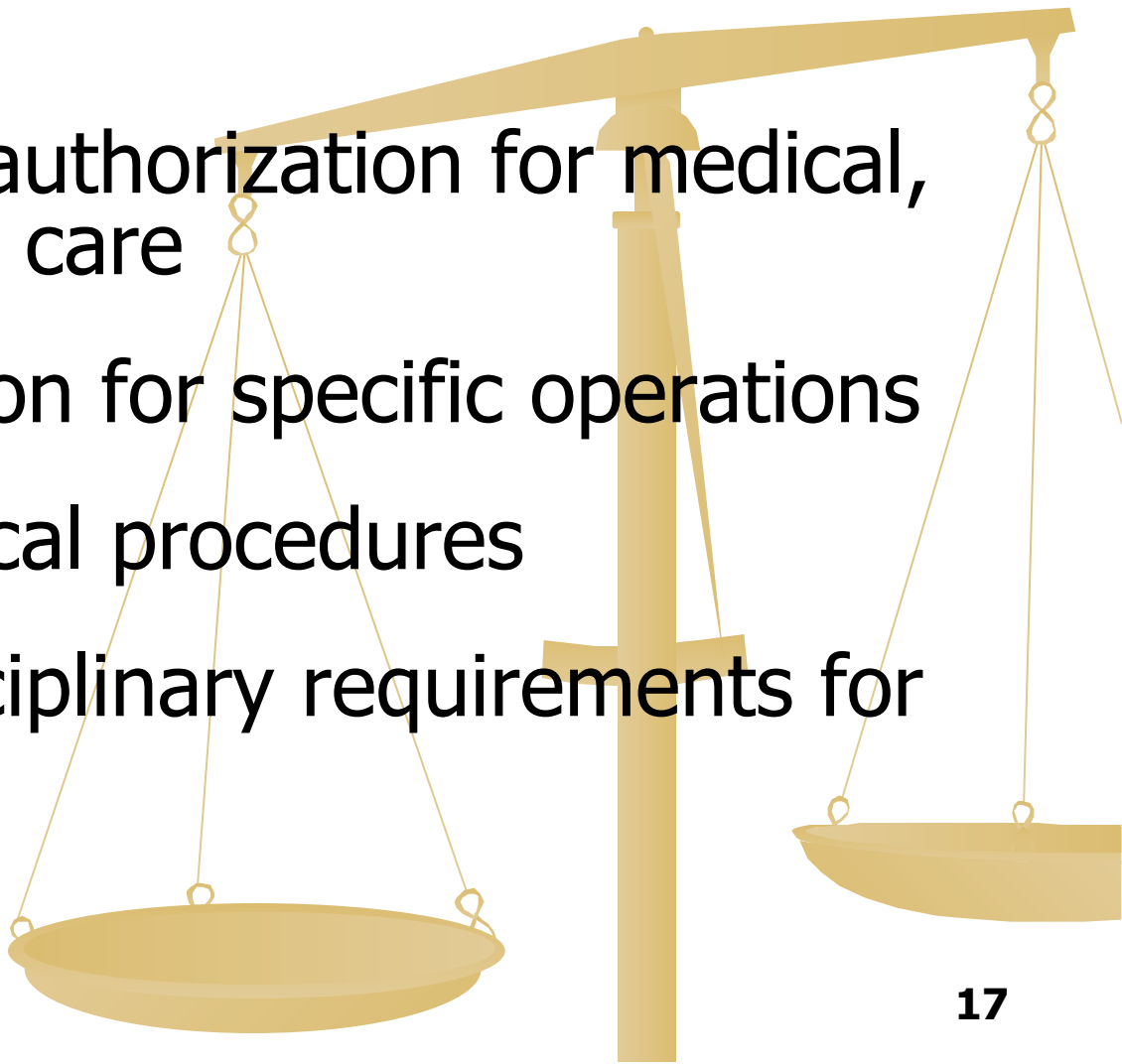
- Can the individual consent to some health care for him or herself?
- Closest relation available (e.g. parent) can authorize healthcare.
- Advanced Healthcare Directive with 2 witness' signatures or notarized.
 - Is revocable





Alternatives: Health Care

- Regional Center authorization for medical, surgical, or dental care
- Court authorization for specific operations
- Emergency medical procedures
- ICF/SNF interdisciplinary requirements for authorization



Alternatives: Education

-Transfer of Educational Decision Making Authority

-Student may assign educational rights



Additional Alternatives:

-Social & Sexual Relationships:

- Services written into IEP or IPP

- Counseling, ILS or SLS

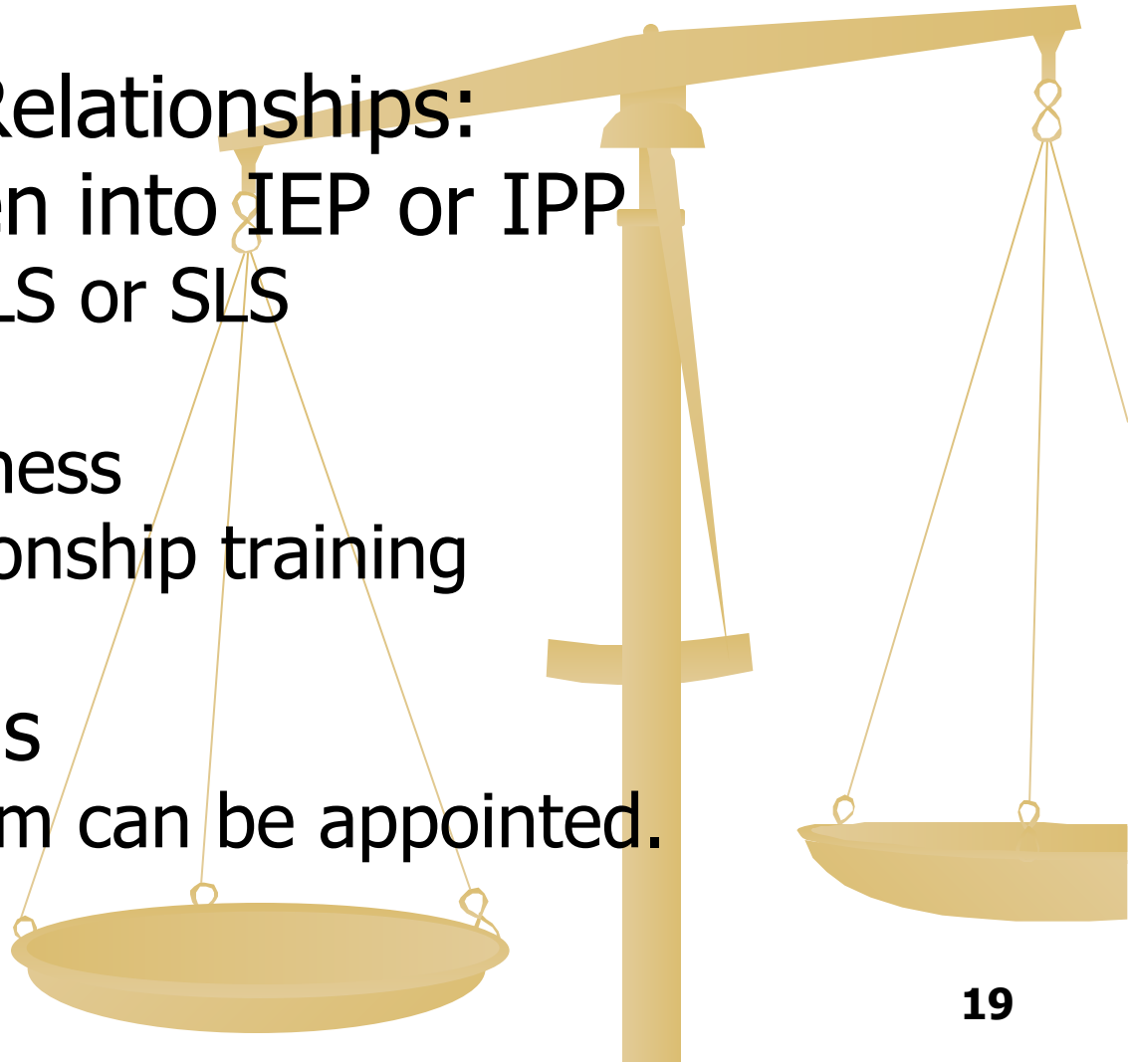
- Social skills

- Safety awareness

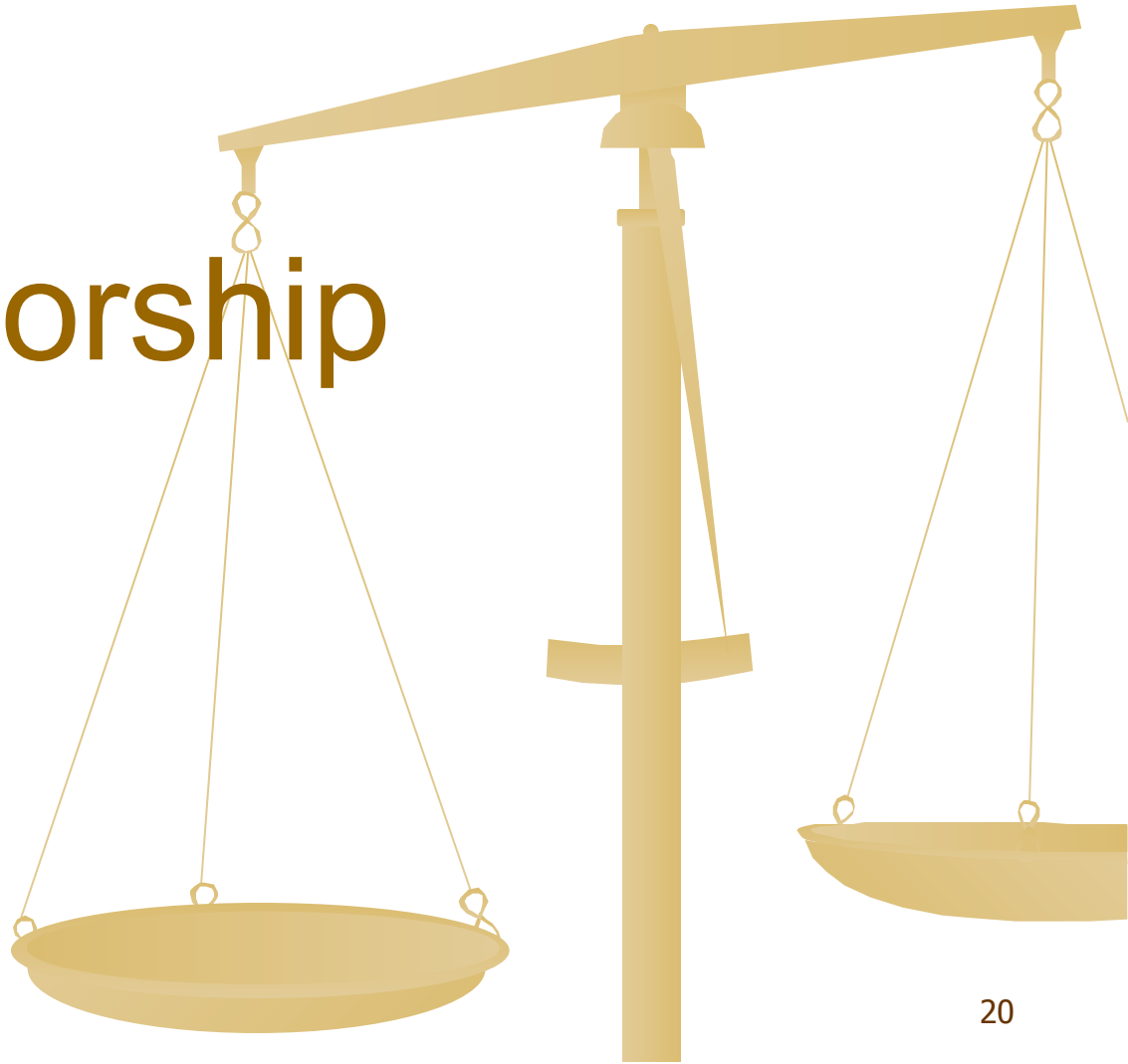
- Healthy relationship training

-Court Proceedings

- Guardian ad Litem can be appointed.

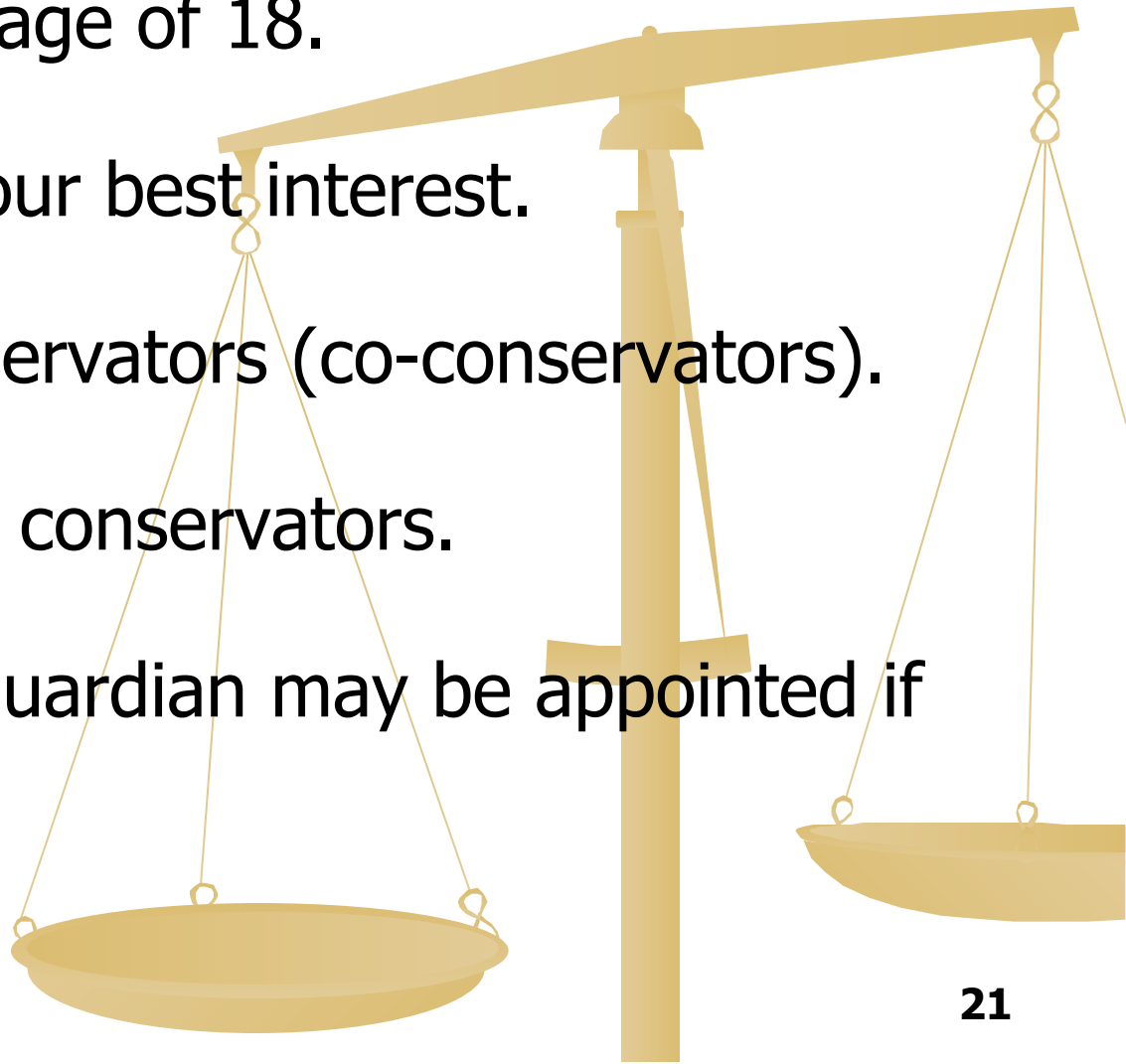


Conservatorship



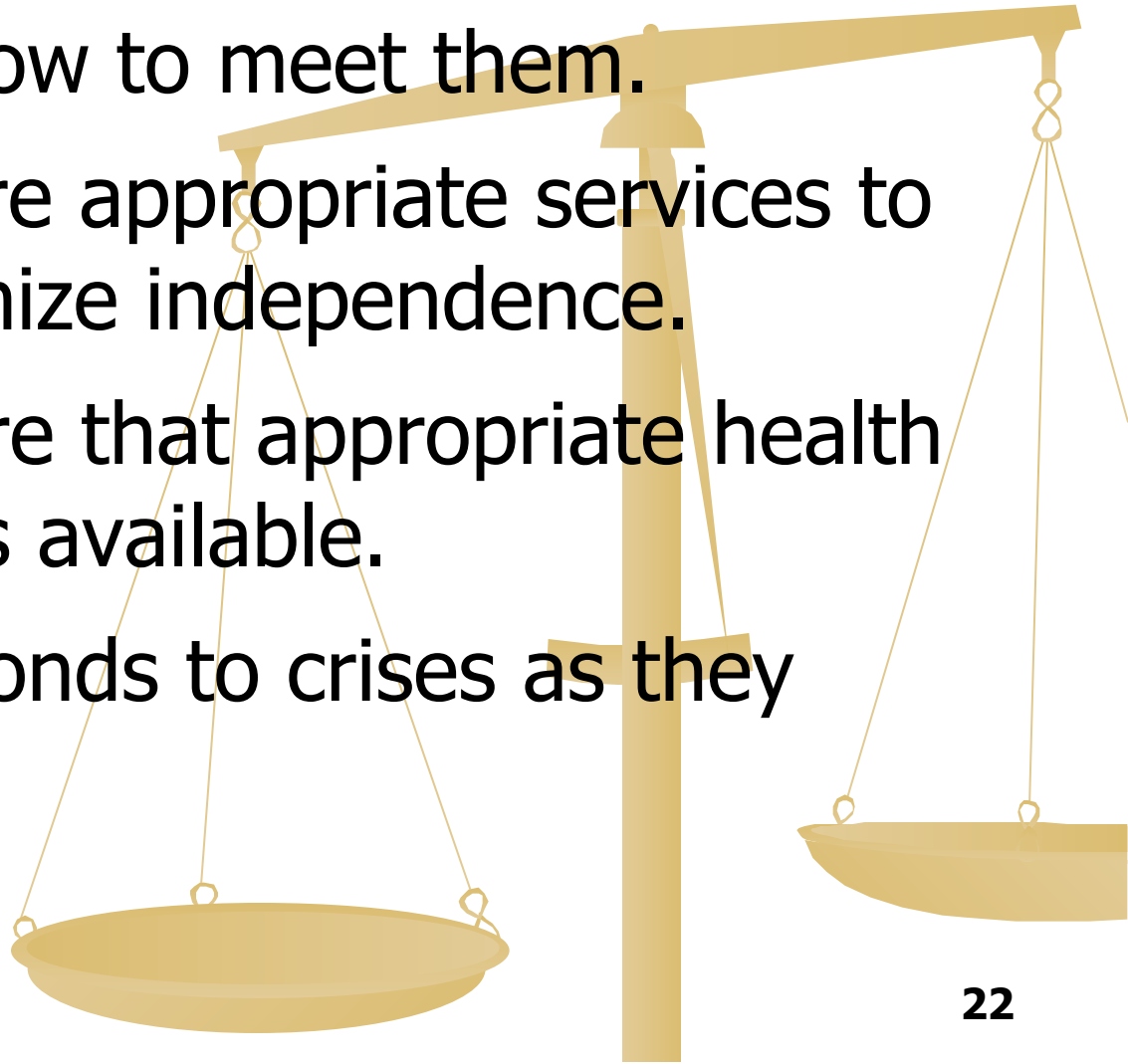
Who can be a Conservator?

- Individual over the age of 18.
- Individual acts in your best interest.
- Can have joint conservators (co-conservators).
- Private professional conservators.
- The county public guardian may be appointed if there is no one else.



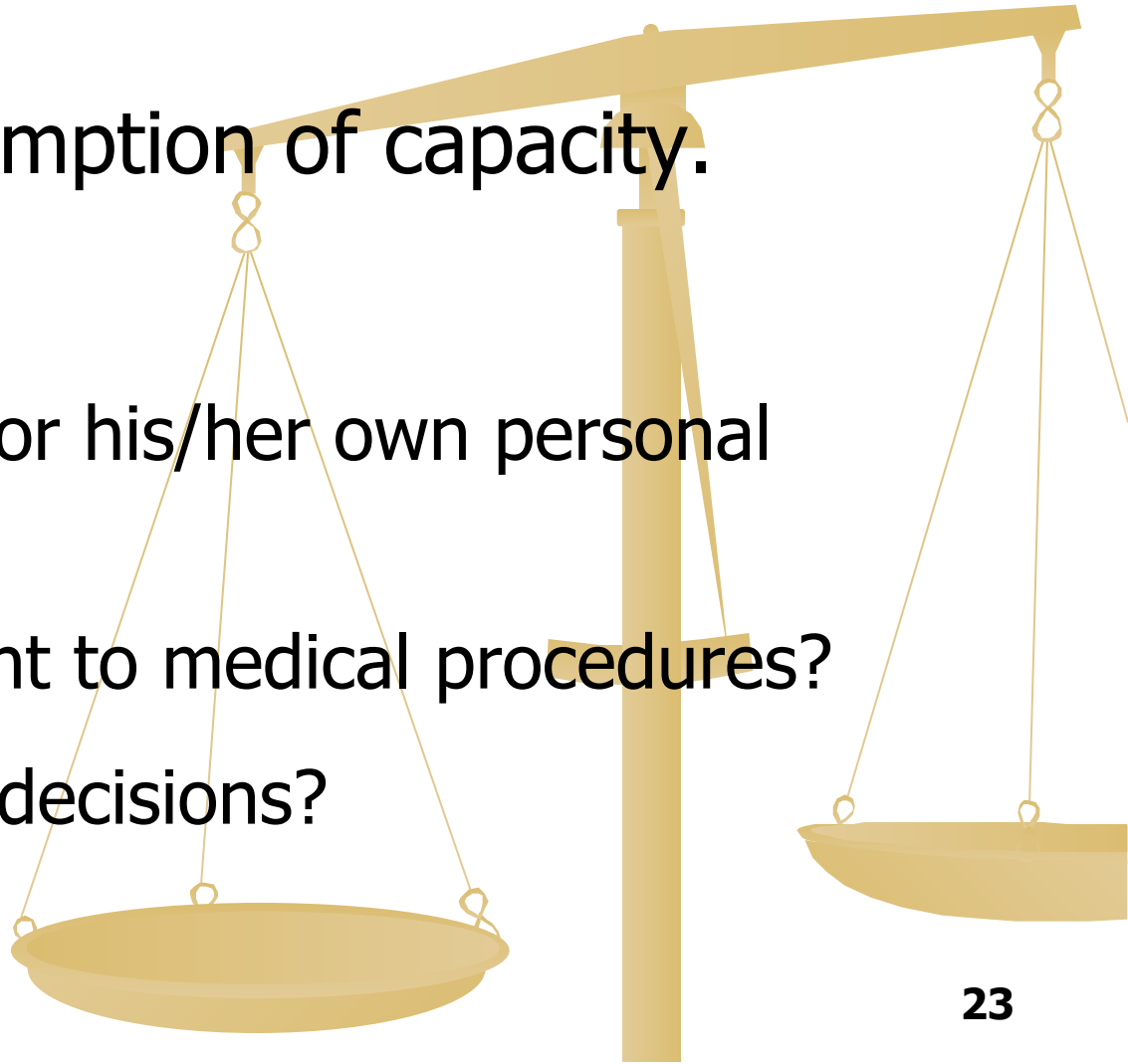
Responsibilities of a Conservator

- Assess the conservatee's needs and how to meet them.
- Secure appropriate services to maximize independence.
- Ensure that appropriate health care is available.
- Responds to crises as they arise.



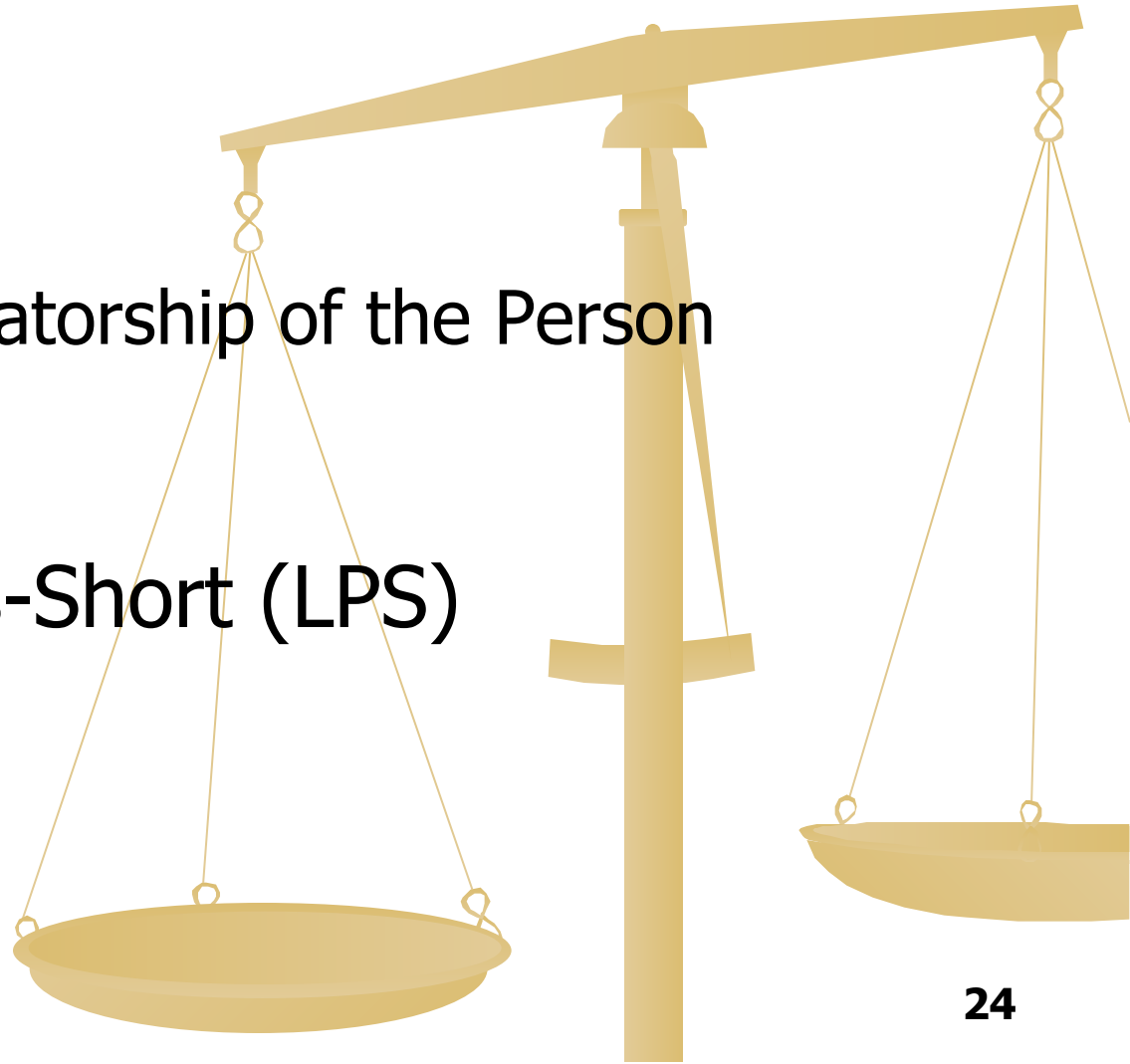
Determining if Conservatorship is Appropriate

- Rebuttable presumption of capacity.
 - Is the person,
 - able to provide for his/her own personal needs?
 - able to consent to medical procedures?
 - able to make decisions?



Types of Conservatorship

- Limited
- Probate Code
 - General Conservatorship of the Person
 - Of the Estate
- Lanterman-Petris-Short (LPS)
- Dementia



Limited Conservatorship

- For individuals with developmental disabilities.
- To allow the individual to be as independent as possible.
- Allows the individual to keep some rights to make some decisions.
- Granted only if there are no less restrictive alternatives.



Powers Available: Limited Conservatorship

- Determine (fix) residence.
- Access to confidential records.
- Control the right to marry.
- Control the right to contract.
- Consent for medical treatment.
- Control social and sexual contacts.
- Make educational decisions.

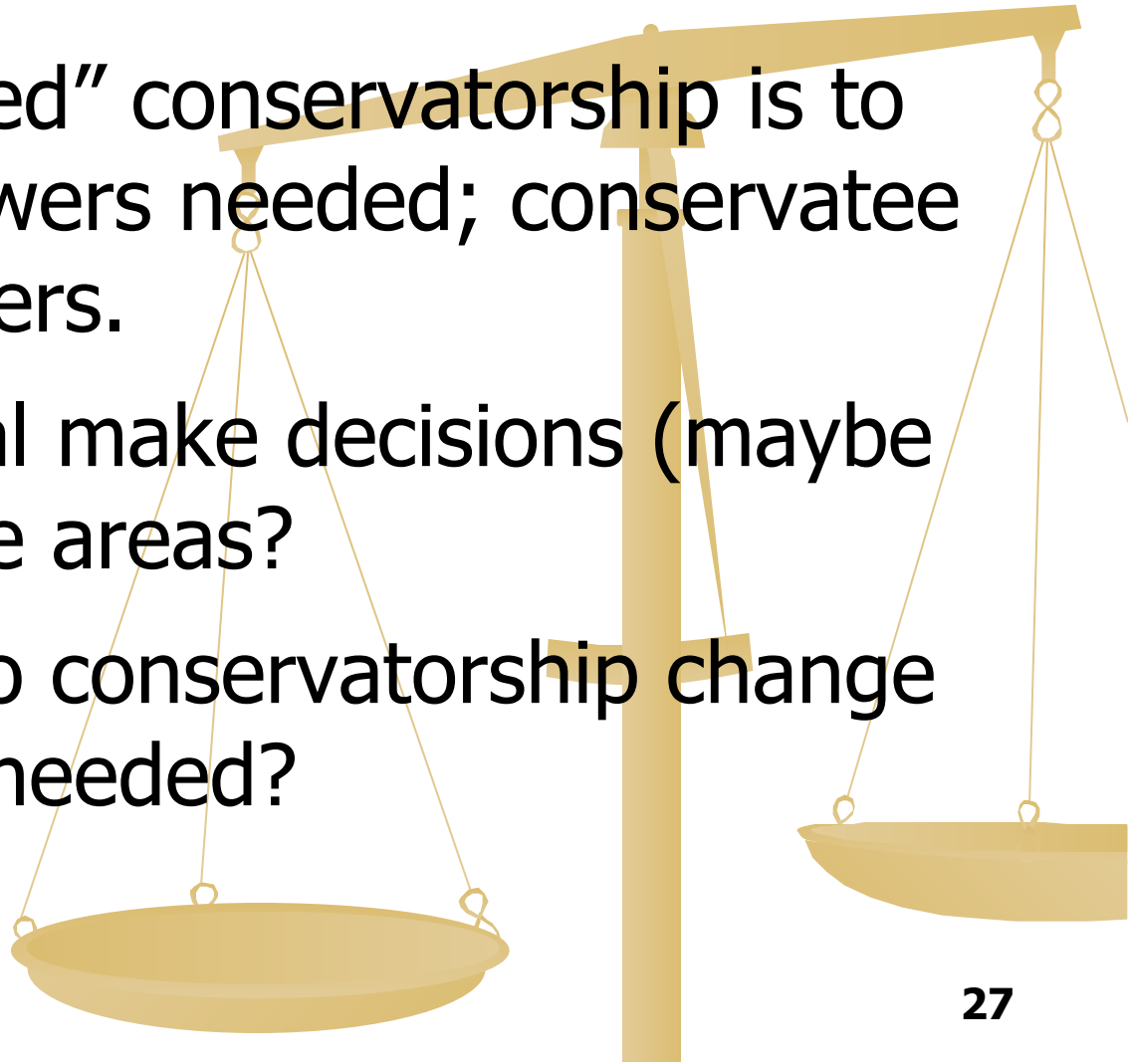


philipmartin.info



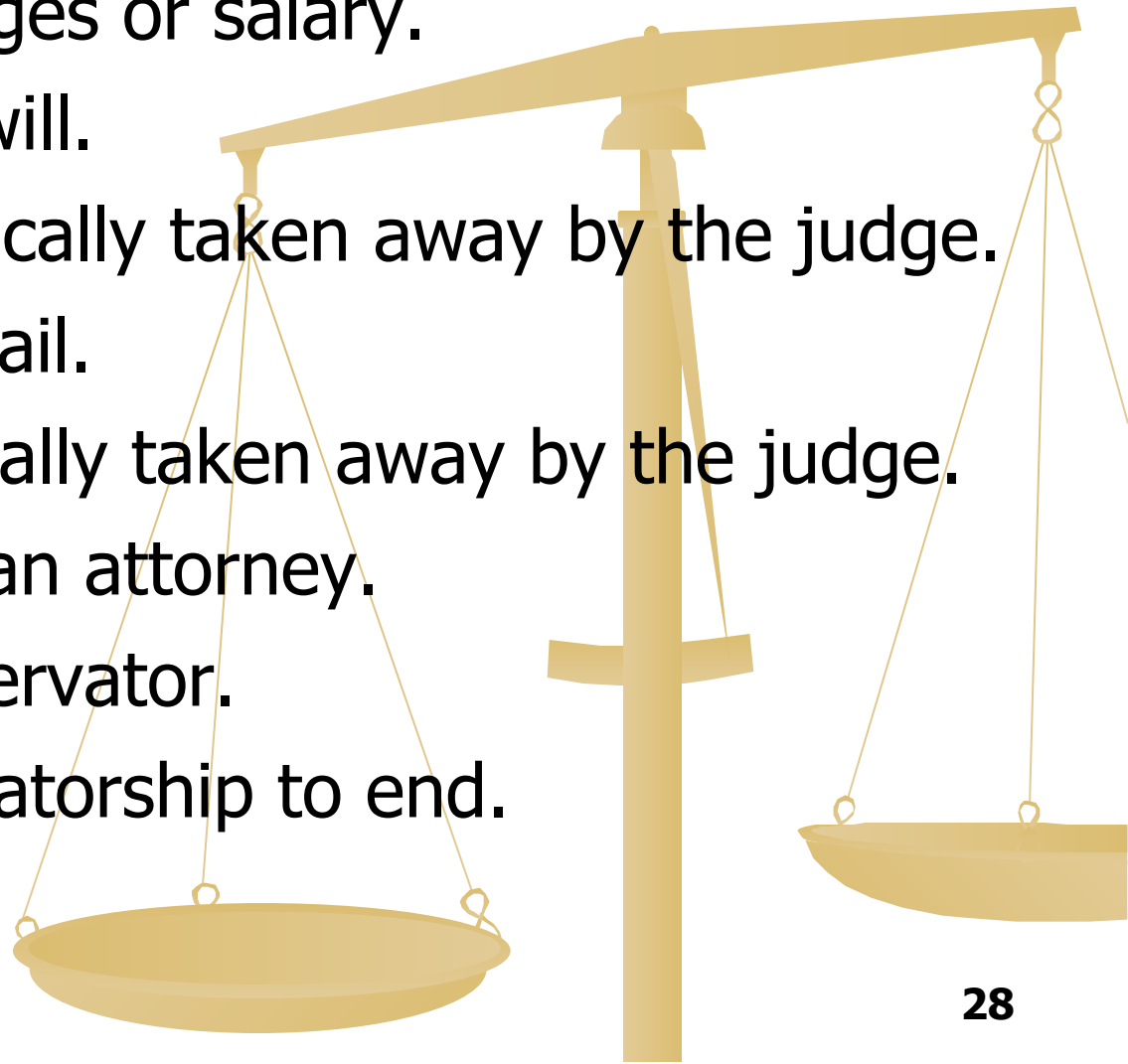
Why Are Only Certain Powers Granted?

- Purpose of “limited” conservatorship is to grant only the powers needed; conservatee retains other powers.
- Can the individual make decisions (maybe with help) in some areas?
- Do alternatives to conservatorship change what powers are needed?



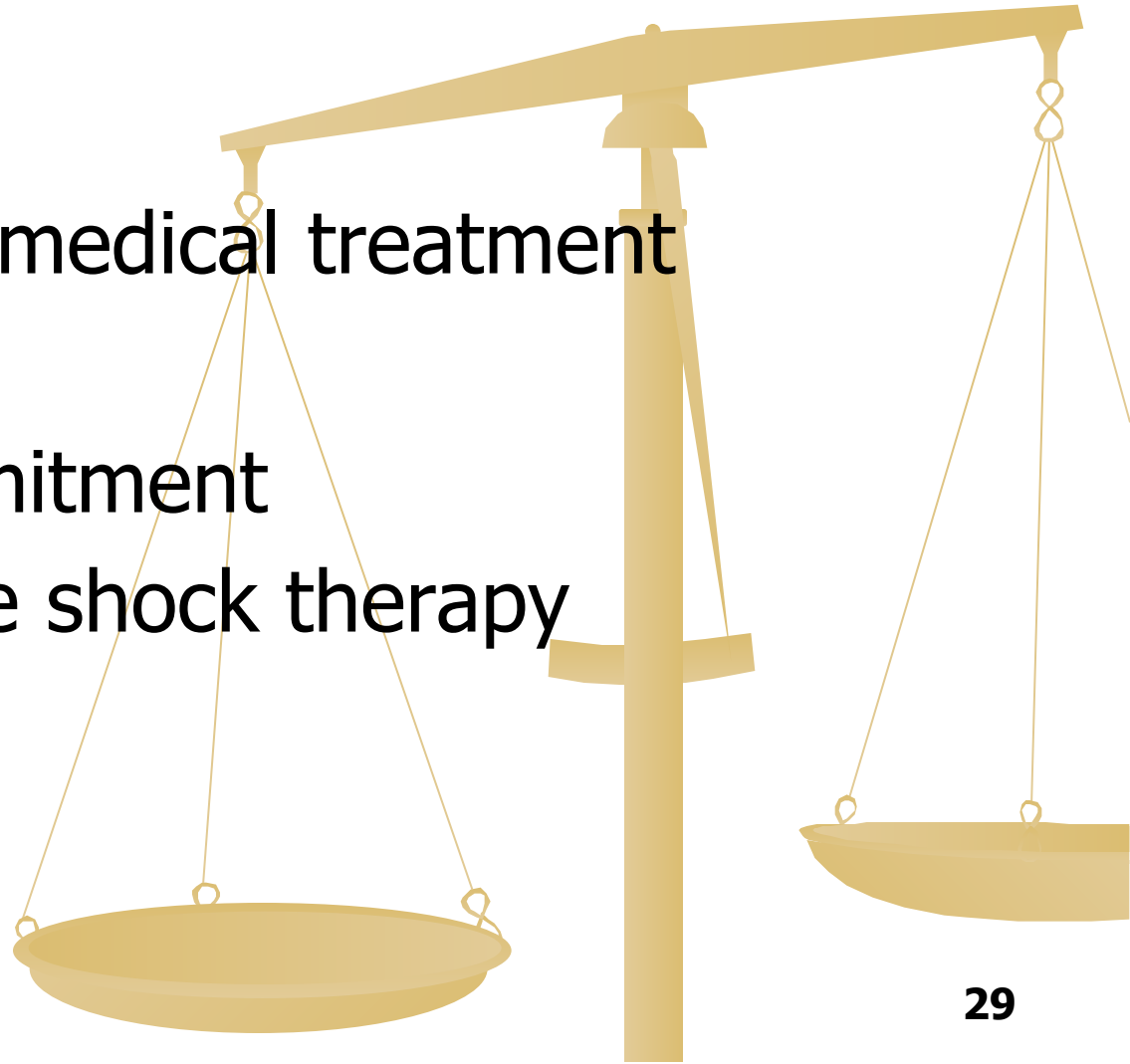
Rights of the Conservatee

- Control his own wages or salary.
- Make or change a will.
- Marry unless specifically taken away by the judge.
- Receive personal mail.
- Vote unless specifically taken away by the judge.
- Be represented by an attorney.
- Ask for a new conservator.
- Ask for the conservatorship to end.



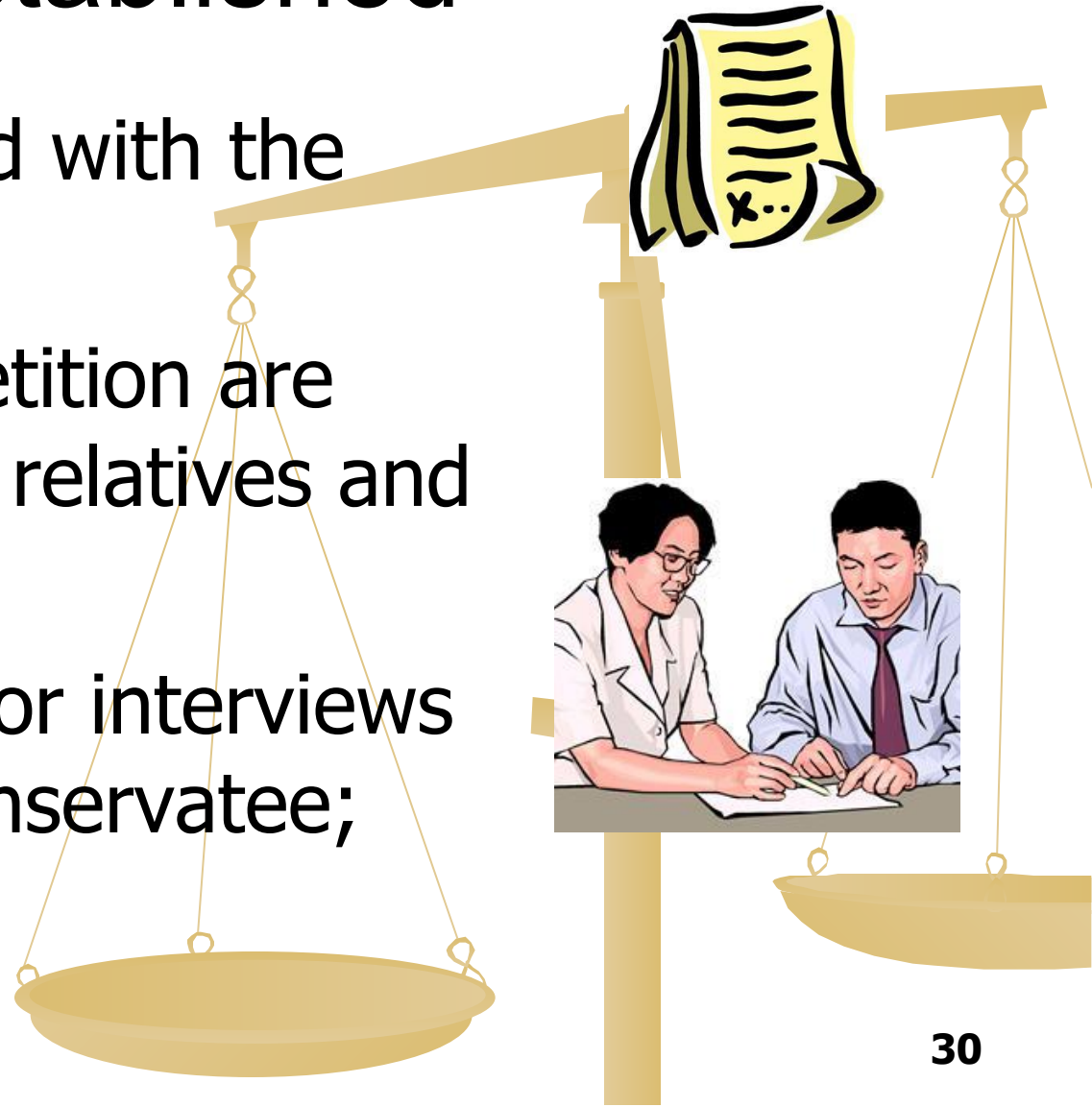
Powers not available in Limited or General Conservatorships:

- Control of wages
- Approve harmful medical treatment
- Sterilization
- Involuntary commitment
- Electro-convulsive shock therapy
- Psychotherapy



How a Conservatorship is Established

1. A petition is filed with the probate court;
2. Copies of the petition are sent to specified relatives and agencies;
3. Court investigator interviews the proposed conservatee;

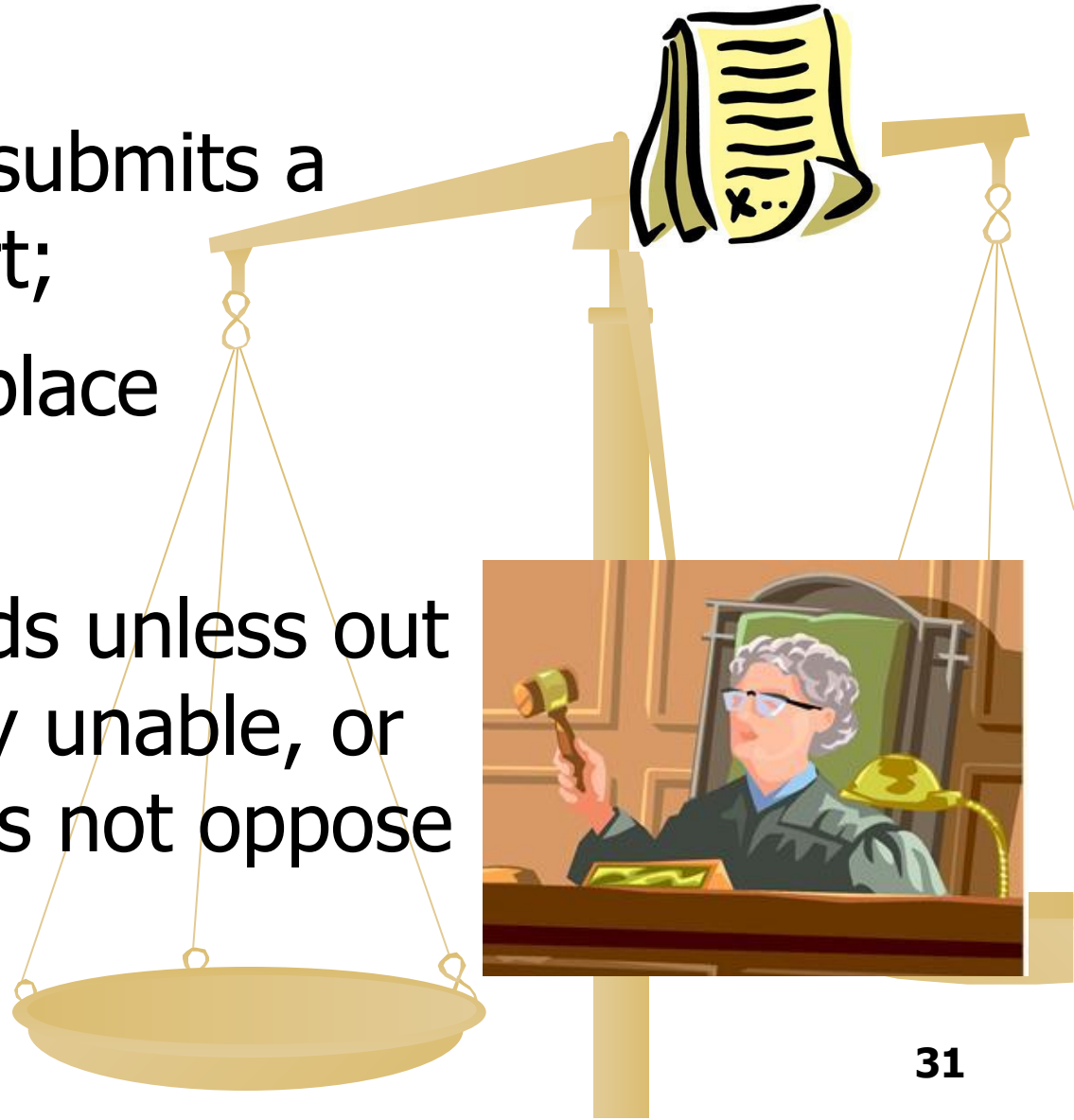


How a Conservatorship is Established cont.

4. Regional Center submits a report to the court;

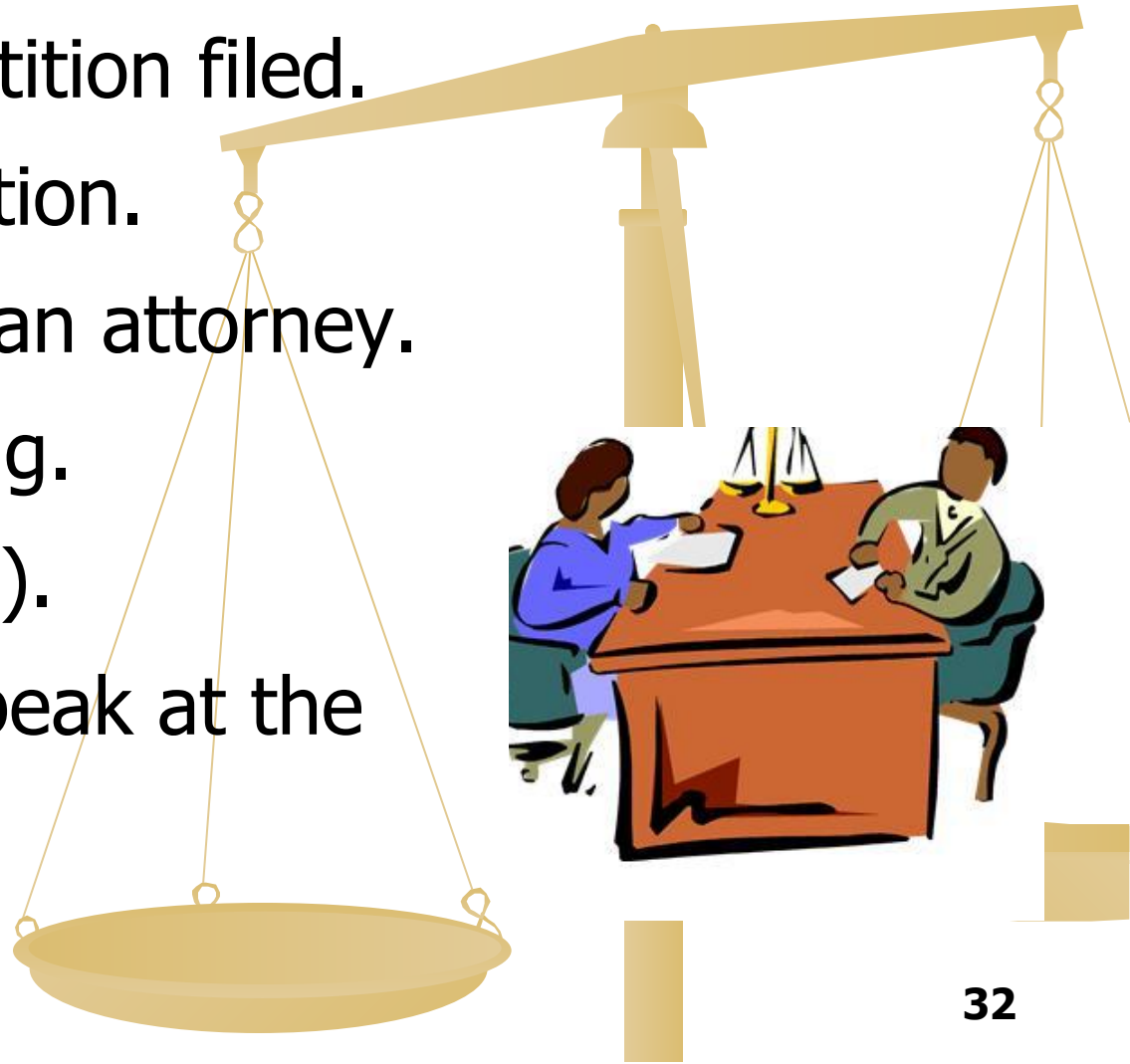
5. A hearing takes place

-Conservatee attends unless out of state, medically unable, or unwilling and does not oppose the petition.



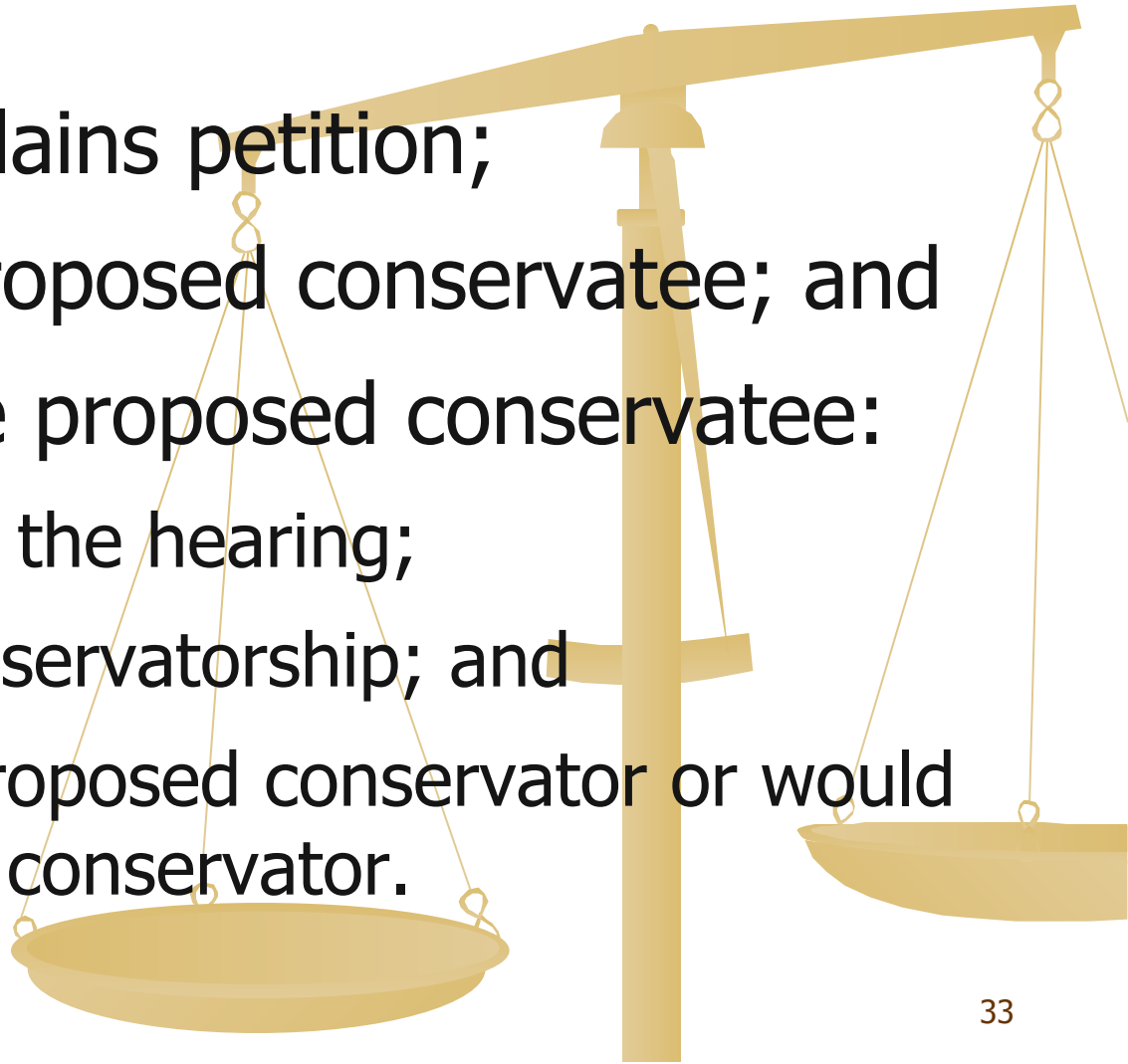
Conservatee Rights in the Conservatorship Process

- To notice of the petition filed.
- To oppose the petition.
- Representation by an attorney.
- To be at the hearing.
- To a jury trial (rare).
- To have a friend speak at the hearing.



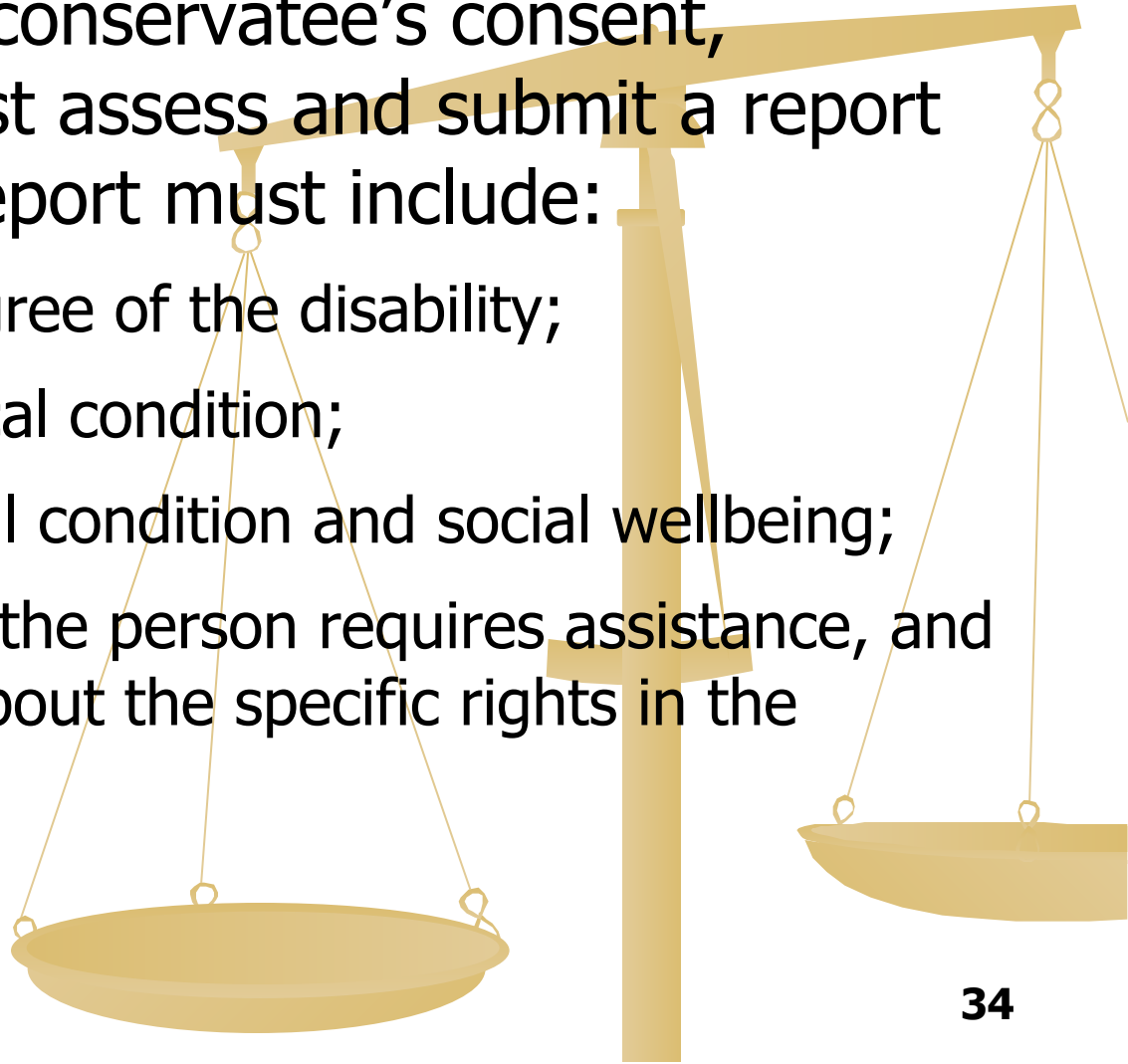
Court Investigator's Role with the Proposed Conservatee:

- Reviews and explains petition;
- Interviews the proposed conservatee; and
- Determines if the proposed conservatee:
 - Is able to attend the hearing;
 - Opposes the conservatorship; and
 - Objects to the proposed conservator or would prefer a different conservator.



Role of the Regional Center

- With the proposed conservatee's consent, Regional Center must assess and submit a report to the court. This report must include:
 - The nature and degree of the disability;
 - The person's physical condition;
 - The person's mental condition and social wellbeing;
 - The areas in which the person requires assistance, and recommendations about the specific rights in the petition.

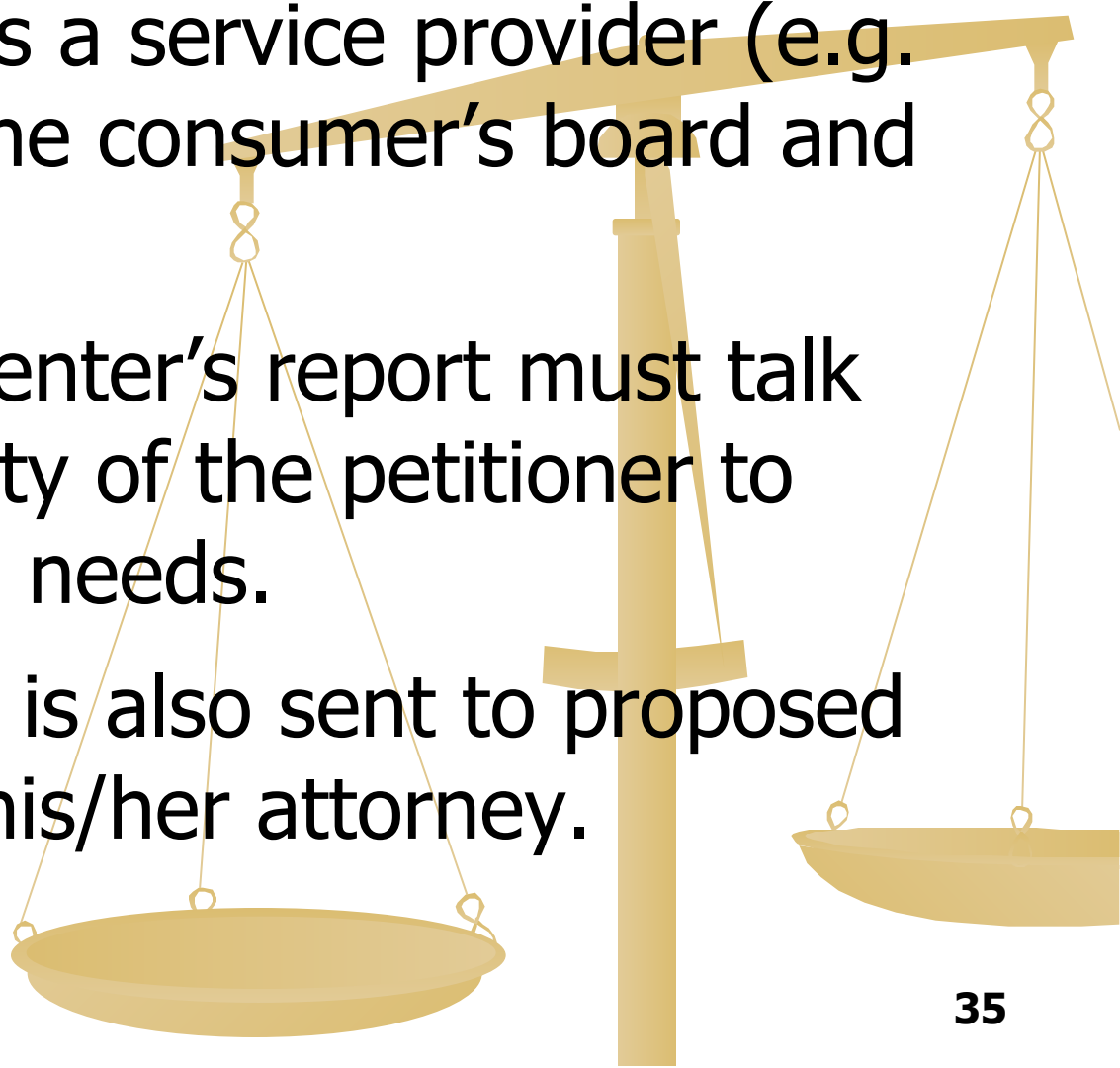


Role of the Regional Center cont.

-If the petitioner is a service provider (e.g. administrator of the consumer's board and care home):

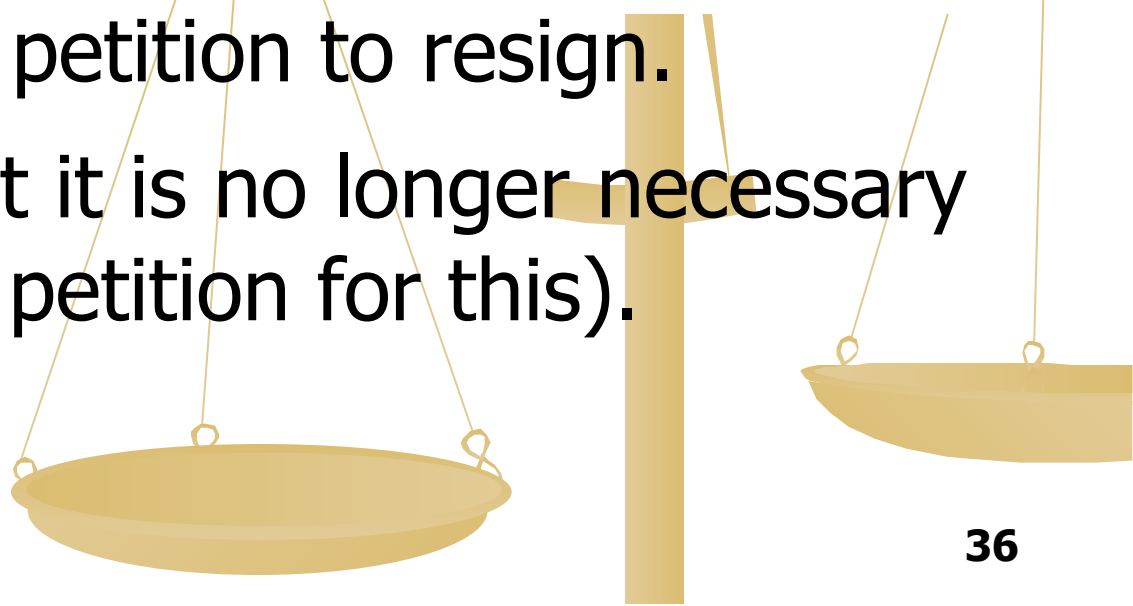
-The regional center's report must talk about the suitability of the petitioner to meet the person's needs.

-Copy of report is also sent to proposed conservatee and his/her attorney.



Terminating a Conservatorship

- Order of the court.
- Death of the conservator.
- Death of the conservatee.
- Conservator files petition to resign.
- Order stating that it is no longer necessary (Conservatee can petition for this).



Co-Conservatorship

-If no co-conservator appointed and sole conservator dies, the conservatorship ends.
(See alternatives for how decisions will be made)

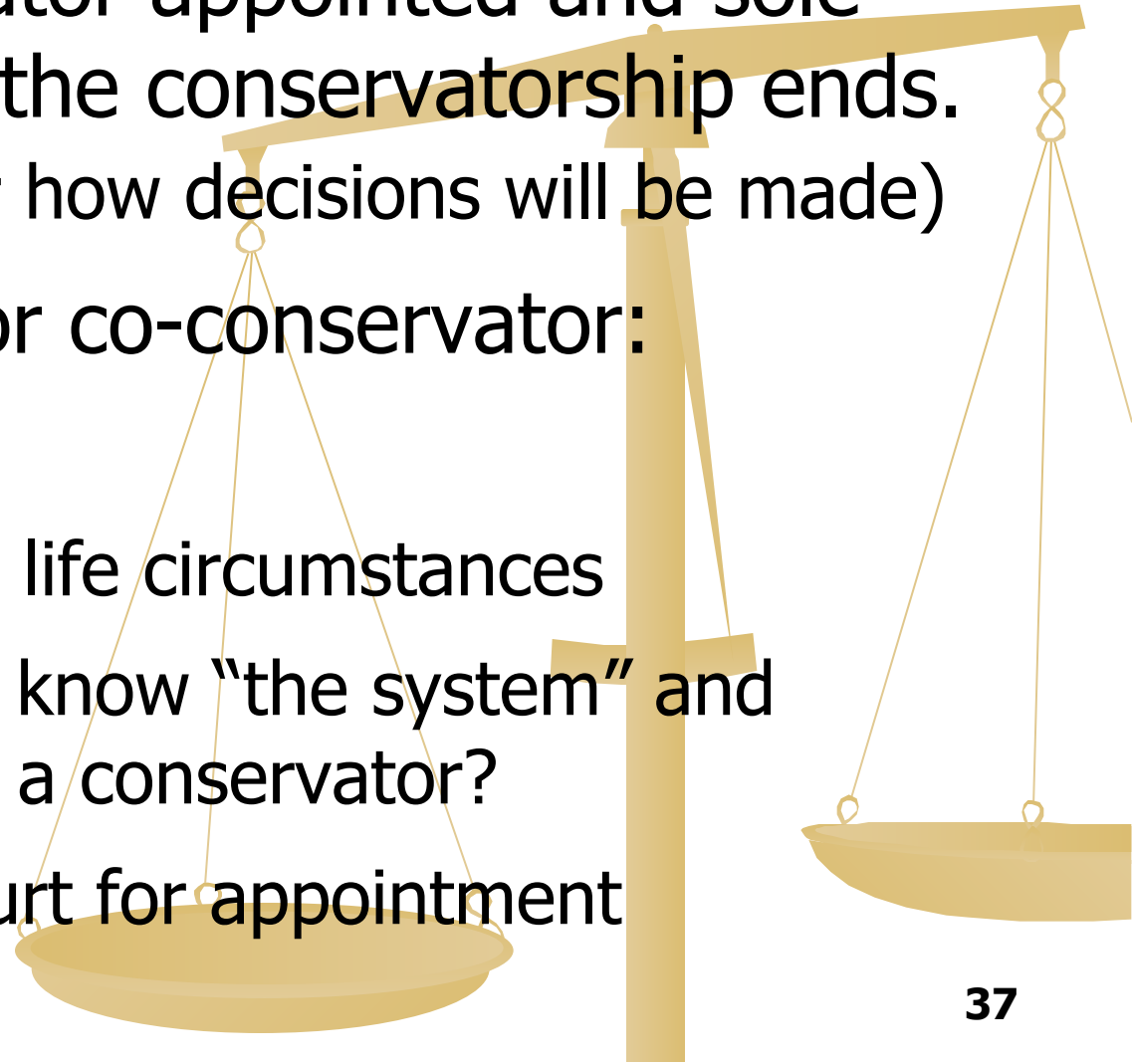
-Considerations for co-conservator:

- Relationships

- Co-conservator's life circumstances

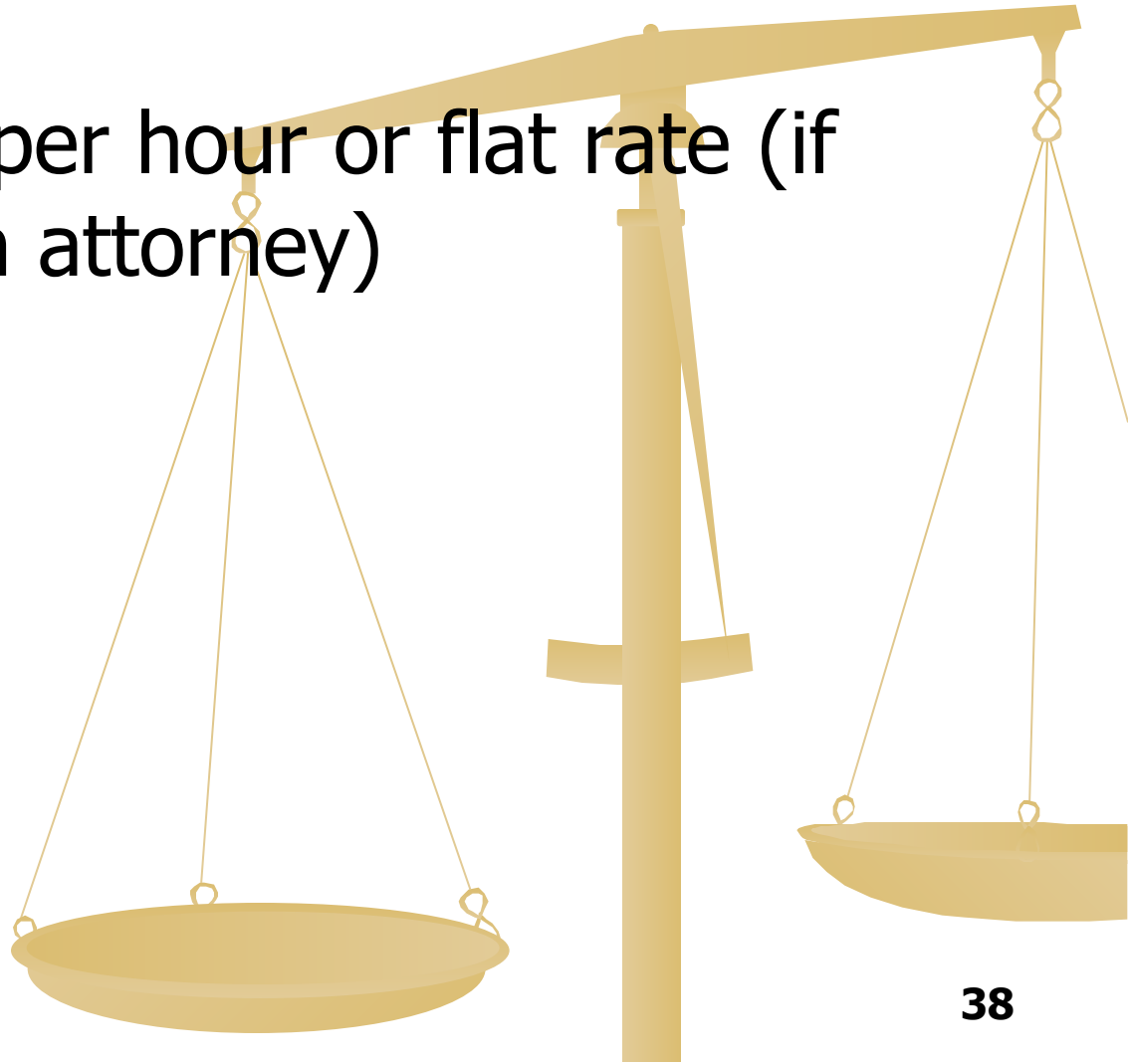
- Does the person know "the system" and responsibilities of a conservator?

- Must petition court for appointment



Cost of Obtaining a Conservatorship

- Legal costs vary per hour or flat rate (if represented by an attorney)
- Court costs
- Report costs
- Copies of Letters



Thank You!

