

Guardianship in Illinois, #FreeBritney, and Jewish Values

by Charles P. Golbert

The [#FreeBritney movement](#) has focused national attention on guardianship. While guardianship affords protections for vulnerable people, it is also an intrusion upon an individual's autonomy and has the potential for abuse.

This article will summarize guardianship in Illinois, including existing protections to safeguard the rights of the individual. The article will then suggest areas where guardianship practice and policy can be improved to prevent abuses. In doing so, the article will discuss the disturbing recent infusion of a profit motive into guardianship with the proliferation of for-profit guardianship corporations. Finally, the article will examine key Jewish values that are reflected in the provision of high quality, compassionate guardianship services.

Our Office

The [Office of the Cook County Public Guardian](#) serves as guardian for some 700 adults with cognitive disabilities. We serve as the guardian of last resort, meaning that the people under our guardianship have no appropriate family members or others to act as their guardian. They have either outlived all of their family or their family members are abusive, neglectful, financially exploitative, uninvolved, or otherwise inappropriate or unable to act as their guardian.

Most of the people we serve are older and have age-related dementia, such as Alzheimer's disease, although we also serve some younger people with developmental delays, brain injuries, and mental health diagnoses. The people under our guardianship come from all walks of life and from every corner of Cook County. As part of our guardianship services, we manage more than \$100 million in diverse estate assets including assets in other states and countries.

[Our office](#) also represents more than 7,000 children in abuse and neglect cases in the Juvenile Division of the Circuit Court, and 700 children in some of the most acrimonious custody and parentage disputes in the Domestic Relations Division. With an interdisciplinary staff of 220 professionals, we are one of the largest guardianship and child advocacy offices in the country.

What is Guardianship?

A guardian is a person or entity appointed by the court to make decisions on behalf of an individual with a cognitive disability and to ensure that all of their needs are met. The guardian of an individual's person is responsible for ensuring that the person is living in a safe and appropriate placement, in the least restrictive setting, and is receiving all appropriate medical and clinical care and services. This includes, among other things, all appropriate support, care, comfort, health, education, maintenance, and professional services. See generally 755 ILCS 5/11a-17.

The guardian of a person's estate is responsible for legal and financial decisions such as paying a person's bills, managing and investing their money, entering into contracts, and maintaining their home and other possessions. See generally 755 ILCS 5/11a-18. The guardian is required to assist the individual in the development of maximum self-reliance and independence. 755 ILCS 5/11a-17(a).

Protections

Delegating such broad and consequential decisional authority is a considerable deprivation of a person's autonomy and civil rights. Therefore, in Illinois, substantial due process protections are afforded both before a guardian can be appointed and in the execution of the guardian's responsibilities.

First, the petition for guardianship must include a medical report that details the respondent's alleged cognitive disability and consequent need for a guardian. 755 ILCS 5/11a-9(a) and (b). The court may appoint independent experts to assess the need for guardianship. 755 ILCS 5/11a-9(b-5). The court must appoint an independent guardian *ad litem* for the respondent. 755 ILCS 5/11a-10(a). The guardian *ad litem* must meet with the respondent and is authorized to review medical records and speak with appropriate professionals. *Id.* The guardian *ad litem* must file a report with the court about the appropriateness of guardianship and testify at the hearing. *Id.*

The respondent is served with a summons that includes a detailed statement of the respondent's rights. 755 ILCS 5/11a-10(c). The respondent has the right to counsel and the court will appoint an attorney if the individual does not have one. 755 ILCS 5/11a-10(b); 755 ILCS 5/11a-11(a). The respondent has the right to be present, and the hearing may be held at such a location that is convenient to the individual, such as the facility where he or she lives. 755 ILCS 5/11a-11(a); 755 ILCS 5/11a-10(d). The respondent has the right

to present evidence, to confront and cross-examine witnesses, and to ask the court to appoint an independent expert. 755 ILCS 5/11a-11(a); 755 ILCS 5/11a-9(b-5). The respondent also has the right to demand a jury trial. 755 ILCS 5/11a-11(a).

The burden of proof to demonstrate that guardianship is necessary is clear and convincing evidence. 755 ILCS 5/11a-3(a). The court is required to make various written findings of fact in support of a decision to appoint a guardian. 755 ILCS 5/11a-12(b) and (c). The court may appoint a guardian only as is necessary to promote the well-being of the respondent and to protect the respondent from neglect, exploitation, or abuse. 755 ILCS 5/11a-3(b).

The court must appoint a limited guardian unless the court finds that a limited guardian will not afford sufficient protection. 755 ILCS 5/11a-12(b) and (c); 755 ILCS 5/11a-3(b). The idea is to delegate to the guardian only those limited authorities necessary to protect the respondent.

Once a guardian is appointed, the court supervises the guardianship. Certain actions require specific court approval, such as placement in a nursing home or other residential facility, 755 ILCS 5/11a-14.1, and the sale of real estate. 755 ILCS 5/20-3 through 5/20-12.

The guardian must file a detailed annual report. 755 ILCS 5/11a-17(b). While the report is discretionary with the court, in Cook County it is routinely ordered to be filed at least annually. In estate cases, the guardian must be bonded for at least one and a half times the value of the estate, 755 ILCS 5/11a-12-2 and 12-5(a), and file detailed verified annual accountings. 755 ILCS 5/24-11. In making decisions, the guardian must exercise substituted judgment – determining what the individual under guardianship would want – whenever possible unless the outcome would result in substantial harm. 755 ILCS 5/11a-17(e).

Community Placement and Financial Exploitation Recovery

Our office is a national and even international model for excellence in guardianship services. Guardians, advocates, and academics from all over the country have come to Chicago to study our innovative programs in order to replicate them in their jurisdictions. We have also hosted delegations from different parts of China, Taiwan, Singapore, and Brazil who have come to study best practices in guardianship. Our lawyers are in high demand as speakers at national conferences about cutting edge practices in guardianship. Our lawyers have also served on the boards of directors and in key leadership positions in organizations such as the National Guardianship Association, the National Academy of Elder Law Attorneys, and the Uniform Law Commission's drafting committee that authored the [Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act](#) (UGCOPAA).

Our office is particularly well known for its leadership in regard to community placement. Our office has an innovative community placement program that is successful in maintaining about one third of the people under our guardianship in their own homes. We have a home care department dedicated to this mission. This department recruits, trains, and supervises independent contract workers who help care for people at home. Over the years we have litigated three class action lawsuits against various Illinois agencies to secure funds to finance such care, money that would otherwise be used to pay for much more expensive nursing home care. In appropriate cases, we use special needs trusts and reverse mortgages to pay for home care. In clinically suitable cases, we have even put people together as roommates so that they can share expenses while remaining in the community. For more information about our innovative home care program, see Charles Golbert, *Justice for Children, Adults with Disabilities and the Elderly: Reflections from 15 Years as an Attorney with the Office of the Public Guardian of Cook County, Illinois*, 1 DePaul J. for Soc. Justice 51, 79-81. (2016)

Another area where we are a leader is financial exploitation recovery litigation. Unfortunately, financial exploitation of older adults and people with disabilities is an exploding problem in our society. Nearly half of our new intake cases come to us with issues of abuse or financial exploitation. Exploiters have included family members, neighbors, financial advisors, police officers, business associates, landlords, tenants, "friends," professional scammers and, most unfortunately, even lawyers.

To combat this problem, we have a unit of senior lawyers who focus their practice on complex litigation to recover stolen assets. The unit has been extremely successful, recovering more than \$60 million over the past decade. We are then able to use the recovered money to care for the individual. We believe that ours is the largest financial recovery practice of its kind in the country in terms of the number of cases litigated and amounts recovered. For more information about the prevalence of financial exploitation in our society and our office's financial exploitation recovery practice, including case studies, see Charles Golbert, *Combating Elder Financial Abuse*, 40 Bifocal 4, p. 59 (Mar.-Apr. 2019); Charles Golbert, *Combating Financial Abuse of the Elderly: The Experience of the Cook County Public Guardian's Office, Illinois, U.S.*, in Ralph Ruebner et al. (eds.), "International and Comparative Law on the Rights of Older Persons" (Vandeplass 2015).

Guardianship Abuses and their Prevention

Because guardianship entails deprivation of decisional authority from people who are particularly vulnerable, abuse can occur despite the rights and protections summarized above. In addition to the Britney Spears case, a recent Amazon documentary, *The Guardians*, details widespread corruption within the guardianship system in Clark County, Nevada. Clark County includes Las Vegas and is one of the country's top retirement destinations. The corruption, malfeasance, and complicity allegedly involved guardians, attorneys, health care providers, and even a judge. A private for-profit guardian and three others, including an attorney she employed, were convicted of perjury, offering false instrument for filing or record, theft, exploitation, and racketeering. Some of the problems with injecting a profit motive into guardianship are discussed below.

Much needs to be done at the national level to prevent such abuses. While Illinois has a model guardianship statute with strong protections, many states have much weaker statutes. For example, some states do not require counsel for the respondent. Some states do not require an independent guardian *ad litem*. Some states have no training requirements or minimum qualifications for guardians. Some states do not provide for substituted decision making. Some states do not even require bonding.

In 2017, the Uniform Law Commission adopted the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act (UGCOPAA). Some of the Act's provisions are modeled after the protections in Illinois. Enactment of this Act in jurisdictions with weaker guardianship laws would be beneficial.

There is scant research on guardianship, including what models of guardianship and statutory schemes work best. Remarkably, because guardianships usually exist at the county level, we don't even know how many people are under guardianship in the United States.

Collecting data at a national level and facilitating data sharing are some of the objectives of the federal [Guardianship Accountability Act](#), introduced last year by Senators Susan Collins (R-ME) and Bob Casey (D-PA). The legislation also aims to promote best practices in guardianship, improve training for guardians and court officials, and expand the use of background checks through demonstration grants.

Guardianship varies greatly from state to state, and even from county to county. Given the unique vulnerabilities of the people served by guardianship, there is a need for uniformity and national oversight. The reforms mentioned above are a good starting place.

For-Profit Guardianship Corporations

I am deeply concerned about the recent infusion of a profit motive into guardianship with the proliferation of for-profit guardianship corporations for helpless people with no families. While, as discussed above, there is little data on guardianship and which models work best, there is ample data showing that our experiment with injecting a profit motive into nursing home care has been an abysmal failure. Abundant research shows that for-profit nursing homes have far inferior outcomes for their residents than not-for-profit facilities. Lee Friedman et al., *Association Between Types of Residence and Clinical Signs of Neglect in Older Adults*, 65 *Gerontology* 1, p. 30 (2019); David Grabowski et al., *Effect of Nursing Home Ownership on the Quality of Post-Acute Care: An Instrumental Variables Approach*, 32 *J. of Health Economics* 1, p. 12 (Jan. 2013); *Non-Profit vs. For-Profit Nursing Homes: Is There a Difference in Care?*, Center for Medicare Advocacy (Mar. 2012) (summarizing research).

Guardian decision-making motivated by profit, as opposed to what is best for the individual, appears to have played a significant role in the abuses in the Britney Spears case and in the abuses in Clark County discussed above. The recent upsurge of for-profit guardianship entities must be closely monitored, studied, and regulated.

Jewish Values Reflected in High-Quality, Compassionate Guardianship

Our office strives to provide the highest quality, compassionate guardianship services, in the least restrictive manner, for those we serve. Over the more than three decades I've had the privilege of working at the Public Guardian's Office, I've been constantly amazed by the concern and sensitivity that our office's outstanding interdisciplinary professionals bring to this mission. Many values intrinsic to Judaism are manifested in the provision of high quality guardianship services. A few of these include:

- *Tikkun olam*, the obligation to work to heal and repair the world and make the world a better place.
- *Bikur cholim*, the responsibility to visit the sick and infirm and tend to their needs.
- *Kibud zekaynim*, the responsibility to respect and care for the aged.
- The obligation to afford special consideration to widows (*almanot*) and orphans (*yatomim*). In Jewish tradition, this is understood as applying to all vulnerable people.
- The responsibility to perform *mitzvot*, good deeds and acts of kindness, throughout the day.

- *Tzedakah*, the obligation to support charitable organizations. The root of the word *tzedakah*, charity, is *tzedeck*, which means justice. The concepts of charity and justice are inextricably intertwined in Jewish tradition.
- The obligation to work to achieve justice. The Torah teaches, “*Tzedek, tzedek tirdof*”; “Justice, justice you shall pursue.” Deut. 16:20. The word *tirdof*, to pursue, does not mean passively following the law. Justice is an ideal which we must actively work to achieve.
- *Chesed v’emet*, the obligation to make decisions guided by truth and compassion.
- The belief that all human beings are created in the image of God (*b’tzelem Elohim*) and are imbued with dignity (*kavod*). This is sometimes referred to as *kavod habriyot*, the dignity of the creation.

Conclusion

Providing guardianship services for vulnerable people is a privilege of the highest order. While challenging, it is immensely rewarding. In doing the work, I find inspiration in the dedication and tenacity of the talented people who work for our office, and in the Jewish teachings reflected in our mission.

Charles P. Golbert is the Cook County Public Guardian. The author thanks Howard S. Berk, President of the Illinois Disability Association, for his excellent suggestions that improved this article.