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# Guardianship: Things to Consider Before Filing a Petition with an Illinois Court

by Steve Raminiak, Esq.

*This article provides general information about Guardianship of a disabled adult in Illinois. For legal advice about your particular circumstances, please consult with an attorney.*

If a loved one suffers from a developmental disability, or can no longer make decisions due to injury or illness, you may eventually consider whether to apply to be his/her Guardian. While each situation is somewhat unique, you will likely encounter the following questions during the Guardianship process.

## *Is this trip really necessary?*

If your loved one's disability did not begin in childhood, s/he may have signed Powers of Attorney which allow others to make decisions after s/he has lost the ability to do so. If possible, look through your loved one's records for these documents. Redouble your efforts if you find a Will or a Trust prepared by a lawyer, as Powers of Attorney are often prepared to accompany those items. However, your loved one cannot dodge Guardianship by signing new Powers of Attorney if s/he presently lacks the capacity to make decisions.

If it is unclear as to whether Guardianship is appropriate, but you are concerned that your loved one is being neglected, abused or exploited, you may wish to contact your local Illinois Adult Protective Services (APS) provider. These agencies investigate allegations involving elderly and disabled people, including "self-neglect," and can direct you or your loved ones as to resources in your community. In certain circumstances, an APS provider may involve another agency that can initiate legal action, including Guardianship proceedings. APS agencies are divided by geographic boundaries and are assigned based on where the elderly or disabled person resides. You can find your local APS agency [here](#).

### *Will anyone object?*

The first steps in a Guardianship can be pleasant and somewhat inexpensive or torturous and extremely costly. The difference primarily depends on whether your loved one will object to a Guardianship and/or if a family battle will arise over who shall be the Guardian. Either fight will cause a great deal of strain on family relationships and generate legal fees far above that of a Guardianship where all peacefully consent.

Furthermore, once the Guardianship process begins, the Court will almost always see it through to the end. If the State of Illinois has been alerted about a person who may be mentally disabled, many Judges believe that it would be irresponsible and unjust to allow such a person to slip through the proverbial cracks unless a Guardianship is clearly unnecessary. In practical terms, this means that a Guardianship proceeding will continue even if the family member who has filed the initial petition has caused a deep rift in the family and no longer wants to be involved.

Even worse, if you started the Guardianship process by filing the initial Guardianship Petition, you not only continue to be responsible for your own attorneys' fees, but you may also become obligated to pay the fees and expenses of other attorneys appointed by the Court, even if you no longer want to be involved. For example, in Cook County, a separate attorney is often appointed as a Guardian ad Litem to interview all involved, report to the Court, and perform any other task that the Court might find helpful. If your loved one resists Guardianship, the Court will likely appoint another attorney to assist him/her in defending against your Guardianship petition.

If your loved one lacks funds to pay for these professionals and **YOU** filed the initial Guardianship Petition, Illinois law directs that their fees are paid by **YOU!**

If the Judge finds that a Guardianship is not necessary and **YOU** filed the initial Guardianship Petition, the Judge may also require **YOU** to pay some or all of the fees of these professionals, even if your loved one can afford to pay their bills.

Additionally, if you engage in litigation with another family member about who should be Guardian, and the Court finds that both of you are fit for the position, a Judge will often block either side from recovering attorneys' fees for that battle from your loved one's Estate.

### *How much will this cost?*

At this writing in 2020, I bill Guardianship matters at \$275/hour. An "uncontested" Guardianship (where all peacefully agree or remain silent) can often be established for around \$2,500 to \$3,000, including all costs. I would not trust an attorney who bills far less than my rate, or will accept a flat fee. You will likely be unsatisfied with the results. The unusually technical nature of Guardianship proceedings often confuses attorneys who do not practice regularly in this area. If your loved one has funds, s/he will very likely be responsible for paying all legal fees and costs if a Guardian is appointed. However, if a Guardianship becomes

"contested," as described above, the legal fees can skyrocket and you may be held personally liable for some or all expenses.

*If I become the Guardian, will I have to make regular reports with the Court?*

Yes. If you are appointed as the Guardian of the Person, you must file a Report with the Court at least once per year as to how your loved one is doing. If you are appointed as the Guardian of the Estate, you will have to submit an Inventory of your loved one's assets in 60 days and then, usually every year, the Court will require you to file an Accounting with the Court which describes all income and expenditures of the Estate.

*If I become the Guardian, can my actions be questioned by the Court?*

Yes. For certain failures, the Court may find you, personally, liable for your acts or omissions as Guardian. For this reason, among others, the Cook County Probate Division usually requires that all Guardians of the Estate are represented by attorneys.

*When should I consult with an attorney?*

Usually, close family members can detect the need for a Guardian long before it becomes immediately necessary. I strongly suggest that you work with an attorney who is experienced in this area so that you can strategically choose when to start the Guardianship process and how to handle other members of your family. By doing so, you minimize the chance that a "crisis" will erupt which could turn a simple, friendly process into an expensive nightmare. It is helpful when time is on your side. When I have been appointed as a Guardian ad Litem, I have often seen how unfortunate circumstances could have been avoided if greater care was taken at earlier stages. It's never too early to consult with an attorney about Guardianship and how you can navigate through this muddy, technical area as easily, harmoniously and cost-effectively as possible.

I strongly encourage you to speak with an attorney who has years of experience with Guardianships. Feel free to contact me, even if you intend to use another attorney. I always provide free consultations.

*The Law Offices of Steve Raminiak, P.C. provide counsel for estate planning and the administration of estates and trusts established for decedents, minors and disabled persons. Steve regularly tackles contested estates, and has been appointed as Guardian ad Litem, Special Administrator, and as counsel for disabled persons by Judges in the Probate Division of the Circuit Court of Cook County.*

*Steve serves as a resource for Chicago Volunteer Legal Services (CVLS) by handling pro bono matters and providing direction to volunteer attorneys. He also contributes to Lawguru.com, a site that offers free answers to legal questions. Steve speaks with groups about estate*

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