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**Exploring the #FreeBritney Movement**

Presented by:

**Laurence I. Gendelman**  
**Gendelman Klimas, Ltd.**  
517 E. 16<sup>th</sup> Avenue  
Denver, Colorado 80203  
Telephone: (720)-213-0687  
Email: [Laurence@Gendelmanklimas.com](mailto:Laurence@Gendelmanklimas.com)

**Molly T. Zwerdinger**  
**Miller & Steiert, PC**  
1901 W. Littleton Blvd.  
Littleton, Colorado 80120  
Telephone: (303)-798-2525  
Fax: (303)-798-2526  
Email: [Mzwerdinger@m-s-lawyers.com](mailto:Mzwerdinger@m-s-lawyers.com)

## **A. Introduction**

Conservatorships have been a hot topic in the media recently given the publicity and interest around the Britney Spears conservatorship case. This course and outline will demystify the basics of conservatorships in Colorado, address the opportunity for abuses in conservatorship cases, cover the timeline of the Britney Spears case, and discuss national trends for conservatorships moving forward.

## **B. Basics of Conservatorships in Colorado**

### i. What is a Conservatorship and Who are the Parties?

A conservatorship is a court action whereby an individual is appointed (conservator) to manage the financial affairs of another individual (protected person). A conservator must be at least twenty-one years of age.<sup>1</sup> The priority of who may serve as conservator is as follows:

1. A fiduciary for the individual who is appointed or already recognized;
2. A person nominated by the protected person, including the nomination of the person in a power of attorney;
3. Agent appointed by the protected persons power of attorney;
4. Protected persons spouse or partner in a civil union;
5. Adult child of protected person;
6. Parent of protected person;
7. Adult with whom the protected person has resided with for more than six months prior to filing.<sup>2</sup>

A conservatorship case is typically brought when an individual is incapacitated, although the appointment of a conservator is not a determination that the individual is incapacitated.<sup>3</sup> An incapacitated person is an individual who is unable to effectively receive or evaluate information or both or make or communicate decisions to such an extent that the individual lacks the ability to satisfy essential requirements for physical health, safety, or self-care, even with appropriate and reasonably available technological assistance.<sup>4</sup> In addition, an incapacitated individual may include a missing person, detained person or individual who is unable to return to the US.<sup>5</sup>

### ii. Venue

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<sup>1</sup> C.R.S. § 15-14-102(2)

<sup>2</sup> C.R.S. § 15-14-413(1)

<sup>3</sup> C.R.S. § 15-14-409

<sup>4</sup> C.R.S. § 15-14-102(5)

<sup>5</sup> C.R.S. § 15-14-401

The appropriate venue for a conservatorship proceeding is the county where the respondent (name for protected person prior to appointment of conservator) resides, or county where the respondent owns property if they are not a resident of Colorado.<sup>6</sup> By accepting the appointment, the conservator subjects themselves to personal jurisdiction of the court.<sup>7</sup>

iii. Legal Standard of Review

During the hearing to appoint a conservator, it must be proved beyond a preponderance of the evidence that the individual for whom a conservatorship is sought has property that will be wasted or dissipated unless management is provided, or money is needed for the support, care, education, health, and welfare of the individual or of individuals who are entitled to the individual's support and that protection is necessary or desirable to obtain or provide money.<sup>8</sup>

iv. Procedure of Conservatorship Proceedings

1. **Petition for Appointment** – the petition contains information about the respondent and the nominated conservator. The petition may be submitted, by the protected person, an individual interested in the estate, affairs, or welfare of the person, or a person who would be adversely affected by the lack of effective management of the property of the protected person.<sup>9</sup>

2. **Professional Evaluation/Court Visitor** – the court *may* order a professional evaluation to determine individual's functional limitations, mental and physical condition and prognosis for improvement.<sup>10</sup> A court visitor is the “eyes” and “ears” for the court, performing a “vital function in the checks and balances upon the respondent's due process rights.”<sup>11</sup> The court visitor meets with the respondent prior to the hearing to assess their condition from a non-medical perspective. The court visitor provides a written report to the court of their observations.

3. **Hearing** – the proposed conservator and the respondent are required to attend the hearing unless excused by the court for good cause.

4. **Court Issues Order** - the court must make the least restrictive order consistent with its findings. The court shall make orders necessitated by the protected person's limitations and demonstrated needs, including orders that will encourage the development of maximum self-reliance and independence of the protected person.<sup>12</sup>

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<sup>6</sup> C.R.S. § 15-14-108(3)

<sup>7</sup> C.R.S. § 15-14-111

<sup>8</sup> C.R.S. § 15-14-401(1)(b)(II)

<sup>9</sup> C.R.S. § 15-14-403(1)

<sup>10</sup> C.R.S. § 15-14-406.5

<sup>11</sup> M. Carl Gladstein, *Guardianship and Conservatorship Under the Colorado Uniform Guardianship and Protective Proceedings Act*, Elder Law in Colorado, §13.3.8, D. Wayne Stewart & Shari D. Caton (managing editors), CBA CLE (2017).

<sup>12</sup> C.R.S. § 15-14-409(2)

**5. Financial Plan/Inventory** – within ninety days after appointment, the conservator must file a financial plan and inventory with the court.<sup>13</sup> If there is a substantial deviation from the financial plan in the future, the conservator must file a new financial plan.<sup>14</sup>

**6. Ongoing Reports Annually** – the court is required to monitor conservatorships which is done through review of annual reports filed by the conservator.<sup>15</sup> The report typically contains information about the assets of the conservatorship estate, disbursements, deposits, services provided for the protected person, and any recommended changes to the conservatorship.

v. Powers of the Conservator in Administration Not Requiring Court Approval

There are some actions of a conservator that require court approval, but many actions are allowed without prior approval by the court. The following powers are granted to a conservator upon appointment, unless stated otherwise by the court:

- (a) Collect, hold, and retain assets of the estate, including assets in which the conservator has a personal interest and real property in another state, until the conservator considers that disposition of an asset should be made;
- (b) Receive additional assets to the estate;
- (c) Continue or participate in the operation of any business or other enterprise;
- (d) Acquire an undivided interest in an asset of the estate in which the conservator, in any fiduciary capacity, holds an undivided interest;
- (e) Invest assets of the estate;
- (f) Deposit money of the estate;
- (g) Acquire or dispose of an asset of the estate;
- (h) Make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, and raze existing or erect new party walls or buildings;
- (i) Subdivide, develop, or dedicate land to public use, make or obtain the vacation of plats and adjust boundaries, adjust differences in valuation or exchange or partition by giving or receiving considerations, and dedicate easements to public use without consideration;

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<sup>13</sup> C.R.S. § 15-14-418-19

<sup>14</sup> Id.

<sup>15</sup> C.R.S. § 15-14-420

- (j) Enter for any purpose into a lease as lessor or lessee;
- (k) Enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;
- (l) Grant an option involving disposition of an asset of the estate and take an option for the acquisition of any asset;
- (m) Vote a security, in person or by general or limited proxy;
- (n) Pay calls, assessments, and any other sums chargeable or accruing against or on account of securities;
- (o) Sell or exercise stock subscription or conversion rights;
- (p) Consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;
- (q) Hold a security in the name of a nominee or in other form without disclosure of the conservatorship so that title to the security may pass by delivery;
- (r) Insure the assets of the estate against damage or loss and the conservator against liability with respect to a third person;
- (s) Borrow money, with or without security, to be repaid from the estate or otherwise and advance money for the protection of the estate or the protected person and for all expenses, losses, and liability sustained in the administration of the estate or because of the holding or ownership of any assets, for which the conservator has a lien on the estate as against the protected person for advances so made;
- (t) Pay or contest any claim, settle a claim by or against the estate or the protected person by compromise, arbitration, or otherwise, and release, in whole or in part, any claim belonging to the estate to the extent the claim is uncollectible;
- (u) Pay taxes, assessments, compensation of the conservator and any guardian, and other expenses incurred in the collection, care, administration, and protection of the estate;
- (v) Allocate items of income or expense to income or principal of the estate, as provided by other law, including creation of reserves out of income for depreciation, obsolescence, or amortization or for depletion of minerals or other natural resources;

- (w) Pay any sum distributable to a protected person or individual who is in fact dependent on the protected person by paying the sum to the distributee or by paying the sum for the use of the distributee;
- (x) Prosecute or defend actions, claims, or proceedings in any jurisdiction for the protection of assets of the estate and of the conservator in the performance of fiduciary duties; and
- (y) Execute and deliver all instruments that will accomplish or facilitate the exercise of the powers vested in the conservator.<sup>16</sup>

### **C. Potential for Abuses in Conservatorships**

#### i. Due Process Issues

1. **US Constitution** – “nor shall any State deprive any person of life, liberty, or property, without due process of law...” Protective proceedings, such as conservatorships, restrict an individual’s access to property and thus entitle the respondent to due process of law in granting a conservatorship.
2. **Procedural Protections**<sup>17</sup>- The Colorado Probate Code and associated case law require certain procedural protections in all protective proceedings, including:
  - i. The respondent is required to attend proceedings unless excused by the Court for good cause;
  - ii. The respondent is entitled to present evidence and to subpoena witnesses or documents;
  - iii. The respondent may examine and cross examine witnesses, including those that may be court-appointed, and may participate in all elements of any hearing;
  - iv. The respondent has the right to be represented by counsel in all proceedings

1. Court-appointed counsel is not mandatory in all cases

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<sup>16</sup> C.R.S. § 15-14-425

<sup>17</sup> M. Carl Glatstein, Guardianship and Conservatorship Under the Colorado Uniform Guardianship and Protective Proceedings Act, Elder Law in Colorado, §19.3.13, D. Wayne Stewart & Shari D. Caton (managing editors), CBA CLE (2017).

2. If a respondent requests court appointed counsel, the Court must appoint counsel; this is not within the Court's discretion
  3. This right exists even if the respondent is incapacitated; the Court may also appoint a *guardian ad litem* if the respondent is unable to communicate with their attorney
  4. The right to counsel continues even after a guardianship or conservatorship has been entered and continues throughout the proceeding.<sup>18</sup>;
- v. Seek termination of the proceedings of modification of the protective arrangement.

ii. Abuses of Protective Proceedings (Breaches of Fiduciary Duty)

**1. What Can Go Wrong- An unlimited number of issues can arise in a conservatorship. Common issues and abuses include:**

*i. Abuses/breaches of Fiduciary Duty*

1. Comingling the respondent's funds with personal or other funds
2. Making improper or risky investment decisions
3. Self-dealing and self-interested/conflicted transactions<sup>19</sup>
4. Civil theft
5. Other actions that would unreasonably harm the respondent, their interests, and their property

*ii. Improper Notice of Proceedings*

*iii. Contempt*

1. A conservator may violate a court order, enter into transactions for which they are not authorized, exceed their authority, etc.

**2. Remedies<sup>20</sup>**

*i. Audit/Accounting*

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<sup>18</sup> C.R.S. §15-14-434

<sup>19</sup> In the Interest of Black, 16CA198 (2018)

<sup>20</sup> C.R.S. §15-10-504

- ii. *Surcharge* (personal liability)
- iii. *Removal from office* (no longer serving as conservator)
- iv. *Contempt*

#### **D. Timeline of the Britney Spears Conservatorship Case**

The authors of this outline caution that the timeline below is based on information presented by the media and may not be entirely accurate. A brief history of the Britney Spears Conservatorship case is outlined as follows:

2007-2008 – Britney was spotted acting out of character (driving with her son not in a car seat, shaving her head, lashing out at the paparazzi, refusing to give children to biological father per custody arrangement).

2008 – Britney was put under a mental health hold at a psychiatric hospital on more than one occasion.

Jamie Spears, Britney’s father, petitioned for emergency and temporary conservatorship. The Court granted this petition.

2009-2019 – The conservatorship was extended each year.

2012 – Britney’s fiancé at the time, Jason Trawick, becomes co-conservator to manage her personal life but not financial affairs.

2019 – Jamie Spears petitions the Court to extend his conservatorship to three other states other than California.

Jamie temporarily steps down as primary conservator. Britney’s care manager, Jodi Montgomery, temporarily takes over Jamie’s role as conservator.

Britney stayed in a mental health facility for a month to overcome a health emergency.



2020 – Britney’s brother, Bryan Spears, publicly speaks out saying that the conservatorship was needed at the beginning, but that he knows Britney wants it to end.

Britney’s lawyers file an opposition to the dealing of parts of her conservatorship.

Britney’s lawyers file a request to remove her father as conservator and to permanently appoint Jodi Montgomery. The court denies the request, but does allow the appointment of a co-conservator, Bessemer Trust at Britney’s request.

The conservatorship is extended another year.

2021 – Jamie Spears claims in court documents his powers as conservator have been limited since the appointment of the co-conservator, Bessemer Trust.

“Framing Britney Spears” comes out, causing more attention towards Britney’s conservatorship.

Britney’s lawyers ask the judge to end the conservatorship. Jamie’s father speaks out saying that every decision he has made was in Britney’s best interest.

Britney’s lawyer requests to have Jodi Montgomery appointed as permanent conservator.

Lynne Spears, Britney’s mother, demands Jamie Spears’ legal fees be repaid to Britney’s estate as she believes the fees charged to handle communication to the press violated Britney’s request for privacy. Jamie asks the court to deny the request Britney requests to be heard in Court and makes a twenty-four-minute statement.

The court denies Britney’s request to remove Jamie Spears as his role of co-conservator of her estate.

Britney’s attorney and her manager withdraw/resign.

Bessemer Trust requests to resign as co-conservator. The Court grants this request

Britney hires her own legal counsel at the permission of the court.

Britney requests that the conservatorship be terminated, calling the conservatorship a “nightmare.”

August 2021, Jamie Spears announces that he plans to step down as conservator.

September 2021, Jamie Spears filed petition with the court to terminate his appointment as conservator. The court granted the petition.

John Zabel, accountant, is named temporary conservator, at request of Britney’s counsel.

## **E. Trends and Alternatives for Conservatorships**

### 1. Use of “Protective Arrangements” in Colorado

*(1) If a basis is established for a protective order with respect to an individual, the court, without appointing a conservator, may:*

*(a) Authorize, direct, or ratify any transaction necessary or desirable to achieve any arrangement for security, service, or care meeting the foreseeable needs of the protected person, including:*

- (I) Payment, delivery, deposit, or retention of funds or property;*
- (II) Sale, mortgage, lease, or other transfer of property;*
- (III) Purchase of an annuity;*

*(IV) Making a contract for life care, deposit contract, or contract for training and education; or*

*(V) Addition to or establishment of a suitable trust, including a trust created under the "Colorado Uniform Custodial Trust Act", article 1.5 of this title; and*

*(b) Authorize, direct, or ratify any other contract, trust, will, or transaction relating to the protected person's property and business affairs, including a settlement of, and distribution of settlement of, a claim, upon determining that it is in the best interest of the protected person.*

*(2) In deciding whether to approve a protective arrangement or other transaction under this section, the court shall consider the factors described in section 15-14-411(3).*

*(3) (a) The court may appoint a special conservator to assist in the accomplishment of any protective arrangement or other transaction authorized under this section. The special conservator has the authority conferred by the order and shall serve until discharged by order after report to the court.*

*(b) If the court appoints a special conservator without notice to the respondent, protected person, or any other person entitled to notice pursuant to section 15-14-404(2) and the person appointed is a professional without priority to serve pursuant to section 15-14-310(1) or a public administrator pursuant to section 15-12-622, the court shall, upon entry of the order of appointment of special conservator, simultaneously appoint a visitor to investigate and report to the court within fourteen days after the appointment as provided in section 15-14-113.5.<sup>21</sup>*

- i. Still requires a “basis for a protective order,” presumably meeting the same requirements as a conservatorship.
- ii. Provides only necessary powers to a conservator and permits the respondent to retain all existing rights over their person and property.

## **2. Legislative Action**

- a.** Senators Elizabeth Warren and Bob Casey have called upon the Department of Health and Human Services and the Department of Justice to provide more information about the prevalence of protective proceedings, the efforts made by agencies that protect those under conservatorship, and ways Congress can improve collection of this data.
- b.** In July of 2021, two members of the House of Representatives introduced a bill known as the Freedom and Right to Emancipate from Exploitation Act.

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<sup>21</sup> C.R.S. §15-14-412

i.If passed, the Act would permit a respondent to request that a guardian or conservator be replaced by a public guardian employed by the state, a family member, or a private agent. The bill also providing funding to states to assign independent caseworkers to individuals under guardianships or conservatorship to monitor signs of abuse and to prevent financial wrongdoing.<sup>22</sup>

3. Judicial Action- The Jenny Hatch case: in 2012 Jenny Hatch (a young woman with down syndrome) contested her guardianship when her parents put her into a group home and took away her ability to see friends and work. Jenny won in court and is now able to make decisions using “supported decision-making.”

"Supported decision-making" means the way an adult with a disability or diminished capacity has made or is making his or her own decisions by using friends, family members, professionals, and other people he or she trusts to:

- i. Help understand the issues and choices;
- ii. Ask questions;
- iii. Receive explanations in language he or she understands;
- iv. Communicate his or her decisions to others if necessary; or
- v. Facilitate the exercise of decisions regarding his or her day-to-day health, safety, welfare, or financial affairs.<sup>23</sup>

4. Advocacy

- a. Organizations such as The Center for Estate Administration Reform and The National Association to Stop Guardianship Abuse
- b. Books and Movies
  - i. *The Guardians*
  - ii. *I Care a Lot*
  - iii. Thomas Lee Wright, *The Family Guide to Preventing Elder Abuse* (2017)

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<sup>22</sup> Aishvarya Kavi, A bipartisan plan seeks to “Free Britney” and others who ask a judge to replace their guardian or conservator, New York Times (<https://www.nytimes.com/2021/07/20/us/politics/free-britney-bill-law.html>) , July 20, 2021.

<sup>23</sup> C.R.S. § 15-14-102(13.5)