
REFORMING IOWA’S GUARDIANSHIP AND CONSERVATORSHIP SYSTEM: AN INTRODUCTION

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Discourse, the online component of the Drake Law Review, is pleased to publish a symposium on the Iowa guardianship and conservatorship system and the recommendations of the Iowa Supreme Court’s Guardianship and Conservatorship Reform Task Force (Task Force). This Article is the first in a series of symposium articles. It provides an introduction to the guardianship and conservatorship system and the Task Force.

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I. THE IOWA GUARDIANSHIP AND CONSERVATORSHIP SYSTEM

A. Background

Iowa, as well as other states, has a guardianship and conservatorship system administered by the judicial branch of government.¹ Guardians and conservators are persons and entities appointed by the court to serve as surrogate decisionmakers for adults with diminished decision-making capacity and minors.² Guardians are responsible for making decisions about the care of persons subject to guardianship, and conservators are responsible for making decisions about the property and finances of persons subject to conservatorship.³

In 2016, there were 22,754 Iowans subject to guardianship and conservatorship.⁴ It appears likely that guardianship and conservatorship caseloads will increase due to Iowa's large and growing aging population that suffers disproportionately from Alzheimer's and other types of dementia leading to the need for guardianships and conservatorships.⁵

State guardianship and conservatorship systems have their roots in the doctrine of *parens patriae*, which can be traced back to fourteenth century England and the Crown's assertion of its power to protect vulnerable persons and their property by making them wards of the Crown.⁶ This doctrine eventually became the basis of the power of the courts in Iowa and other states to appoint guardians and conservators for vulnerable adults and minors.⁷

1. See NAT'L ASS'N FOR COURT MGMT., ADULT GUARDIANSHIP GUIDE: A GUIDE TO PLAN, DEVELOP AND SUSTAIN A COMPREHENSIVE COURT GUARDIANSHIP AND CONSERVATORSHIP PROGRAM 3 (2013-2014), https://nacmnet.org/sites/default/files/publications/AdultGuardianshipGuide_withCover.pdf; see generally Symposium, *Third National Guardianship Summit: Standards for Excellence*, 2012 UTAH L. REV. 1155 (2012).

2. UNIF. GUARDIANSHIP, CONSERVATORSHIP, & OTHER PROTECTIVE ARRANGEMENTS ACT § 102 (5), (9) (NAT'L CONFERENCE OF COMM'RS ON UNIF. STATE LAWS 2017); NAT'L PROB. COURT STANDARDS Standard 3.3. & cmt. (NAT'L COLL. OF PROB. COURT JUDGES).

3. UNIF. GUARDIANSHIP, CONSERVATORSHIP, & OTHER PROTECTIVE ARRANGEMENTS ACT § 102 (5), (9); NAT'L PROB. COURT STANDARDS Standard 3.3. & cmt.

4. IOWA GUARDIANSHIP & CONSERVATORSHIP REFORM TASK FORCE, REFORMING IOWA'S GUARDIANSHIP AND CONSERVATORSHIP SYSTEM 2 (2017) [hereinafter TASK FORCE REPORT] (endnote omitted).

5. See *id.* app. A, at A:12-15.

6. MARY JO QUINN, GUARDIANSHIPS OF ADULTS, ACHIEVING JUSTICE, AUTONOMY, AND SAFETY 19 (Helvi Gold & Brian Black eds., 2005); Lawrence B. Custer, *The Origins of the Doctrine of Parens Patriae*, 27 EMORY L.J. 195, 195-96 (1978).

7. See QUINN, *supra* note 6, at 19.

B. Legal Framework

The Iowa Probate Code provides the legal framework for the establishment of guardianships and conservatorships. The filing of a petition for establishment of a guardianship, a conservatorship, or both initiates the court process.⁸ The criteria that must be met for establishment of an adult guardianship are that a person's decision-making capacity "is so impaired that the person is unable to care for . . . [his or her] personal safety or to attend to or provide for necessities . . . such as food, shelter, clothing, or medical care, without which physical injury or illness may occur."⁹ The criteria that must be met for establishment of an adult conservatorship are that a person's decision-making capacity "is so impaired that the person is unable to make, communicate, or carry out important decisions concerning the person's financial affairs."¹⁰ The burden of proof that must be satisfied for establishment of an adult guardianship or conservatorship is clear and convincing evidence.¹¹

The court is responsible for monitoring established guardianships and conservatorships on an ongoing basis to ensure that persons subject to a guardianship or conservatorship are receiving proper care, that their property and finances are being managed properly, and that they are protected from abuse, neglect, and financial exploitation.¹² The primary vehicle for monitoring is the court's review and approval of reports from guardians and its review and approval of reports together with accountings from conservators.¹³ In connection with the monitoring function, the court is also responsible for determining whether a guardianship or conservatorship should be terminated or modified.¹⁴

C. A General Profile of the Guardianship and Conservatorship System

While the number of pending, or open, guardianship and conservatorship cases in Iowa is known, other basic, state-level data about the guardianship and conservatorship system has been limited.¹⁵ For example, statistical reports,

8. IOWA CODE ANN. §§ 633.552, 633.556(1), 633.566, 633.570(1) (West 2018).

9. IOWA CODE ANN. § 633.552(2)(a) (2017).

10. IOWA CODE ANN. § 633.566(2)(a).

11. IOWA CODE ANN. §§ 633.556(1), 633.570(1).

12. *See* IOWA CODE ANN. §§ 633.669(1)–(2), (5), 633.670(1), (3) (West 2018).

13. IOWA CODE ANN. §§ 633.669(5), 633.670(3).

14. IOWA CODE ANN. § 633.551(3) (West 2018).

15. The lack of state-level data about guardianship and conservatorship cases is a longstanding and widespread problem not only in Iowa, but also in states throughout the country. *See* BRENDA K. UEKERT, ADULT GUARDIANSHIP COURT DATA AND ISSUES: RESULTS FROM AN ONLINE SURVEY 4 (2010), http://aja.ncsc.dni.us/pdfs/GuardianshipSurveyReport_FINAL.pdf.

which the “State Court Administrator produces, contain data as to the total number of pending Iowa guardianship and conservatorship cases, but these reports do not distinguish between adult and minor cases.”¹⁶

In response to the unavailability of data about the Iowa guardianship and conservatorship system, the Institute on Guardianship and Conservatorship at the University of Iowa College of Law undertook an extensive study of the system.¹⁷

Over two years, research assistants reviewed more than 4,000 guardianship and conservatorship case files from ten counties in five judicial districts.¹⁸ This review resulted in detailed quantitative and qualitative data about numerous aspects of the guardianship and conservatorship system, including caseloads, characteristics of persons subject to guardianship and conservatorship, and characteristics of guardians and conservators.¹⁹

The study found that 60 percent of the cases reviewed were guardianship cases, 15 percent were conservatorship cases, and 26 percent were combined guardianship and conservatorship cases.²⁰ A little under two-thirds of the cases (65 percent) involved adult guardianships and conservatorships, and a little over one-third of the cases (36 percent) involved minors.²¹

The study found the single largest category of adult guardianships (62 percent) consisted of adults of all ages with intellectual disabilities.²² The second largest category (10 percent) consisted of older adults with Alzheimer’s and other types of dementias.²³ There were also a significant number of adults with mental illnesses and brain injuries.²⁴ It should be noted that the reason for the

16. TASK FORCE REPORT, *supra* note 4, at 133 (citing an e-mail from David K. Boyd, State Court Adm’r, to Josephine Gittler, Task Force Reporter (July 7, 2017) (on file with Josephine Gittler)).

17. *Id.* at 133, app. A, at A:6. Case files were reviewed in the Woodbury and O’Brien counties of the Third Judicial District; in Polk and Warren counties of the Fifth Judicial District; in Linn and Johnson counties of the Sixth Judicial District in Cedar and Scott counties of the Seventh Judicial District; and in Des Moines and Lee (south) counties of the Eighth Judicial District. *Id.* app. A, at A:6–8.

18. *Id.* at 133, app. A, at A:6–8.

19. *See id.* at 133.

20. *Id.* app. A, at A:14. Because percentages were rounded to the nearest whole percent, they do add up to 100 percent. *Id.*

21. *Id.* Specifically, 65 percent of the cases involved adults and 36 percent involved minors. *Id.* Because percentages were rounded to the nearest whole percent, they do add up to 100 percent. *Id.*

22. *Id.* app. A, at A:15.

23. *Id.*

24. *Id.*

establishment of an adult guardianship or conservatorship often could not be determined from a review of the case file.²⁵

In the vast majority of minor guardianship cases (82 percent), the reason for the appointment of a guardian was a parental failure to fulfill his or her parental responsibility with respect to the custody and care of a child.²⁶ In the vast majority of minor conservatorship cases (91 percent) the reason for the appointment of a conservator was that the child had received financial assets as a result of either a legal settlement or inheritance.²⁷ Here, again, it should be noted the reason for the establishment of a minor guardianship or conservatorship often could not be determined from a review of the case file.²⁸

The study disclosed that guardians and conservators were generally family members.²⁹ Thus, in the cases reviewed, 81 percent of guardians of adults, 83 percent of guardians of minors, and 83 percent of conservators of minors were family members, albeit 39 percent of conservators of adults were family members.³⁰

II. THE IOWA GUARDIANSHIP AND CONSERVATORSHIP REFORM TASK FORCE

A. Establishment of the Task Force

On January 14, 2015, the Iowa Supreme Court issued an order establishing the Guardianship and Conservatorship Reform Task Force.³¹ The supreme court stated that the Task Force's mission was "to review Iowa's guardianship . . . laws and procedures in order to ensure the system is efficient and responsive to the needs of Iowans."³²

The Iowa Task Force is one of many efforts to reform state guardianship and conservatorship systems. The original impetus for these efforts, a series of media stories, reports, and congressional hearings exposing the deficiencies and failures of state guardianship and conservatorship systems to protect vulnerable persons and their property, has given rise to guardianship and conservatorship reform efforts at both the national and state levels.³³ In recent years, national

25. *Id.*

26. *See id.* app. A, at A:16.

27. *Id.*

28. *Id.*

29. *Id.* app. A, at A:17

30. *Id.*

31. *Id.* app. B, at A:21–23.

32. *Id.* app. B, at A:21–22.

33. *See, e.g.,* Susan B. Garland, *Calls for Court Reform as Legal Guardians Abuse*

judicial and court-management organizations have been active advocates for reform.³⁴ As of 2015, reform task forces, commissions, committees, and other comparable groups had been formed, often under the aegis of the judicial branch of government, in 25 states.³⁵

The supreme court's order establishing the Task Force charged it to do the following:

Identify the strengths and weaknesses of Iowa's guardianship and conservatorship laws and practices.

Examine guardianship and conservatorship laws and practices in other jurisdictions, including standards and recommendations of national organizations.

Develop recommendations for effective and efficient guardianship and conservatorship laws, practices, and procedures.

Develop recommendations to foster continuous improvement to the guardianship and conservatorship system to ensure it is responsive to future generations of Iowans.³⁶

B. Task Force Organization and Membership

The Task Force had three components. The Task Force Steering Committee oversaw the organization and activities of the Task Force.³⁷ Five Task Force Work Groups developed recommendations to address issues and problems in the following areas: "(1) [the] establishment of adult guardianships and

Older Adults, N.Y. TIMES (July 28, 2017), <https://www.nytimes.com/2017/07/28/business/calls-for-court-reform-as-legal-guardians-abuse-older-adults.html>. For a history of guardianship and conservatorship reform, see generally Sally Hurme & Erica Wood, *Introduction, Symposium, Third National Guardianship Summit: Standards of Excellence*, 2012 UTAH L. REV. 1157.

34. See, e.g., NAT'L PROB. COURT STANDARDS, *supra* note 2, at Standard 3.3.19 cmt.; NAT'L ASS'N FOR COURT MGMT., *supra* note 1, at 2–3; NAT'L CTR. FOR STATE COURTS, ADULT GUARDIANSHIP INITIATIVE: AN INITIATIVE OF THE NCSC'S CENTER FOR ELDERS AND THE COURTS AND THE CCJ/COSCA JOINT COMMITTEE ON ELDERS AND THE COURTS 3 (2016), <http://www.eldersandcourts.org/~media/Microsites/Files/cec/Guardianship%20Strategic%20Action%20Plan%202016.ashx>.

35. See TASK FORCE REPORT, *supra* note 4, app. C, at A:32. (citing Erica Wood, Iowa Guardianship and Conservatorship Summit, *Past & Current Paths to Improving Guardianship* (PowerPoint presentation) (October 2015)).

36. TASK FORCE REPORT, *supra* note 4, app. B, at A:21–22.

37. *Id.* at 3.

conservatorships, (2) [the] qualifications, duties and responsibilities of guardians and conservators, (3) [the] court monitoring of adult guardianships and conservatorships, (4) minor guardianships and conservatorships, and (5) [the] administration of the guardianship and conservatorship system.”³⁸ Furthermore, “[t]he Resource Committee on Clinical Evaluations (Resource Committee) was responsible for identifying issues and problems, as well as developing recommendations regarding the court’s use of clinical evaluations of persons who are alleged to be in need of guardianships and conservatorships and for whom guardianships and conservatorships are established.”³⁹

Seventy-two individuals from throughout the state participated in the Task Force.⁴⁰ These Task Force participants were representative of the multiple stakeholders in the guardianship and conservatorship system. “They included: (1) judges and other judicial branch personnel, (2) attorneys, (3) guardians and conservators, (4) financial institutions and bonding companies, (5) advocates for individuals with disabilities, mental illnesses and brain injuries, (6) advocates for older individuals, (7) staff of state and local agencies and programs, (8) clinicians and service providers, and (9) legal academics.”⁴¹

C. Task Force Activities

In August and September of 2015, the Steering Committee disseminated a request for input from any interested party.⁴² The Steering Committee then held two hearings, one in Des Moines and one in Iowa City.⁴³

In October of 2015, a Task Force website was created at the University of Iowa College of Law for members of the Steering Committee, Work Groups, and Resource Committee.⁴⁴ The website was a repository for extensive resource materials, such as national standards and model acts, state statutory surveys, reports of state reform task force studies, and reports.⁴⁵ The website also was a repository for the documents and materials of the Steering Committee, Work Groups, and Resource Committee.⁴⁶

In October of 2015, the Iowa Guardianship and Conservatorship Summit

38. *Id.*

39. *Id.* at 4.

40. *Id.* at 3.

41. *Id.* at 4.

42. *Id.*

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.*

was held in Des Moines for Task Force participants.⁴⁷ The Summit furnished a foundation and broader context for the work of the Task Force participants.⁴⁸ “It featured recognized national experts on guardianship and conservatorship reform”⁴⁹ It also featured “judges and court administrators from Arizona, Minnesota, Nebraska, and Texas who shared the lessons to be learned from their efforts to bring about systemic changes in their respective guardianship and conservatorship systems.”⁵⁰

“In January of 2016, the process of developing Task Force recommendations began.”⁵¹ During the next 15 months, Work Group and Resource Committee members took part “in 54 conference calls, responded to 23 e-mail surveys and reviewed 111 issue memos.”⁵²

“In March of 2017, the preliminary recommendations developed by each Work Group were distributed to all Work Group members for their review and comments,” and in April of 2017, the Task Force Final Plenary Meeting was held for members of the Steering Committee, Work Groups, and Resource Committee.⁵³ At the meeting, the members discussed and commented on the preliminary recommendations of the Work Groups and Resource Committee.⁵⁴ “During the period from May to June of 2017, the Work Groups finalized their recommendations.”⁵⁵ In August of 2017, the Task Force issued its Final Report (Task Force Report) containing its recommendations with comments.⁵⁶

D. Task Force Recommendations

The Task Force issued 272 recommendations which are set forth in the Appendix to this Article.⁵⁷ As the Task Force Report indicated, these recommendations, taken together, “constitute a roadmap for future directions of the Iowa guardianship and conservatorship system and set forth benchmarks for measuring progress in achieving needed improvements in the system.”⁵⁸ The

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.* at 4–5.

51. *Id.* at 5.

52. *Id.*

53. *Id.* (endnote omitted).

54. *Id.*

55. *Id.*

56. *See generally id.*

57. *See id.* at 11–159.

58. *Id.* at 5; *see infra* Appendix: Recommendations of the Iowa Guardianship and Conservatorship Reform Task Force.

Task Force Report summarized the overarching themes in these recommendations as follows:

Guardianships and conservatorships should be established as a last resort when less restrictive and intrusive alternatives are not appropriate or not available.

Persons alleged to be in need of guardianships and conservatorships should be afforded procedural protections in guardianship and conservatorship proceedings.

The autonomy and self-determination of persons subject to guardianships and conservatorships, to the extent feasible, should be respected.

Potential guardians and conservators should be screened to ensure they are suitable for appointment.

Guardians and conservators should be provided the guidance, training and assistance they need to carry out their duties and responsibilities.

Judges should be provided the information they need to make informed decisions in guardianship and conservatorship proceedings in accordance with statutory requirements.

Court monitoring of guardianships should be strengthened in order to ensure that persons subject to guardianships are provided needed care and protection.

Court monitoring of conservatorships should be strengthened to ensure that the property of persons subject to conservatorship are protected from misappropriation and misuse.

The existing resources for the guardianship and conservatorship system should be allocated and used effectively and efficiently, and additional funding should be provided to the Judicial Branch to make needed improvements in the system.⁵⁹

The Task Force Report pointed out:

Since the Task Force recommendations are comprehensive, covering virtually all aspects of the guardianship and conservatorship system, there is considerable variation in the actions required for their implementation. Many of the recommendations call for revisions of the Iowa Code that will

59. *Id.* at 5–6.

require legislative action. Other recommendations call for action on the part of the Supreme Court, State Court Administration and other segments of the Judicial Branch. Some recommendations will require action by other stakeholders.⁶⁰

The Task Force Report also pointed out:

The recommendations form a continuum from the standpoint of the resources required for their implementation. At one end are those that would necessitate little or no increase in Judicial Branch funding, and at the other end are those which would necessitate substantial additional funding. The time frame for the implementation of recommendations will vary depending on the resources required for implementation and the availability of such resources. Finally, it must be emphasized that it is anticipated that the implementation of some [of] the recommendations would bring about cost savings and enhance the cost-effectiveness of the system.⁶¹

III. CONCLUSION

The nearly 23,000 Iowans subject to guardianship, conservatorship or both constitute an extremely vulnerable population in need of care and protection from abuse, neglect, and financial exploitation. The Iowa Supreme Court's Guardianship and Conservatorship Reform Task Force developed a number of recommendations directed at bringing about needed reform of the guardianship and conservatorship system.⁶² Subsequent symposium articles will describe and analyze these recommendations in more detail.

60. *Id.* at 6.

61. *Id.* at 6–7.

62. *See supra* Part II.D.

APPENDIX: RECOMMENDATIONS OF THE IOWA
GUARDIANSHIP AND CONSERVATORSHIP REFORM TASK
FORCE

PART ONE: ESTABLISHMENT OF ADULT GUARDIANSHIPS &
CONSERVATORSHIPS

I. REVISION OF IOWA CODE PROVISIONS REGARDING ESTABLISHMENT OF
ADULT GUARDIANSHIPS AND CONSERVATORSHIPS

1.1. The Iowa General Assembly should undertake a comprehensive revision of the Iowa Probate Code provisions with respect to establishment of adult guardianships and conservatorships in accordance with the recommendations of the Iowa Guardianship and Conservatorship Reform Task Force.

II. TERMINOLOGY

1.2. The use of the term “ward” in the Iowa Code, court rules and other legal documents should be replaced by the use of the terms “person subject to guardianship” and “person subject to conservatorship.” The term “respondent” should be used to refer to a person alleged to be in need of a guardianship or conservatorship.

III. GUARDIANSHIP AND CONSERVATORSHIP ALTERNATIVES AND LIMITED
GUARDIANSHIPS

*A. Use of Less Restrictive/Intrusive Alternatives to Guardianships and
Conservatorships*

1.3. The court should encourage the appropriate use of less restrictive/intrusive alternatives to guardianships and conservatorships.

1.4. Information about alternatives to guardianships and conservatorships should be provided to unrepresented persons seeking to file guardianship and conservatorship petitions. Court staff should refer such persons to other organizational entities and programs for such information.

1.5. The Iowa Code should require that the petition must state what alternatives to a requested guardianship or conservatorship have been considered, and if such alternatives are insufficient to meet the respondent's needs, the petition must state why they are insufficient.

1.6. The Iowa Code should require that if the court grants a petition, the court should make findings as to what alternatives were considered and why they were not considered appropriate based on the pleadings, the court visitor (guardian ad litem) report, and the hearing.

1.7. A checklist with respect to alternatives should be developed for use by judges, court visitors (guardians ad litem), petitioners, respondents, and their attorneys.

B. Use of Limited Guardianships and Conservatorships

1.8. A full guardianship or conservatorship should not be imposed upon a person when a limited guardianship or conservatorship would meet his or her needs.

1.9. The Iowa Code should require that if a petition requests a full guardianship or conservatorship, the petition must state the reason or reasons why a limited guardianship or conservatorship is inappropriate.

1.10. The court should be provided an evaluation by a qualified professional as to the decision-making capacity and functional abilities and limitations of a respondent to a guardianship or conservatorship petition for the purpose of considering the appropriateness of a limited guardianship or conservatorship.

1.11. The Iowa Code should require that if the court grants a petition for a full guardianship or conservatorship, the court should make specific findings of fact as to why a limited guardianship or conservatorship was not considered appropriate.

1.12. Checklists and/or guidelines should be developed to assist judges to determine the appropriateness of limited guardianships and conservatorships.

1.13. Attorneys who represent petitioners and attorneys who represent respondents should receive training regarding the use of limited guardianships and conservatorships.

C. Minors with Intellectual Disabilities Transitioning to Adult Status

1.14. Educational materials about alternatives to guardianships and conservatorships and limited guardianships and conservatorships for minors with intellectual disabilities transitioning to adult status should be developed. These materials should be disseminated to families of these minors, providers of services to these minors and their families, attorneys who represent parties in guardianship and conservatorship proceedings,

court visitors (guardians ad litem), and judges.

IV. VOLUNTARY GUARDIANSHIPS AND CONSERVATORSHIPS

1.15. Alternative One

Iowa Code section 633.557 authorizing the appointment of a guardian on a voluntary petition and Iowa Code section 633.572 authorizing the appointment of conservator on a voluntary petition should be repealed, and voluntary petitions should not be permitted.

1.15. Alternative Two

The Iowa Code should authorize any adult to file a petition on his or her own behalf requesting the appointment of a guardian or conservator. Procedural due process requirements currently applicable to involuntary petitions should be applicable to a petition filed by an adult on his or her own behalf, and any adult filing such a petition should be represented by counsel.

V. PETITION AND NOTICE

A. *Petition*

1.16. The Iowa Code should require that the petition contain a statement of the factual basis, related to the respondent's alleged incapacity and need for protection, for establishment of a guardianship or conservatorship.

1.17. In addition to requiring the listing of the name and contact information for the respondent and the proposed guardian or conservator, the Iowa Code should require that the petition must list, to the extent known, the name and contact information for the following persons:

- (a) the respondent's spouse, adult children, and parents,
 - (b) the respondent's siblings,
 - (c) an adult with whom the respondent has resided for at least the six months prior to the filing of the petition,
 - (d) any person responsible for the care or custody of the respondent,
 - (e) any legal representative or representative payee of the respondent,
- and
- (f) the person(s) designated under any powers of attorney or health care directives executed by the respondent.

1.18. Additional persons who may have an interest in the proceeding or information relevant to the proceeding may be listed in an attachment to the petition.

B. Notice

1.19. The Iowa Code should require that the respondent be personally served with notice of the filing of a guardianship or conservatorship petition and of the scheduled hearing on the petition in accordance with the rules of civil procedure. A copy of the petition should be attached to the notice of the filing of a petition that is served upon the respondent. The notice of the scheduled hearing on the petition given to the respondent should indicate the time and place of the hearing.

1.20. The proposed guardian or conservator should receive notice (mail service) regarding the filing of a petition if the proposed guardian or conservator is not the petitioner.

1.21. The respondent's spouse should receive notice (mail service) regarding the filing of a petition. If there is no spouse, the respondent's adult children and parents should receive notice (mail service) regarding the filing of a petition.

1.22. Other persons required to be listed in the petition in accordance with above recommendation 1.17(b)-(d) should receive notice (mail service) regarding the filing of a petition. The Iowa Code should expressly provide that failure to give actual notice to such persons listed in the petition or their failure to receive actual notice does not constitute a jurisdictional defect and does not preclude the appointment of a guardian or conservator by the court.

1.23. Notice of the filing of a petition given respondent's spouse, adult children or parents and others persons required to be listed in the petition in accordance with above recommendation 1.17(b)-(d) should inform them that they may register to receive notice of the hearing on the petition and of other proceedings and that they may submit a request to intervene in the proceedings.

VI. HEARING REQUIREMENTS

1.24. The Probate Code, Division XIII, regarding the opening of guardianships and conservatorships should be amended so as to provide the following with respect to hearings in guardianship and conservatorship proceedings:

(a) After the filing of a petition, the court should schedule a hearing for the earliest date possible.

(b) The respondent should have a right to be present at the hearing and at all other stages of guardianship or conservatorship proceedings. The court should accept a waiver of this right only upon a showing of good cause and a record being made of the waiver.

(c) The court should make reasonable accommodations to enable the respondent to be present at the hearing and at all other stages of the proceedings.

(d) The respondent may subpoena witnesses and documents, examine witnesses, present evidence, and otherwise participate in the hearing.

(e) The court should require the proposed guardian or conservator to attend the hearing but may excuse his or her attendance for good cause shown.

(f) The court may require the court visitor (guardian ad litem) who prepared a report for the court regarding the respondent to attend the hearing.

(g) An interested party may request the court to permit him or her to attend and to participate in the hearing. The court may grant the request if the court determines that such attendance and participation is in the best interests of the respondent.

(h) The court should make a complete record of the hearing.

VII. COUNSEL FOR RESPONDENT AND COURT VISITOR (GUARDIAN AD LITEM)

A. *Distinction Between Counsel for Respondent and Court Visitor (Guardian Ad Litem)*

1.25. The Iowa Code should be amended to clarify the distinction between the appointment of counsel for the respondent and the appointment of a court visitor (guardian ad litem), to specify when one or both should be appointed, and to clarify their respective roles.

B. *Counsel for Respondent*

1.26. The Iowa Code should continue to require that the court appoint

an attorney to represent the respondent in guardianship or conservatorship proceedings unless the respondent is represented by retained counsel in accordance with Iowa Code sections 633.561 and 633.575.

1.27. The Iowa Code should provide:

(a)The attorney representing the respondent in a guardianship or conservatorship proceeding shall advocate for the respondent's wishes to the extent that those wishes are reasonably ascertainable.

(b)If the respondent's wishes are not reasonably ascertainable, the attorney representing the respondent shall advocate for the result that is the least restrictive option in type, duration, and scope, consistent with the respondent's interests.

C. Court Visitor

1.28. The term "court visitor" should be substituted for the term "guardian ad litem" in the Iowa Code.

1.29. The Iowa Code should provide that the court may appoint a court visitor, if needed and appropriate.

1.30. The Iowa Code should specify the required duties and responsibilities of the court visitor as follows:

(a)The court visitor should visit and, if possible, interview the respondent in the manner that the respondent is best able to understand in order to:

(i)explain to the respondent the substance of the petition, the nature, purpose, and effect of the proceeding, the respondent's rights at the hearing, and the general powers and duties of a guardian;

(ii)determine the respondent's views about the proposed guardian or conservator, the proposed guardian's or conservator's powers and duties, and the scope and duration of the proposed guardianship or conservatorship;

(iii)inform the respondent of the right to employ and consult with a lawyer at the respondent's own expense and the right to request a court-appointed lawyer.

(b)In addition to the foregoing duties and responsibilities, the court visitor should:

(i)interview the petitioner and the proposed guardian or conservator;

(ii) visit the residence where it is reasonably believed that the respondent will live if the appointment is made;

(iii) obtain information from any physician or other person who is known to have treated, advised, or assessed the respondent's relevant physical or mental condition; and

(iv) make any other investigation the court directs.

1.31. The Iowa Code should provide:

(a) The court visitor promptly must file a report in writing with the court, which must include:

(i) a summary of daily functions the respondent can and cannot manage without assistance, and daily functions the respondent could manage with the assistance of supportive services or benefits, including use of appropriate technological assistance and appropriate decision-making support,

(ii) recommendations regarding the appropriateness of guardianship or conservatorship, including whether less restrictive means of intervention are available; and the appropriateness of a full or limited guardianship or conservatorship,

(iii) a statement of the qualifications of the proposed guardian, together with a statement whether the respondent approves or disapproves of the proposed guardian,

(iv) a statement whether the proposed residence for the respondent meets the respondent's individual needs and whether the respondent has expressed a preference as to residence,

(v) a recommendation as to whether a professional evaluation or further evaluation is necessary,

(vi) a statement as to the respondent's ability to attend a hearing at the location court is typically held,

(vii) a statement of the respondent's ability to participate in a hearing that identifies any technology or other forms of support that would enhance the respondent's ability to participate, and

(viii) any other matters the court directs.

VIII. STANDBY PETITIONS AND EMERGENCY PETITIONS

A. *Standby Petitions for Appointment of Guardians*

and Conservators

1.32. The Iowa Code should continue to authorize the appointment of a guardian or conservator on a standby basis.

1.33. The requirements applicable to the court's granting of a petition for a guardianship or conservatorship by the court should be applicable to the court's granting of a standby petition for guardianship on a standby basis.

1.34 The Iowa Code should expressly authorize the appointment of a guardian or a conservatorship on a standby basis for a minor approaching adulthood. The Iowa Code should provide that any person who is interested in the welfare of a minor who is at least seventeen years and six months of age and who is alleged to meet the statutory criteria for a guardianship or conservatorship may initiate proceedings and request that a court order granting a petition take effect immediately on the minor's eighteenth birthday.

*B. Emergency Appointment of Temporary Guardian
or Conservator*

1.35. The Iowa Code should authorize the court to appoint a temporary guardian or conservator ex parte:

(a) upon the showing of an emergency, and

(b) when notice of the temporary appointment is promptly provided to the respondent and other persons required to be listed in the petition in accordance with recommendation 1.17.

1.36. The respondent should be entitled to an expedited hearing upon a motion by the respondent seeking to revoke the temporary guardianship or conservatorship.

1.38. The powers of a temporary guardian or conservator should be carefully limited and delineated in the order of appointment.

1.39. Appointments of temporary guardians or conservators should not exceed twenty-one (21) days.

IX: ORDERS OF APPOINTMENT AND GUIDANCE FOR NEWLY APPOINTED
GUARDIANS AND CONSERVATORS

1.40. The court should tailor orders appointing guardians and conservators to the facts and circumstances of each case. Each order should clearly specify the powers of the guardian or conservator, including

any limitations to his or her powers, and the rights retained by the person subject to guardianship or conservatorship.

1.41. The court should inform newly appointed guardians of their duties and responsibilities, such as the requirement that they file an initial care plan and annual reports thereafter. They also should be informed of applicable standards of practice.

1.42. The court should inform newly appointed conservators of their duties and responsibilities, such as the requirement that they file an initial financial management plan and inventory, and annual reports and accountings thereafter. They also should be informed of applicable standards of practice.

1.43. Following appointment, the court should require guardians and conservators to provide a copy of the order of appointment and explain the terms of the order to the person subject to guardianship or conservatorship.

PART TWO: ESTABLISHMENT OF MINOR GUARDIANSHIPS &
CONSERVATORSHIPS

PART ONE A: ESTABLISHMENT OF MINOR
GUARDIANSHIPS

I. STATUTORY CRITERIA FOR MINOR GUARDIANSHIPS

A. Specification of Statutory Criteria

2.1. The Iowa Code should provide specific statutory criteria for the appointment of a guardian for a minor.

*B. Termination of Parental Rights, Death of Parents and Nomination of
Guardian by Will*

2.2. The Iowa Code should authorize the court to appoint a guardian for a minor if all parental rights have been terminated or both parents of the child are deceased.

2.3. The Iowa Code should provide that if a custodial parent is deceased, the surviving parent, if qualified and suitable, should be preferred over other persons for appointment as guardian for the minor and that preference should next be given to any person, if qualified and suitable, nominated as guardian for the minor in the custodial parent's will.

C. Appointment of a Guardian with Parental Consent

2.4. The Iowa Code should authorize the court to grant a petition for the appointment of a guardian for a minor if the parents of the minor consent and the minor is in need of adult care because of any one of the following:

- (a) the child's custodial parent has a serious or terminal illness;
- (b) the custodial parent's physical or mental health prevents the parent from providing proper care and supervision for the child;
- (c) the child's home is no longer habitable as the result of a natural disaster;
- (d) the custodial parent of the child is incarcerated;
- (e) the custodial parent of the child is on active military duty;
- (f) the parties have articulated and agreed to another reason that guardianship is in the best interests of the child.

2.5. The Iowa Code should require that if the petition requests a consensual guardianship, the petition must include a written consent signed by the custodial parent or parents verifying that the parent or parents understand the nature of the guardianship and knowingly and voluntarily consent to the guardianship.

2.6. The Iowa Code should require that the parties file an agreement between the proposed guardian and the parents on or before the date of the hearing. The agreement should address:

- (a) the responsibilities of the guardian,
- (b) the responsibilities of the parents,
- (c) the expected duration of the guardianship, if known, and
- (d) parent-child contact and parental involvement in decision-making.

2.7. The court should grant the petition if, after the hearing, it finds by clear and convincing evidence that:

- (a) the child's parents had notice of the proceeding and knowingly and voluntarily consented to the guardianship,
- (b) the agreement is voluntary,
- (c) the proposed guardian is suitable, and
- (d) the guardianship is in the best interests of the child.

2.8. If the court grants the petition, it should approve the agreement at the hearing and issue an order establishing a guardianship that incorporates by reference the terms of the agreement unless the court finds that the agreement was not reached knowingly and voluntarily or is not in the best interests of the child.

D. Appointment of Guardian without Parental Consent

2.9. Alternative A

The Iowa Code should not authorize the court to appoint a guardian for a minor without parental consent. The only alternative in such cases should be the filing of a child in need of assistance (CINA) petition provided the required CINA statutory criteria are met.

2.9. Alternative B

1. The Iowa Code should authorize the court to appoint a guardian without parental consent if the court finds by clear and convincing evidence that the minor's parents are unwilling or unable to exercise their parental rights and carry out their parental responsibilities, that the minor is, or will be, without health, education, or other care necessary for the minor's well-being or protection from serious harm, and that the appointment is in the best interest of the minor.

2. The Iowa Code should authorize the court to appoint a guardian without parental consent if the court finds by clear and convincing evidence that there is a de facto guardian, that there has been a demonstrated lack of consistent participation in the minor's life by the nonconsenting parent and that the appointment is in the best interest of the minor.

(a)The term "demonstrated lack of consistent participation" means a refusal or failure to comply with the duties imposed upon a parent by the parent-child relationship, including but not limited to, providing the minor necessary food, clothing, shelter, health care, education, a nurturing and consistent relationship and other care and control necessary for the minor's physical, mental, and emotional health and development.

(b)To determine whether a parent demonstrated a lack of consistent participation, the court should consider the following factors, at a minimum:

(i)the intent of the parent or parents in placing the minor with the person petitioning as a de facto guardian,

(ii)the amount of involvement the parent or parents had with the minor during the parent's or parents' absence,

(iii)the facts and circumstances of the absence of the parent or parents,

(iv)the parent's or parents' refusal to comply with conditions for retaining custody set forth in any previous court orders, and

(v)whether the nonconsenting parent or parents was previously prevented from participating in the minor's life as a result of domestic violence or child abuse or neglect.

3. The court should be authorized to appoint a guardian without parental consent if the court finds by clear and convincing evidence that a living situation has been created for the minor that is intolerable, at least temporarily, even though the living situation does not rise to the level of jeopardy required for the adjudication of the minor as a CINA and for the termination of parental rights and that the appointment is in the best interest of the minor.

4. Before establishing a minor guardianship under this section, the court should consider if a CINA petition is appropriate. If the court determines a CINA petition is not appropriate, the court should make findings of fact as to why it is not appropriate.

5. A proceeding to appoint a guardian under this section should not create a new eligibility category for the Department of Human Services protective services.

II. PETITION AND NOTICE

A. *Petition*

2.10. The Iowa Code should require that the petition contain a statement of the reason and factual basis for the establishment of a minor guardianship.

2.11. The Iowa Code should require that the petition list, to the extent known, the name and contact information for the following:

(a)the petitioner and the petitioner's relationship to the minor,

(b)the minor,

(c)each of the minor's parents,

(d)if the petitioner is not the proposed guardian, the proposed

guardian,

(e) the minor's adult siblings and grandparents,

(f) any person who has had the primary responsibility for the care or custody of the minor or with whom the minor has resided for at least the six months prior to the filing of the petition, and

(g) any existing legal representative of the minor or representative payee for the minor.

2.12. The Iowa Code should require that the petition state the following:

(a) the guardianship powers being requested and the duration of those powers, and

(b) whether other related proceedings are pending.

2.13. The petitioner should include in an attached affidavit:

(a) any additional information, to the extent ascertainable, that is required by Iowa Code section 598B.209 (The Iowa Uniform Child-Custody Jurisdiction and Enforcement Act), and

(b) if known, any person not listed in the petition who may have an interest in the proceeding or information relevant to the proceeding.

2.14. A standardized form for a petition initiating proceedings regarding the non-testamentary appointment of a guardian for a minor should be developed and adopted. The form should be user-friendly, i.e., written in plain language, easily readable type, and understandable by persons with different educational levels and from different backgrounds.

2.15. The petition form, together with a description of the jurisdiction of the court regarding minor guardianships, an explanation of guardianship, and instructions for filing a petition should be readily available from the court, on-line and in the community.

B. Notice

2.16. The Iowa Code should require that timely notice of a guardianship proceeding be given to:

a) the minor if:

alternative one—the minor is fourteen years of age or older, or

alternative two—the court determines that the minor has attained a

sufficient age to understand the guardianship proceeding,

(b)each of the minor's parents,

(c)the proposed guardian, if the petitioner is not the proposed guardian,

(d)if known, any adult who has had the primary care and custody of the minor or with whom the minor has resided during the 60 days prior to the filing of the petition,

(e)if known, the minor's grandparent(s) and adult sibling(s),

(f)if known, any existing conservator and any representative payee for the minor, and

(g)any other person the court determines should receive notice.

2.17. The notice should include the time and place of the hearing on the petition, together with a copy of the petition, a description of the purpose and possible consequences of the guardianship proceeding, and a statement of the right to request appointment of counsel for the minor.

2.18. A standardized form for notice of a minor guardianship proceeding should be developed and adopted. Any written notice should be user- friendly, i.e., written in plain language, easily readable type, and should be understandable by persons with different educational levels and from different backgrounds.

2.19. The Iowa Judicial Branch should adopt a procedure that allows an interested person to file a request with the court for notice and/or to intervene in the proceedings with a statement describing the interest of the person making the request.

III. HEARING REQUIREMENTS

2.20. Upon the filing of a petition, the court should be required to set a hearing for the earliest date possible.

2.21. The court should be required to make a complete record of the hearing.

2.22. The court should encourage participation of minors who have the capacity to understand and express a reasoned preference in guardianship hearings and proceedings, and the court should consider their views in determining whether to appoint a guardian and whom to appoint as guardian.

2.23. A presumption should exist that it is in the best interest of a minor, fourteen years of age or older, to attend and participate in guardianship hearings and proceedings.

IV. COUNSEL FOR MINOR, COURT VISITOR, AND COUNSEL FOR MINOR PARENTS

A. *Counsel for Minor*

2.24. The Iowa Code should require that the court appoint counsel to represent the minor in guardianship proceedings unless the minor is represented by retained counsel.

2.25. The Iowa Code should provide:

(a) that the attorney representing the minor in a guardianship proceeding should advocate for the minor's wishes to the extent that those wishes are reasonably ascertainable, and

(b) if the minor's wishes are not reasonably ascertainable, counsel for the minor should advocate for the result that is the least restrictive option in type, duration, and scope that is consistent with the minor's best interests.

B. *Court Visitor*

2.26. The Iowa Code should authorize the court to appoint a court visitor if needed and appropriate.

2.27. An attorney appointed to serve as counsel for the minor should not be appointed to serve as a court visitor in a minor guardianship proceeding.

2.28. The court visitor should advocate for the child's best interests without being bound by the child's expressed wishes.

2.29. The Iowa Code should specify the duties and responsibilities of the court visitor as follows:

(a) If the minor's age is appropriate, the court visitor should:

(i) interview the minor in person and in the manner that the minor is best able to understand;

(ii) explain to the minor the substance of the petition, the nature, purpose, and effect of the proceeding, the minor's rights at the hearing, and the general powers and duties of a guardian; and

(iii) determine the minor's views about the proposed guardian or conservator, the proposed guardian's powers and duties, and the scope and duration of the proposed guardianship.

(b) In addition to the foregoing duties and responsibilities, the court visitor should:

(i) interview the minor's parents,

(ii) interview the petitioner and, if the petitioner is not the proposed guardian, interview the proposed guardian,

(iii) visit, to the extent feasible, the residence in where it is reasonably believed that the minor will live if the appointment of a guardian is made, and

(iv) make any other investigation the court directs including, but not limited to, interviewing any person providing medical, mental health, educational, social and other services to the minor.

2.30. The court visitor promptly should be required to file a report in writing with the court. This report should include:

(a) a recommendation regarding the appropriateness of a guardianship,

(b) a statement of the qualifications of the proposed guardian, together with a statement of whether the minor has expressed agreement with the appointment of the proposed guardian,

(c) a statement of whether the proposed residence meets the minor's individual needs and whether the minor has expressed a preference as to residence,

(d) a recommendation as to whether a professional evaluation or further evaluation is necessary,

(e) a statement as to the minor's ability to attend and participate in a hearing at the location where it will be held, and

(f) any other matters the court directs.

C. Counsel for Parents of Minor

2.31. Upon the filing of a petition for a minor guardianship without parental consent, the Iowa Code should require that the court appoint counsel for the parent if:

(a) the parent requests counsel, and

(b)the parent is financially unable to retain counsel.

V. EMERGENCY APPOINTMENT OF TEMPORARY GUARDIAN FOR A MINOR

2.32. The Iowa Code should authorize the court to appoint a temporary guardian for a minor on an emergency basis ex parte under the following conditions:

(a)there is a showing that the minor will suffer immediate or irreparable harm and there is no one with authority to act under the circumstances;

(b)a petition for a permanent guardianship for the minor is filed;

(c)the petition is set for hearing on the proposed permanent guardianship on an expedited basis; and

(d)notice of the temporary appointment is promptly provided in accordance with applicable notice requirements.

2.33. The minor, or the person with custody of the minor, should be entitled to an expeditious hearing upon a motion seeking to revoke the temporary guardianship.

2.34. The powers of a temporary guardian should be carefully limited and delineated in the order of appointment.

2.35. Appointments of temporary guardians should be of limited and finite duration.

PART ONE B: ESTABLISHMENT OF MINOR CONSERVATORSHIPS

I. APPLICABILITY OF LAW AND PRACTICES FOR ADULT CONSERVATORSHIPS TO MINOR CONSERVATORSHIPS

2.36. Statutory requirements, court rules, and best practices applicable to the establishment of an adult conservatorship should be applicable to the establishment of a minor guardianship subject to the exceptions in recommendation 2.37 and recommendation 2.38 which apply specifically to minor conservatorships.

II. STATUTORY CRITERIA FOR MINOR CONSERVATORSHIPS

2.37. The court should be authorized to appoint a conservator for a minor if the court determines that a conservator is necessary to protect the assets of the minor and to manage the minor's financial affairs.

III. MINOR CONSERVATORSHIP PETITION

2.38. A petition to establish a conservatorship for a minor should require the following information:

(a) the reason and factual basis for establishment of a conservatorship,

(b) the name and contact information for the following:

(i) the petitioner and the petitioner's relationship with the minor;

(ii) the minor;

(iii) each parent of the minor;

(iv) if the petitioner is not the proposed conservator, the proposed conservator;

(v) any existing guardian or representative payee for the minor;

(c) the conservatorship powers being requested and the duration of those powers;

(d) whether other related proceedings are pending;

(e) the nature and estimated value of assets of the minor; and

(f) the estimated annual income and annual estimated living expenses.

PART ONE C: ALTERNATIVES TO ESTABLISHMENT OF MINOR GUARDIANSHIPS AND CONSERVATORSHIPS: PARENTAL POWERS OF ATTORNEY

2.41. The Iowa Code should authorize a parent of a minor to execute a power of attorney delegating to another person—the agent—for a period not exceeding six months, any power regarding custody, care or property of the minor, except the power to consent to the minor's abortion or sterilization or the power to consent to the withholding or withdrawing of life-sustaining treatment from a minor.

2.42. Only a parent with sole legal custody, sole physical custody or primary physical custody should have the authority to execute a power of attorney, and notice to the noncustodial parent should be required.

2.43. In performing a delegated function, an agent should exercise reasonable care to comply with the terms of the delegation and reasonable care in the performance of delegated powers.

2.44. By accepting a delegation from a parent, an agent should be

deemed to submit to the jurisdiction of the Iowa courts.

2.45. A parent should be able to revoke a delegation of powers at any time.

2.46. An otherwise valid power of attorney should not become effective or remain in effect if the Juvenile Court or the District Court has assumed jurisdiction of a case involving the care or custody of a child who is the subject of a parental delegation of powers under the power of attorney.

PART THREE: GUARDIANS & CONSERVATORS FOR ADULTS AND
MINORS QUALIFICATIONS/DUTIES/STANDARDS

I. BACKGROUND

II. GUARDIANS AND CONSERVATORS QUALIFICATIONS AND APPOINTMENT

A. Background Checks of Prospective Guardians and Conservators

3.1. The Iowa Code should require that all prospective guardians and conservators of adults and minors, other than financial institutions with Iowa trust powers, undergo criminal background checks and checks of the Iowa Dependent Adult Abuse Registry, the Iowa Child Abuse Registry and the Iowa Sex Offender Registry.

3.2. The Court should be authorized to request, when appropriate, an additional national background check or a background check in another state on a prospective guardian or conservator.

3.3. Prospective guardians and conservators, other than financial institutions with Iowa trust powers, should be required to disclose any criminal convictions to the court prior to and after appointment, and to disclose any placement on the Iowa Dependent Adult Abuse Registry, the Child Abuse Registry or the Sex Offender Registry prior to and after appointment.

3.4. The court should have the discretion to determine whether to treat a criminal conviction or other criminal background check information as disqualifying a person from being appointed as a guardian or conservator. Guidelines and criteria should be established for such determinations by the court. Among the factors that should be considered are the type of crime for which the prospective guardian or conservator was convicted and how much time has elapsed since the conviction.

3.5. The court should have the discretion to determine whether to treat the placement of a prospective guardian or conservator on the Iowa Dependent Adult Abuse Registry, the Child Abuse Registry or the Sex Offender Registry as disqualifying for appointment as guardian or conservator. Guidelines and criteria should be established for such determinations by the court.

B. Conservator Bonds and Alternatives to Bonds

3.6. The Iowa Code should require all conservators of adults and minors, other than financial institutions with Iowa trust powers, to post a surety bond in an amount equal to the liquid assets and annual income of the person subject to conservatorship, except as provided in Recommendation 3.7.

3.7. The Iowa Code should authorize the court to waive the bond requirement if the court determines that there is an alternative to a bond that will provide sufficient protection to the liquid assets and income of the person subject to conservatorship.

3.8. A conservator should be required to submit a plan for any proposed alternative to a bond for the court to review and approve.

C. Certification of Guardians and Conservators

3.9. Certification should be required for: (1) professional guardians and conservators, other than financial institutions with Iowa trust powers, (2) public guardians and conservators, and (3) volunteers serving as guardians and conservators in multiple cases.

3.10. Certification should not be required of family members serving as guardians and conservators.

D. Appointment of Guardians and Conservators for Adults and Minors

3.11. Iowa Code sections 633.559 and 633.571, authorizing the court to appoint as a guardian or conservator for an adult any qualified and suitable person who is willing to serve in that capacity, should be retained.

3.12. Iowa Code sections 633.559 and 633.571 should be amended to conform to the Iowa Uniform Power of Attorney Act, section 633B.108, providing that “[t]he court should appoint as guardian for an adult the person or persons nominated in a valid health care power of attorney and should appoint as conservator the person or persons nominated in a valid durable power of attorney unless good cause is shown or the nominee is

disqualified.”

3.13. Iowa Code sections 633.559 and 633.571 with respect to the preference to be given to the appointment of parents as a guardian or conservators for a minor should be retained.

3.14. A court rule should be adopted that requires a guardian or conservator nominated in a guardianship or conservatorship petition to submit an affidavit outlining his or her qualifications for serving as a guardian or conservator to the court. The Judicial Branch should adopt a standardized form to be used in the submission of these affidavits.

III. DUTIES AND STANDARDS OF PRACTICE FOR GUARDIANS AND CONSERVATORS

A. *Statutory Duties and Court Rules*

3.15. The Iowa Code should set forth the mandatory legal duties of guardians and conservators that apply to all guardians and conservators.

3.16. Court rules should set forth guardian and conservator standards of practice. Every guardian and conservator should be held to the same standards of practice, regardless of familial relationship, except a guardian and a conservator with a higher level of relevant skills should be held to the use of those skills.

3.17. The duties and standards of practices set forth in the Iowa Code and court rules should be enumerated in a clear and concise statement that is furnished to guardians and conservators at the time of appointment. Guardians and conservators should acknowledge, in writing, receipt of the information in the statement.

3.18. Guardian and conservator duties and standards of practice should be explained in educational materials and educational activities for guardians and conservators.

B. *Relationship of Guardians and Conservators with the Court*

3.19. Guardians and conservators should keep the court periodically informed of the status of adults and minors subject to guardianship or conservatorship and informed of their actions as guardians and conservators so that the court can fully and effectively monitor guardianships and conservatorships.

(a)After appointment, the guardian should be required to submit an initial care plan for the person subject to guardianship for court review and

approval. The guardian thereafter should be required to submit annual reports for court review and approval.

(b)After appointment, the conservator should be required to submit an initial financial management plan for the person subject to conservatorship, together with an inventory of his or her property, for court review and approval. The conservator thereafter should be required to submit annual reports and accountings for court review and approval.

3.20. Guardians and conservators should promptly report to the court any change in the decision-making capacity and functional abilities and limitations of adults subject to a guardianship or conservatorship that may warrant its modification or termination, and they should promptly report to the court any change in status of minors subject to a guardianship or conservatorship that may warrant its modification or termination.

3.21. Guardians and conservators should promptly report to the court, the Department of Human Services and any other appropriate authorities, suspected abuse, neglect and financial exploitation of persons subject to guardianship and conservatorship.

C. Core Duties and Standards of Practice

3.22. Guardians and conservators should treat adults and minors subject to guardianship and conservatorship with dignity and respect.

3.23. Guardians and conservators should promote the self-determination of adults subject to guardianship and conservatorship, to the extent reasonably possible, by involving them in decisions that affect them and by considering their wishes, values, and preferences in making decisions on their behalf.

3.24. Standards that give guidance to guardians and conservators for using substituted judgment and best interest principles in their decision-making for adults subject to guardianship and conservatorship should be adopted.

(a)Substituted judgment is the principle of decision-making under which the guardian or the conservator makes the decision that they know, or reasonably believe, the protected person would make if able to do so, unless such a decision would unreasonably harm or endanger the protected person's welfare or interests.

(b)Best interest is the principle of decision-making under which the guardian or the conservator makes the decision based on a determination

of what is in the best interest of the protected person.

(c) Decision-making standards should emphasize a preference for use of substituted judgment in decision-making by guardians and conservators. This means:

(i) The guardian or conservator should make the decision that they know, or reasonably believe, the protected person would make if able to do so, unless such a decision would unreasonably harm or endanger the protected person's welfare or interests.

(ii) If the guardian does not know, or cannot reasonably ascertain the decision that the protected person would make if able to do so, or making such a decision would unreasonably harm or endanger the protected person's welfare or interests, the guardian or conservator should act in accordance with the protected person's best interest.

3.25. Persons who serve as guardians and conservators for adults and minors with whom they are not living should maintain regular contact with them through visits and other means of communication.

3.26. Guardians and conservators should make reasonable efforts to identify family members and others with whom a protected person has a significant supportive relationship and to facilitate the continuation of such relationships.

(a) Iowa Code sections 633.637A and 633.635(2)(d), recognizing the right of an adult subject to guardianship to have consensual contact with other persons, should be retained.

(b) The guardian for a minor should provide or arrange for the provision of the opportunity for regular visitation, communication, and interaction of the minor with his or her parents unless direct physical harm or significant emotional harm to the minor is likely to result.

(i) Prior court approval should be required for a guardian's denial of visitation, communication or interaction by a parent with a minor under guardianship. A court should approve the denial of visitation, communication or interaction only upon a showing of good cause by the guardian.

(ii) A guardian should be permitted to place reasonable time, place or manner restrictions on visitation, communication or interaction between a minor under guardianship and his or her parents without prior court approval.

3.27. Guardians and conservators should make a good faith effort to cooperate with other substitute decision-makers for persons subject to guardianship and conservatorship. These include any other guardian, conservator, an agent under a durable power of attorney, an agent (attorney-in-fact) under a health care power of attorney, a representative payee, or a trustee.

D. Guardian Residential Decision-Making

Authority of guardian to make residential decisions for adults and minors

3.28. The Iowa Code should continue to authorize the court to grant the power to guardians to establish the residence of the adults and minors subject to guardianship.

Standards for guardian residential decisions for adults

3.29. In making residential decisions, the guardian should attempt to maximize the self-reliance and independence of the adult subject to guardianship and should involve such protected person in these decisions to the extent reasonably feasible.

3.30. In making residential decisions, the guardian should identify and advocate for the goals, preferences, and needs of the protected person with respect to his or her residence. Goals refer to what is important to the protected person with respect to the location and the type of his or her residence, and preferences refer to specific expressions of choice by the protected person.

3.31. The guardian should seek information, identify, and examine all available residential options that will fulfill the residential goals, preferences and needs of the protected person and should take advantage of available professional assistance for this purpose.

3.32. The guardian should give priority to home or other community-based settings, unless they are inconsistent with the goals, preferences, and needs of the protected person.

3.33. The guardian should consider the proximity of the setting to those people and activities that are important to the protected person when choosing a residential setting.

3.34. In making residential decisions, the guardian should use the substituted judgment and the best interest principles with preference given to the substituted judgment principle, as stated in Recommendation 3.24.

(a)The guardian should first make the decision that he or she knows, or reasonably believes, the protected person would make if able to do so, unless such a decision would unreasonably harm or endanger the protected person's welfare or interests.

(b)If the guardian does not know, or cannot reasonably ascertain, the decision that the protected person would make if able to do so, or making such a decision would unreasonably harm or endanger the protected person's welfare or interests, the guardian should then make the decision that is in the protected person's best interests.

3.35. The guardian should monitor the protected person's residential setting on an ongoing basis and take any necessary action if the setting does not continue to meet the protected person's current goals, preferences, and needs, including but not limited to:

(a)ensuring the quality of care and the appropriateness of the setting from the standpoint of the protected person's feelings and attitudes,

(b)enforcing the rights of the protected person who is a resident of a nursing home or other long-term care facility, and

(c)exploring alternative opportunities for long-term services and support where necessary to better fulfill the protected person's goals, preferences, and needs.

3.36. The guardian should make reasonable efforts to maintain the person's established social and support networks during the protected person's temporary absences from the primary permanent residence.

E. Guardian Health Care Decision-Making

Authority of guardian to make health care decisions for adults and minors

3.37. The Iowa Code should continue to authorize the court to grant the power to guardians for adults and minors to consent to services for the promotion, maintenance, and restoration of health, services for the diagnosis and treatment of disease and injury and long-term and palliative care.

3.38. Unless limited by the court's order of appointment or other orders, guardians should monitor the health status of adults and minors and seek to ensure that they receive needed and appropriate health services and care.

Relationship between guardian and agent under health care power of

attorney

3.39. A valid durable power of attorney for health care executed by an adult subject to guardianship in accordance with Iowa Code section 144B.6 before the appointment of a guardian should remain in effect unless the court determines that the person designated as the (agent) in the power of attorney is unable, unwilling, or unsuitable to perform the duties of an attorney-in-fact, or the court specifically finds that the attorney-in-fact is acting in a manner contrary to the wishes of the principal.

3.40. If a power of attorney for health care remains in effect after the appointment of a guardian, the attorney-in-fact should be authorized to make health care decisions for the adult subject to guardianship but the agent should keep the guardian informed regarding such decisions.

3.41. The guardian should be authorized to petition the court to construe the power of attorney or to review the conduct of the attorney-in-fact under the power of attorney.

3.42. A health care professional should not be subject to criminal prosecution, civil liability, or professional discipline if the professional relies on a decision made by a health care agent for an adult subject to guardianship provided the requirements of Iowa Code section 144B.9 are satisfied.

Standards for guardian health care decision-making for adults

3.43. The guardian, in making health care decisions for an adult subject to guardianship, or in seeking court approval for such decisions, should involve such protected person to the extent reasonably feasible.

3.44. In making health care decisions for a protected person, the guardian should apply the substituted judgment and the best interest principles with preference given to the substituted judgment principle, as stated in Recommendation 3.24.

(a)The guardian should first make the decision that he or she knows, or reasonably believes, the protected person would make if able to do so, unless such a decision would unreasonably harm or endanger the welfare or interests of the protected person.

(b)If the guardian does not know, or cannot reasonably ascertain the decision that the protected person would make if able to do so, or if making such a decision would unreasonably harm or endanger the welfare or interests of the protected person, the guardian should then make the

decision that is in the protected person's best interests.

3.45. The guardian should keep persons who have a significant ongoing relationship with the protected person reasonably informed of major health care decisions.

F. Conservator Financial Decisions and Management

3.46. The conservator should use reasonable efforts to:

(a)ascertain the income, assets, and liabilities of the person subject to a conservatorship,

(b)ascertain the goals, preferences, and needs of such protected person with respect to the management of his or her financial affairs,

(c)prepare an initial financial management plan for court review and approval,

(d)provide oversight to income and assets under the control of the protected person, and

(e)consult with the guardian and consult with others close to the protected person under guardianship.

3.47. If a bond is required, the conservator should take the steps necessary to obtain a bond at the expense of the estate of the protected person.

3.48. The conservator should manage the financial affairs of the protected person in a way that maximizes his or her his dignity, autonomy, and self-determination.

(a)When possible, the conservator should encourage and assist the protected person to act on his or her own behalf and to participate in financial decisions.

(b)The conservator, consistent with the Iowa Code and court orders, should exercise authority only as necessitated by the cognitive and functional limitations of the protected person.

3.49. In making financial decisions, the conservator should consider the current wishes, past practices, reliable evidence of likely choices, and the best interests of the protected person, including the financial resources needed for his or her current and future care.

3.50. When making decisions regarding investing, spending, and management of the income and assets, including asset recovery of the

protected person, the conservator should:

(a) give priority to the needs and preferences of the person under conservatorship,

(b) weigh the costs and benefits to his or her estate, but value his or her well-being over the preservation of the estate.

3.51. When making investments, the conservator should apply state law regarding prudent investment practices, including Iowa Code section 633.A.4302.

3.52. The conservator should avoid conflicts of interest and self-dealing and appearances of conflicts of interest and self-dealing.

(a) The conservator should act so as not to create a conflict of interest and to engage in self-dealing that impairs the conservator's ability to act impartially in the interest of the person under conservatorship.

(b) The conservator should become educated as to what constitutes a conflict of interest and self-dealing.

IV. GUARDIAN AND CONSERVATOR FEES

3.53. The Iowa Code and/or a court rule should provide that guardians and conservators are entitled to reasonable compensation for their services. A court rule should be adopted that lists the factors the court may consider in determining the reasonableness of fees for guardians and conservators, other than financial institutions with Iowa trust powers. These factors should include:

(a) powers and responsibilities under the court appointment,

(b) necessity and quality of the services performed,

(c) the extent to which the services provided and the basis for the fees were consistent with the guardianship initial care plan or the conservatorship initial financial management plan,

(d) the guardian's/conservator's expertise, training and education, experience, professional standing, and skill,

(e) the services actually performed, including the time actually expended, and the attention and skill-level required for these services,

(f) the character of the services performed, including their difficulty and the degree of skill and care required,

(g) the fees customarily paid and time customarily expended for

performing like services in the community, including whether the court has previously approved similar fees in another comparable matter,

(h) the need for and local availability of specialized knowledge and the need for retaining outside fiduciaries to avoid conflicts of interest,

(i) the effect of services on the protected person, specifically what benefits to the protected person were derived from the services, and whether probable benefits exceeded costs, and

(j) the request for compensation in comparison to the previously disclosed basis for fees, and the amount approved in the initial care plan or financial management plan.

3.54. The court should monitor the reasonableness of guardian and conservator fees actively and in a timely manner.

(a) Conservators should be required to submit an application for fees with the annual report that itemizes the services provided.

(b) The court may require a hearing or an additional statement explaining a fee approval request.

(c) The court should support any rejection or reduction of fees with a statement of explanation.

3.55. Conservators should report to the court the likelihood that the protected person's assets will be exhausted and advise the court whether they intend to withdraw as conservator when there are no longer funds to pay fees.

PART FOUR: COURT MONITORING OF ADULT & MINOR
GUARDIANSHIPS & CONSERVATORSHIPS

I. COURT MONITORING: INTRODUCTION

II. GENERAL COURT MONITORING STANDARDS

4.1. The court should monitor adult and minor guardianships and conservatorships on an ongoing basis, including:

ensuring that initial care plans, initial financial management plans,

inventories, annual reports, and annual accountings are filed on time and that their contents are promptly reviewed and approved,

ensuring compliance by guardians and conservators with statutory requirements and with the terms of court orders,

determining whether guardianships and conservatorships should be continued, modified, or terminated, and

determining independently, as needed and appropriate, the status of adults and minors subject to guardianship to ensure that they receive needed care and protection and to ensure the prevention, identification, and redress of misappropriation and misuse of the income and assets of adults and minors subject to conservatorship.

III. GUARDIAN'S DUTY TO REPORT TO COURT

A. Adult Guardianships

4.2. The Iowa Code should require guardians of adults to file within 60 days of appointment an initial care plan for an adult subject to guardianship for review and approval by the court. Thereafter, guardians should be required to file a report annually for review and approval by the court.

4.3. The initial care plan should reflect, to the extent reasonably possible, a person-centered planning process that maximizes the self-determination of the protected adult and involves collaboration with the protected adult and his or her family, friends, and other persons with whom he or she has a significant relationship.

4.4. The guardian's initial care plan should describe:

the status and condition of the protected adult, and

the guardian's plan to address the protected adult's needs, including identification of the following:

(i) the living arrangements for the protected adult that the guardian expects to arrange, facilitate, or continue,

(ii) the health, educational and social services, and activities and the other supports for the protected adult that the guardian expects to arrange, facilitate, or continue,

(iii) the anticipated nature and frequency of the guardian's visits and communication with the protected adult,

(iv) the persons, if any, with whom the protected adult has a significant relationship and any plans the guardian has for facilitating contacts of the protected adult with such persons, and

(v) the goals for the protected adult and how the guardian anticipates achieving those goals.

4.5. The guardian should report substantial changes in the initial care plan in the annual reports submitted to the court.

4.6. The Judicial Branch should adopt a standardized form for the initial care plan for the use of guardians of adults. The form should be user-friendly, i.e., written in plain language, easily readable type, and understandable by persons with different educational levels and different backgrounds.

4.7. The Judicial Branch should revise the existing form for the annual report for the use of guardians of adults. This form should elicit more detail and specificity with respect to the status and well-being of the protected adult and the activities of the guardian. The form should be user-friendly, i.e., written in plain language, easily readable type, and understandable by persons with different educational levels and different backgrounds.

B. Minor Guardianships

4.8. The Iowa Code should require the guardian of a minor to file an initial care plan for the minor within 60 days of appointment for review and approval by the court and thereafter to file an annual report for review and approval by the court.

4.9. The guardian's initial care plan should:

(a) describe the condition and status of the minor subject to guardianship, and

(b) describe the guardian's plan to address the minor's needs including identification of the following:

the minor's living arrangement and care that the guardian expects to arrange, facilitate or continue,

the health, educational, vocational and social services and activities that the guardian expects to arrange, facilitate, or continue on behalf of the minor,

the parents and the family members with whom the minor has a

significant relationship and any plans the guardian has for arranging, facilitating or continuing contacts with such persons,

the anticipated nature and frequency of the guardian's visits and communication with the minor and activities on behalf of the minor, and

the guardian's goals for the minor and how the guardian anticipates achieving those goals.

4.10. The Judicial Branch should adopt a separate standardized form for the initial care plan specifically for the use of guardians of minors. The form should be user-friendly, i.e., written in plain language, easily readable type, and understandable by persons with different educational levels and from different backgrounds.

4.11. The Judicial Branch should adopt a separate standardized annual report form specifically for the use of guardians of minors that describes the status and condition of the minor and the guardian's actions and activities on behalf of the minor. The form should be user-friendly, i.e., written in plain language, easily readable type, and understandable by persons with different educational levels and from different backgrounds.

IV. CONSERVATOR'S DUTY TO REPORT TO COURT

4.12. The Iowa Code should require conservators of adults and minors to file an initial financial management plan, together with an inventory of the conservatorship property, within sixty days of their appointment for court review and approval. Thereafter, the Iowa Code should require conservators to file annual reports and accountings for court review and approval.

4.13. The conservator's initial financial management plan should describe how the conservator plans to protect, manage, expend, and distribute the assets of the conservatorship estate in order to meet the needs of the person subject to conservatorship and to allocate resources for those needs. The conservator should report substantial changes in the initial financial management plan in the annual reports that the conservator files with the court.

4.14. The Judicial Branch should adopt a standardized initial financial management plan form for the use of conservators. The form should be user-friendly, i.e., written in plain language, easily readable type, and understandable by persons with different educational levels and different backgrounds.

4.15. The Judicial Branch should adopt a revised standardized annual report form for the use of conservators. The form should be user-friendly, i.e., written in plain language, easily readable type, and understandable by persons with different educational levels and different backgrounds.

V. CONSERVATORSHIP ACCOUNTABILITY PROJECT

4.16. The Iowa Judicial Branch should develop a pilot project, modeled on the innovative and successful Minnesota Conservator Account Auditing Program (CAAP), to improve the ability of the court to monitor conservatorships and to prevent the misappropriation and misuse of the property of adults and minor subject to conservatorship.

4.17. This project should have the following components:

specialized software for the electronic entry and submission of itemized transaction information and documentation of transactions by conservators,

use of factors (red flags) that are predictive of cases where there is a higher risk of misappropriation and misuse of assets by conservators,

differential case management (review) of the information and documentation submitted by conservators with different levels of review depending upon the risk of misappropriation and misuse of assets, and

an audit unit staffed by persons with expertise in accounting, including forensic accounting, that conducts reviews of high risk cases and periodic reviews of other cases.

4.18. In developing this project, the Iowa Judicial Branch should draw upon the knowledge and experience made available through the Conservatorship Accountability Project conducted by the National Center on State Courts and endorsed by Conference of Chief Justices (CCJ) and the Conference of State Court Administrators (COSCA).

VI. WAIVERS OF FILING REQUIREMENTS, EXTENSIONS OF TIME FOR FILING, AND ENFORCEMENT OF FILING REQUIREMENTS

4.19. The court should not grant a waiver of the requirement for the filing of guardianship initial care plans and annual reports or of the requirements for the filing of conservatorship initial financial management plans, inventories, annual reports, and accountings.

4.20. The court should grant an extension of time for the filing of required plans, inventories, annual reports, and accountings only when

good cause is shown. Policies and practices should be developed to prevent “abuse” of extension requests and to avoid repeated extensions in a case.

4.21. Guardians and conservators who fail to file the required plans, inventories, annual reports, and accountings should be subject to removal and/or subject to sanctions deemed appropriate by the court, provided that they receive fair notice of failure to file and the opportunity to cure such failure.

VII. GUARDIAN POWERS AND DECISIONS REQUIRING PRIOR COURT APPROVAL

A. Prior Court Approval for Guardian Residential Decision-Making for Adults Subject to Guardianship

4.22. Guardians should be required to obtain prior court approval for changing the permanent residence of an adult subject to guardianship to a nursing home, other secure facility, or secure portion of a facility restricting his or her ability to leave or have visitors, unless advance notice of such change was set forth in the initial care plan or an annual report that was approved by the court. In an emergency situation, the court should review a request for such approval on an expedited basis, and, if appropriate, the court may set the matter for an emergency hearing. Such a provision should replace the existing provision in Iowa Code section 633.635(2)(a).

B. Prior Court Approval for Guardian Health Care Decision-Making for Adults Subject to Guardianship

4.23. The Iowa Code should continue to require that a guardian obtain prior court approval for the guardian’s consent to withholding or withdrawal of life-sustaining treatment from a person subject to guardianship.

4.24. The Iowa Code should list the specific types of interventions, including sterilization and abortion, for which a guardian must obtain prior court approval. Such a provision should replace the existing provision of Iowa Code section 633.635(2)(b), requiring prior court approval for “[a]rranging the provision of major elective surgery or any other non-emergency major medical procedure.”

VIII. TERMINATION AND MODIFICATION OF GUARDIANSHIPS AND

CONSERVATORSHIPS

4.25. Once an adult guardianship or conservatorship is established, the court should periodically review whether the guardianship or conservatorship should be terminated or modified.

4.26. The Iowa Code should provide that the court must terminate a guardianship or conservatorship if the court finds by clear and convincing evidence that the grounds for a guardianship or conservatorship required by the Iowa Code are not currently satisfied.

4.27. The Iowa Code should provide that the court must modify the powers granted to the guardian or conservator if the court finds that the powers are either more than needed or less than needed in view of the decision-making capacity, functional abilities and limitations of the adult subject to guardianship or conservatorship, the availability of third-party assistance and decision-making supports for such person, or other circumstances.

4.28. The Iowa Code and/or a court rule should provide that the court may conduct a hearing to determine whether termination or modification of a guardianship or conservatorship is appropriate upon:

(a) the filing of a petition by a person subject to guardianship or conservatorship, a guardian, a conservator, or other person with an interest in the welfare of such an adult,

(b) the receipt of a written communication from an adult subject to guardianship or conservatorship, a guardian, a conservator, or other person with an interest in the welfare of such an adult indicating that termination or modification may be appropriate,

(c) a report from a guardian or a conservator, or

(d) the court's determination that such a hearing would be in the best interest of an adult subject to guardianship or conservatorship.

4.29. A person seeking termination has the burden of making a prima facie showing that the guardianship or conservatorship should be terminated. If such a showing is made, the guardian, the conservator, or other person resisting termination has the burden of going forward to prove by clear and convincing evidence that the guardianship or conservatorship should not be terminated. The burdens of proof and this standard of proof are applicable to a modification of a guardianship or conservatorship if it will result in a grant of greater powers to a guardian or conservator.

4.30. Except as otherwise ordered by the court for good cause, before terminating or modifying a guardianship or conservatorship, the court shall follow the same procedures to safeguard the rights of the adult subject to guardianship or conservatorship as apply to a petition for a guardianship or conservatorship, including the right to be represented by counsel.

IX. REMOVAL OF GUARDIANS AND CONSERVATORS

4.31. The court should continue to be authorized to remove a guardian or conservator for failure to perform his or her duties, or for other good cause, and appoint a successor guardian or conservator.

4.32. The Iowa Code and/or a court rule should provide that the court may conduct a hearing to determine whether removal of a guardian or conservator is appropriate upon:

(a) the filing of a petition by a person subject to guardianship or conservatorship, a guardian, a conservator, or other person with an interest in the protected person's welfare,

(b) the receipt of a written communication from a protected person, a guardian, a conservator, or other person with an interest in the protected person, indicating that removal may be appropriate, or

(c) the court's determination that such a hearing would be in the best interest of the protected person.

4.33. A protected person subject to guardianship or conservatorship seeking to remove a guardian or conservator should be entitled to be represented by counsel in accordance with Recommendation 1.26 in Part One of this Report.

PART FIVE: ADMINISTRATION OF GUARDIANSHIP & CONSERVATORSHIP SYSTEM

I. ORGANIZATION AND STAFFING OF GUARDIANSHIP AND CONSERVATORSHIP SYSTEM

A. *Probate Court Jurisdiction and Assignment of Judges*

5.1. In allocating judicial resources to guardianship and conservatorship proceedings and to monitoring of guardianships and

conservatorships, the following goals that constitute best practices should be given priority:

(a) Judges should have the knowledge and experience needed for decision-making with respect to guardianship and conservatorship cases and should have the opportunity to develop expertise with respect to these cases over time.

(b) There should be continuity and consistency in judicial decision-making with respect to guardianship and conservatorship cases.

5.2. Options for accomplishment of the foregoing goals that constitute recognized best practices include the following options:

(a) Consideration in each judicial district should be given to individual assignment of probate court guardianship and conservatorship cases to judges, i.e., a specific case or cases is assigned to a single judge who follows the case over time. In an individual assignment system, cases should be screened, and priority for individual assignment of a case should be given to those cases that warrant a higher level of court monitoring.

(b) Consideration in each judicial district should be given to the assigning of a judge or judges, including judges with senior status, to handle all guardianship and conservatorship matters, full or part-time, on an ongoing basis for a specified period of time. Such assignment of a judge or judges may be made either for one or more counties within a district or district-wide depending upon guardianship and conservatorship caseloads.

B. Juvenile Court Jurisdiction and Assignment of Judges to Minor Guardianship Cases

5.3. The Iowa Code should be amended so as to transfer the jurisdiction of minor guardianship cases from the Probate Court to the Juvenile Court and to create a new Juvenile Court jurisdictional category of "child in need of guardianship proceedings." In accordance with the Juvenile Court's "one judge one family" principle, minor guardianship cases should be individually assigned to a Juvenile Court judge, and the judge, who grants a minor guardianship petition, should generally monitor the case over time. The Task recommends that the Probate Court continue to have jurisdiction over minor conservatorship cases and case involving both a conservatorship and a guardianship for a minor.

C. Clerks of Court and Their Staffs and Auditors

5.4. The staffing of the offices of Clerks of Court should be adequate and appropriate to ensure effective and efficient management of guardianship and conservatorship caseloads.

5.5. The district court administrator in each district should designate clerks with knowledge and experience in the management of guardianship and conservatorship caseloads to provide assistance to other clerks of court and their staffs in one or more counties within a district.

5.6. The staffing needed at the clerk level to assist judges in reviewing conservators' inventories, initial financial management plans, annual reports and accountings should be identified and resources allocated for such staffing. Consideration should be given to creating specialized clerk positions to assist judges in these reviews. Clerks in these positions should receive needed training in the review of inventories, initial financial management plans, annual reports and accountings.

5.7. In accordance with Recommendations 4.16-4.17, the Iowa Judicial Branch should develop a pilot project to improve the ability of the court to monitor conservatorships that should include an audit unit staffed by persons with accounting expertise.

D. Volunteer Monitoring Programs and Volunteer Guardian and Conservator Assistance Programs

5.8. Volunteer programs that provide education and assistance to guardians and conservators and volunteer programs that provide assistance to the court in monitoring guardianships and conservatorships should be developed.

(a) Court-sponsored volunteer programs, modeled on the Iowa Guardianship and Conservatorship Assistance & Monitoring Pilot Project, in which law, business, and social work students participate, should be developed for interested judicial districts in collaboration with the University of Iowa College of Law and the Drake University School of Law. Such programs should provide education and assistance to guardians and conservators and/or provide assistance to the court in monitoring guardianships and conservatorships.

(b) Court-sponsored or court-managed programs utilizing community volunteers (e.g., AARP Iowa members) should be developed. Such programs should provide education and assistance to guardians and conservators and/or provide assistance to the court in monitoring

guardianships and conservatorships.

(c) Consideration should be given to the development of programs utilizing attorneys to assist the court in monitoring guardianships and conservatorships.

II. EDUCATION AND TRAINING OF JUDICIAL BRANCH PERSONNEL, GUARDIANS AND CONSERVATORS, AND OTHER PARTICIPANTS IN GUARDIANSHIP AND CONSERVATORSHIP PROCEEDINGS

A. Judicial Branch Personnel

District Court Judges and Associate District Court Judges

5.9. The Iowa Judicial Branch should ensure that specialized orientation and education is made available for district court judges and associate district court judges at the time of their appointment to prepare them to carry out their duties and responsibilities with respect to guardianship and conservatorship cases.

5.10. The Iowa Judicial Branch should ensure that specialized continuing education is made available to district court judges and associate district court judges, after their appointment, to assist them in carrying out their duties and responsibilities with respect to guardianship and conservatorship cases.

5.11. The Iowa Judicial Branch should encourage the participation of judges in relevant continuing education programs with respect to guardianship and conservatorship cases, at least annually, in accordance with National Probate Court Standard 2.3.4.

5.12. Methods of education for judges should include, but should not be limited to, the following:

(a) the Probate Bench Book and other materials, which are disseminated in both written and electronic form and are updated periodically,

(b) webinars, websites, videos, and other appropriate technologies, and

(c) in-person educational sessions and meetings.

5.13. The Judicial Branch should identify and collaborate with other possible sources of needed education for judges including, but not limited to the following:

(a) the Iowa Judges Association,

(b)law schools such as the University of Iowa College of Law and the Drake University School of Law and other institutions of higher learning, and

(c)national providers of judicial education such as the National College of Probate Judges, the National Judicial College, and the National Center on State Courts.

Clerks of Court and their staffs and District Court Administrators and their staffs

5.14. The Iowa Judicial Branch should ensure that specialized education is made available for clerks of court and their staffs and for district court administrators and their staffs to prepare and assist them in carrying out their duties and responsibilities with respect to guardianship and conservatorship cases.

5.15. Methods of education for court staff should include, but not be limited to, the following:

(a)the Probate Section of the Clerk's Manual and other written materials, which are updated periodically,

(b)webinars, websites, videos, and other appropriate technologies, and

(c) in-person educational sessions and meetings.

5.16. The Judicial Branch should identify and collaborate with other possible sources of needed education for court staff including, but not limited to the following:

(a)the Iowa Clerk's Association,

(b)state educational institutions such as the University of Iowa College of Law and the Drake University School of Law, and

(c)national providers of education for court staff such as the National Association for Court Management and the Institute for Court Management and National Center on State Courts.

B. Guardians and Conservators

5.17. The Iowa Judicial Branch should ensure that guardians and conservators are provided sufficient ongoing multi-faceted education and training to achieve the highest quality of guardianship and conservatorship services possible.

5.18. At the time of appointment and thereafter, guardians should be provided, at a minimum, education and training regarding:

(a) their legal duties and responsibilities as guardians, including, but not limited to, the requirement that they prepare and file initial care plans, and annual reports, and that they obtain prior court approval for specified decisions and actions,

(b) applicable standards of practice for guardians,

(c) information about the availability of benefits and services for persons under guardianship, and

(d) possible sources of assistance in carrying out their duties and responsibilities as guardians.

5.19. At the time of appointment and thereafter, conservators should be provided at a minimum education and training regarding:

(a) their legal duties and responsibilities as conservators, including but not limited to, the requirement that they prepare and file an initial financial management plan and inventory, and that they prepare and file annual reports and accountings, and that they obtain prior court approval for specified decisions and actions,

(b) applicable standards of practice for conservators, and

(c) possible sources of assistance in carrying out their duties and responsibilities as conservators.

5.20. Needed education and training should be made available to guardians and conservators through a variety of methods including written materials, websites, videos, social media, and in-person educational sessions and meetings.

5.21. The Iowa Judicial Branch should ensure that guardians and conservators are provided with the assistance they may need to fulfill their duties and responsibilities to persons subject to guardianship and conservatorship and to the court.

5.22. In providing and arranging for the provision of education and assistance to guardians and conservators, the Judicial Branch should collaborate with and take advantage of resources from other appropriate entities.

C. Other Participants in Guardianship and Conservatorship System

5.23. Attorneys should receive continuing legal education to prepare

and assist them to represent parties in guardianship and conservatorship proceedings from providers of continuing legal education including, but not limited to, the Iowa State Bar Association, the Iowa Academy of Trust and Estate Counsel, the University of Iowa College of Law and the Drake University School of Law.

5.24. The Iowa Judicial Branch should collaborate with other interested organizational entities to provide or arrange for the provision of needed education for individuals serving as court visitors.

III. GUARDIANSHIP AND CONSERVATORSHIP DATA, FILES, AND FORMS

A. Data Collection, Analysis and Reporting

5.25. The Iowa Judicial System should collect, analyze, and report state level data regarding guardianship and conservatorship cases to promote effective and efficient management and improvement of the guardianship and conservatorship system and to promote the transparency and accountability of the system.

B. Maintenance of Updated Files

5.26. Statewide policies and procedures should be developed for annual review and updating of guardianship and conservatorship case files in order to ensure that they are current and to ensure the closure or transfer of cases as needed and appropriate. The periodic review and updating of case files should be the responsibility of the chief district court judge and the administrative judges for counties within a district.

5.27. Upon the appointment of guardians and conservators, the court should inform them that they must notify the court promptly of any change in their address and contact information within the judicial district, the state, or outside the state.

C. Revision of Existing Forms and Development of New Standardized Forms

5.28. The Supreme Court should create a committee, or some other entity, to revise existing standardized forms and to develop new forms that reflect the recommendations of the Guardianship and Conservatorship Reform Task Force. Forms and form instructions should be developed and revised in collaboration with representatives from other appropriate major stakeholders, and these forms and instructions, particularly those for use by lay persons not represented by attorneys, should be user-friendly.

IV. GUARDIANSHIP AND CONSERVATORSHIP PROGRAMS AND INITIATIVES

A. Public Guardianship and Conservatorship Programs

5.29. Public guardians and conservators should be made available as needed at the local level in each of Iowa's judicial districts.

5.30. In order to meet the need for public guardians and conservators, volunteers should be recruited, trained, and supported to serve as public guardians and conservators. Statewide standards with respect to the qualifications and training of volunteers serving as public guardians and conservators should be developed. Resources for needed legal assistance and other types of assistance should be made available to volunteers serving as public guardians and conservators.

5.31. State funding should be provided to the Iowa Judicial Branch for the administration of a public guardian and conservator program for adults. Utilization of such funding to subcontract with appropriate entities and individuals for public guardianship and conservatorship services in each judicial district should be explored.

5.32. A public guardianship and conservatorship program should be developed for minors. Consideration should be given to designation of the Iowa Child Advocacy Board to develop a public guardianship and conservatorship program for minors.

B. Guardian and Conservator Certification Program

5.33. The Iowa Judicial Branch (State Court Administration) should consider contracting with the Center on Guardianship Certification for certification of professional guardians and conservators, public guardians and conservators, and volunteers serving in multiple cases.

C. Citizen Complaint Process

5.34. The Judicial Branch should establish a clear and easy to use citizen complaint process for communicating concerns to the court about guardianships and conservatorships and the performance of guardians and conservators. The process should outline circumstances under which a court can receive *ex parte* communications. Following the appointment of a guardian or conservator, the court should provide a description of the process to the person subject to guardianship or conservatorship, the guardian or conservator, and to all persons who received notice of the original petition.

5.35. The Judicial Branch and the Department of Human Services (DHS) should collaborate in the development of protocols for Judicial Branch personnel as to the reporting to DHS of suspected cases of “dependent adult abuse” and “child abuse” of persons subject to guardianship and conservatorship.

D. Mediation of Contested Guardianship and Conservatorship Cases

5.36. Court-ordered referral of a contested guardianship or conservatorship case to mediation should be authorized by statute and/or a court rule.

5.37. Court rules should set forth requirements to ensure the competence and accountability of mediators, including adherence to accepted ethical standards. The extensive experience of other state court-connected civil mediation programs and the Polk County Probate Court mediation pilot project should be looked to in such rule development.

5.38. Court rules should set forth what cases are eligible for referral to mediation and the procedure(s) for referring cases to mediation.

5.39. Each Judicial District should identify, to the extent possible, resources for the administration and funding of mediation services with the goal of eventually establishing a statewide program of mediation services under the auspices of the Iowa Judicial Branch in collaboration with other appropriate organizational entities.

PART SIX: CLINICAL EVALUATIONS & JUDICIAL CAPACITY
DETERMINATIONS

I. BACKGROUND

*A. JUDICIAL NEED FOR CLINICAL EVALUATIONS IN
GUARDIANSHIP AND CONSERVATORSHIP PROCEEDINGS*

B. Resource Committee Findings

II. FRAMEWORK FOR JUDICIAL DETERMINATIONS AND PROFESSIONAL
CLINICAL EVALUATIONS

6.1. Judges should become familiar with and consider utilizing the framework for the determination of the capacity of a person in guardianship or conservatorship proceedings developed by a Working

Group of the American Bar Association, the American Psychological Association and the National College of Probate Judges.

6.2. In order to make informed capacity determinations in accordance with statutory criteria, judges should be provided with information based on evaluations that employ accepted and validated procedures, methodologies, and tools that are appropriate for the person being assessed.

6.3. Evaluations should be conducted by qualified professionals with training and experience in the use of such procedures, methodologies, and tools that are appropriate for the person being assessed.

III. COURT-ORDERED EVALUATIONS

6.4. The Iowa Code should authorize the court to order an evaluation of the decision-making capacity and functional limitations and abilities of a person for the purpose of determining whether to appoint a guardian or a conservator for the person and for the purpose of determining whether to establish a full or a limited guardianship or conservatorship for the person.

6.5. The Iowa Code should authorize the court to order an evaluation of the decision-making capacity and functional limitations and abilities of an adult for whom a guardianship or conservatorship has been established for the purpose of determining whether the guardianship or conservatorship should be continued, modified, or terminated.

6.6. A court-ordered professional evaluation should be confidential and should be sealed subject to the following exceptions:

(a) In a proceeding to establish a guardianship or conservatorship, a court-ordered professional evaluation should be made available to:

(i) the court,

(ii) the respondent,

(iii) the petitioner,

(iv) the respondent's attorney and the petitioner's attorney for purposes of the proceeding,

(v) a court visitor, and

(vi) other persons for good cause shown and for such purposes as the court may order.

(b) In a proceeding to determine whether a guardianship or conser-

vatorship should be, continued, modified or terminated, the court may grant access to the evaluation for good cause shown and for such purposes as the court may order.

6.7. The Judicial Branch should adopt a standardized form for the collection and synthesis of relevant and needed professional evaluation information.

IV. COURT-ORDERED PRODUCTION OF EXISTING EVALUATION DOCUMENTS

6.8. The Iowa Code should authorize the court to order the production of existing documents containing the results of a professional evaluation of the decision-making capacity and functional limitations and abilities of an adult for the purpose of determining whether to grant a guardianship or a conservatorship petition and for the purpose of determining whether to establish a full or a limited guardianship or conservatorship.

6.9. The Iowa Code should authorize the court to order the production of the results of a professional evaluation of the decision-making capacity and functional limitations and abilities of an adult for whom a guardianship or conservatorship has been established for the purpose of determining whether the guardianship or conservatorship should be continued, modified, or terminated.

6.10. Any document containing professional evaluation information and produced pursuant to court order should be confidential and should be sealed subject to the following exceptions:

(a) In a proceeding to establish a guardianship or conservatorship, any document containing professional evaluation information and produced pursuant to court order should be made available to:

(i) the court,

(ii) the respondent,

(iii) the petitioner,

(iv) the respondent's attorney and the petitioner's attorney for purposes of the proceeding,

(v) a court visitor, and

(vi) other persons for good cause shown and for such purposes as the court may order.

(b) In a proceeding to determine whether a guardianship or conservatorship should be continued, modified or terminated, the court may grant access to the evaluation for good cause shown and for such purposes as the court may order.

6.11. If directed by the court, the duties of a court visitor should include the review and synthesis of professional evaluation information and the incorporation of such information in the aforementioned standardized form.

V. EDUCATION OF JUDGES AND ATTORNEYS AND AVAILABILITY AND
EDUCATION OF PROFESSIONALS TO CONDUCT EVALUATIONS

6.12. Judges who must make capacity determinations should be provided education including, but not limited to:

(a) accepted assessments procedures, methods, and tools for the type of populations that are subject to guardianship and conservatorship proceedings, and

(b) interpretation and use of information about decision-making capacity and functional abilities and limitations of an adult generated by an evaluation conducted by a qualified professional.

6.13. Attorneys who represent respondents and persons subject to guardianship and conservatorship proceedings should be provided education including, but not limited to:

(a) accepted assessments procedures, methods, and tools for the type of populations that are subject to guardianship and conservatorship proceedings.

(b) interpretation and use of information about decision-making capacity and functional abilities and limitations of an adult generated by evaluations conducted by qualified professionals.

6.14. An education program should be developed and implemented to expand the pool of clinicians and practitioners, especially in rural and other underserved areas, who are qualified to conduct evaluations that can provide needed information to courts regarding the decision-making capacity and functional abilities and limitations of adults for the purpose of guardianship and conservatorship proceedings.