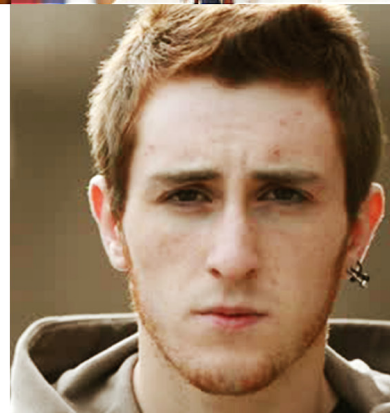
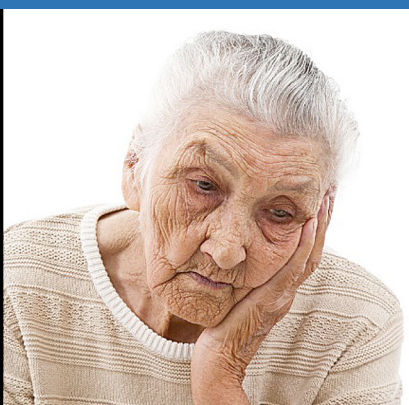

Reforming Iowa's Guardianship and Conservatorship System



IOWA
GUARDIANSHIP AND CONSERVATORSHIP
REFORM TASK FORCE

FINAL REPORT

AUGUST 2017

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PREFACE AND ACKNOWLEDGEMENTS

As of 2016, more than 22,000 vulnerable Iowans—both adults and minors—were subject to guardianships and conservatorships. The Iowa Supreme Court established the Guardianship and Conservatorship Reform Task Force to address the challenges that the Iowa guardianship and conservatorship system faces now and will face in the future in meeting the needs of vulnerable Iowans who lack the ability to make decision for themselves and are in need of care and protection.

This Final Report of the Iowa Guardianship and Conservatorship Task Force presents 232 recommendations to reform the Iowa guardianship and conservatorship system. These recommendations provide a comprehensive roadmap for future directions of the system.

The Task Force recommendations are the product of the efforts of more than 70 individuals who served as members of the Task Force Steering Committee, the five Task Force Work Groups, and the Task Force Committee on Clinical Evaluation. The Task Force brought together representatives of the many stakeholders in the guardianship and conservatorship system—judges, other judicial branch personnel, attorneys, guardians and conservators, advocates for individuals with disabilities, mental illnesses and brain injuries, advocates for older individuals with Alzheimer’s and other dementias, staffs of state and local agencies, clinicians and service providers, and legal academics.

The Task Force benefited greatly from the knowledge, the experience, and the diversity of perspectives that individuals who served as members of the Task Force brought to its deliberations and the development of its recommendations. Judges Myron Gookin, Kathleen Kilnoski, Jeffrey Larson, Kellyann Lekar, and Stuart Werling, who served as Work Group chairs, are to be commended for their commitment to the work of the Task Force and the leadership they provided to the five Work Groups. Justice Bruce Zager, who served as Chair of the Task Force Steering Committee, likewise is to be commended for his commitment to the work of the Task Force and the leadership that he provided to the Task Force as a whole.

Finally, we wish to acknowledge the contribution of the University of Iowa College of Law and the Drake University School of Law to the work of the Task Force. The support of these law schools made possible our participation in the Task Force. Additionally, and most importantly, the University of Iowa College of Law made funding available for the Task Force’s Iowa Guardianship and Conservatorship Summit and its Final Plenary Meeting.

Josephine Gittler, Task Force Coordinator and Reporter
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August 12, 2017

TABLE OF CONTENTS

INTRODUCTION	1
I. OVERVIEW: IOWA GUARDIANSHIP & CONSERVATORSHIP SYSTEM	1
II. OVERVIEW OF THE IOWA GUARDIANSHIP & CONSERVATORSHIP REFORM TASK FORCE	2
A. Establishment of the Task Force	2
B. Task Force Organization and Membership	3
C. Task Force Activities	4
III. TASK FORCE RECOMMENDATIONS	5
IV. TASK FORCE FINAL REPORT	7
PART ONE: ESTABLISHMENT OF ADULT GUARDIANSHIPS & CONSERVATORSHIPS	11
I. REVISION OF IOWA CODE PROVISIONS REGARDING ESTABLISHMENT OF ADULT GUARDIANSHIPS AND CONSERVATORSHIPS.....	11
II. TERMINOLOGY	13
III. GUARDIANSHIP/CONSERVATORSHIP ALTERNATIVES AND LIMITED GUARDIANSHIPS	14
A. Use of Less Restrictive/Intrusive Alternatives to Guardianships and Conservatorships	14
B. Use of Limited Guardianships and Conservatorships.....	15
C. Minors with Intellectual Disabilities Transitioning to Adult Status	19
IV. VOLUNTARY GUARDIANSHIPS AND CONSERVATORSHIPS	19
V. PETITION AND NOTICE	21
A. Petition	21
B. Notice	24
VI. HEARING REQUIREMENTS	25
VII. COUNSEL FOR RESPONDENT AND COURT VISITOR (GUARDIAN AD LITEM)	27
A. Distinction Between Counsel for Respondent and Court Visitor (Guardian Ad Litem)	27

B. Counsel for Respondent	28
C. Court Visitor	29
VIII. STANDBY PETITIONS AND EMERGENCY PETITIONS	32
A. Standby Petitions for Appointment of Guardians and Conservators	32
B. Emergency Appointment of Temporary Guardian or Conservator	33
IX. ORDERS OF APPOINTMENT AND GUIDANCE FOR NEWLY APPOINTED	
GUARDIANS AND CONSERVATORS.....	34
PART TWO: ESTABLISHMENT OF MINOR GUARDIANSHIPS & CONSERVATORSHIPS	39
PART ONE A: ESTABLISHMENT OF MINOR GUARDIANSHIPS.....	39
I. STATUTORY CRITERIA FOR MINOR GUARDIANSHIPS	39
A. Specification of Statutory Criteria	39
B. Termination of Parental Rights, Death of Parents and Nomination of Guardian by Will	40
C. Appointment of a Guardian with Parental Consent.....	40
D. Appointment of Guardian without Parental Consent.....	42
II. PETITION AND NOTICE	45
A. Petition	45
B. Notice	47
III. HEARING REQUIREMENTS.....	48
IV. COUNSEL FOR MINOR, COURT VISITOR, AND COUNSEL FOR MINOR PARENTS	49
A. Counsel for Minor.....	49
B. Court Visitor	50
C. Counsel for Parents of Minor	51
V. EMERGENCY APPOINTMENT OF TEMPORARY GUARDIAN FOR A MINOR	52
PART ONE B: ESTABLISHMENT OF MINOR CONSERVATORSHIPS	53
I. APPLICABILITY OF LAW AND PRACTICES FOR ADULT CONSERVATORSHIPS	
TO MINOR CONSERVATORSHIPS.....	53

II. STATUTORY CRITERIA FOR MINOR CONSERVATORSHIPS	54
III. MINOR CONSERVATORSHIP PETITION	54
PART ONE C: ALTERNATIVES TO ESTABLISHMENT OF MINOR GUARDIANSHIPS	
AND CONSERVATORSHIPS: PARENTAL POWERS OF ATTORNEY	55
PART THREE: GUARDIANS & CONSERVATORS FOR ADULTS AND MINORS:	
QUALIFICATIONS/DUTIES/STANDARDS	59
I. BACKGROUND	59
II. GUARDIANS AND CONSERVATORS AND APPOINTMENT	61
A. Background Checks of Prospective Guardians and Conservators	61
B. Conservator Bonds and Alternatives to Bonds	63
C. Certification of Guardians and Conservators	65
D. Appointment of Guardians and Conservators for Adults and Minors	66
III. DUTIES AND STANDARDS OF PRACTICE FOR GUARDIANS AND CONSERVATORS	68
A. Statutory Duties and Court Rules	68
B. Relationship of Guardians and Conservators with the Court	69
C. Core Duties and Standards of Practice	70
D. Guardian Residential Decision-Making	73
E. Guardian Health Care Decision-Making	76
F. Conservator Financial Decisions and Management	79
IV. GUARDIAN AND CONSERVATOR FEES	82
PART FOUR: COURT MONITORING ADULT & MINOR GUARDIANSHIPS &	
CONSERVATORSHIPS	89
I. BACKGROUND	89
II. GENERAL COURT MONITORING STANDARDS	90
III. GUARDIAN’S DUTY TO REPORT TO COURT	91
A. Adult Guardianships	91

B. Minor Guardianships	95
IV. CONSERVATOR'S DUTY TO REPORT TO COURT	96
V. CONSERVATORSHIP ACCOUNTABILITY PROJECT	98
VI. WAIVERS OF FILING REQUIREMENTS, EXTENSIONS OF TIME FOR FILING, AND ENFORCEMENT OF FILING REQUIREMENTS	101
VII. GUARDIAN POWERS AND DECISIONS REQUIRING PRIOR COURT APPROVAL.....	103
A. Prior Court Approval for Guardian Residential Decision-Making for Adults Subject to Guardianship	103
B. Prior Court Approval for Guardian Health Care Decision-Making for Adults Subject to Guardianship	104
VIII. TERMINATION AND MODIFICATION OF GUARDIANSHIPS AND CONSERVATORS.....	106
IX. REMOVAL OF GUARDIANS AND CONSERVATORS.....	110
PART FIVE: ADMINISTRATION OF GUARDIANSHIP & CONSERVATORSHIP SYSTEM.....	117
I. ORGANIZATION AND STAFFING OF GUARDIANSHIP AND CONSERVATORSHIP SYSTEM.....	117
A. Probate Court Jurisdiction and Assignment of Judges	117
B. Juvenile Court Jurisdiction and Assignment of Judges to Minor Guardianship Cases	120
C. Clerks of Court and Their Staffs and Auditors	123
D. Volunteer Monitoring Programs and Volunteer Guardian and Conservator Assistance Programs	124
II. EDUCATION AND TRAINING OF JUDICIAL BRANCH PERSONNEL, GUARDIANS AND CONSERVATORS, AND OTHER PARTICIPANTS IN GUARDIANSHIP AND CONSERVATORSHIP PROCEEDINGS	127
A. Judicial Branch Personnel.....	127
B. Guardians and Conservators	129
C. Other Participants in Guardianship and Conservatorship System	131
III. GUARDIANSHIP AND CONSERVATORSHIP DATA, FILES, AND FORMS	132
A. Data Collection, Analysis and Reporting	132

B. Maintenance of Updated Files	133
C. Revision of Existing Forms and Development of New Standardized Forms.....	135
IV. GUARDIANSHIP AND CONSERVATORSHIP PROGRAMS AND INITIATIVES	136
A. Public Guardianship and Conservatorship Programs.....	136
B. Guardian and Conservator Certification Program.....	140
C. Citizen Complaint Process	141
D. Mediation of Contested Guardianship and Conservatorship Cases	142
PART SIX: CLINICAL EVALUATIONS & JUDICIAL CAPACITY DETERMINATIONS	151
I. BACKGROUND	151
A. Judicial Need for Clinical Evaluations in Guardianship and Conservatorship Proceedings.....	151
B. Resource Committee Findings.....	151
II. FRAMEWORK FOR JUDICIAL DETERMINATIONS AND PROFESSIONAL CLINICAL EVALUATIONS	153
III. COURT-ORDERED EVALUATIONS	155
IV. COURT-ORDERED PRODUCTION OF EXISTING EVALUATION DOCUMENTS	157
V. EDUCATION OF JUDGES AND ATTORNEYS AND AVAILABILITY AND EDUCATION OF PROFESSIONALS TO CONDUCT EVALUATIONS.....	159
APPENDICES.....	A:1
A. Josephine Gittler, The Iowa Guardianship and Conservatorship Study	A:3
B. Iowa Supreme Court (January 14, 2015).....	A:19
C. Erica Wood, Past and Current Paths to Improving Guardianship	A:25
D. Iowa Supreme Court Order (August 28, 2015).....	A:47
E. Task Force Work Groups, Assignments and Membership	A:53
F. Task Force Resource Committee on Clinical Evaluation, Membership.....	A:61
G. Task Force Request for Input.....	A:65
H. Iowa Guardianship and Conservatorship Summit Program	A:69

I. Task Force Plenary Meeting Program	A:79
J. Initial Care Plan for Adult, Model Form.....	A:83
K. Annual Report for Adult, Model Form	A:89
L. Initial Care Plan for Minor, Model Form	A:95
M. Annual Report for Minor, Model Form	A:101

INTRODUCTION

I. OVERVIEW OF THE IOWA GUARDIANSHIP AND CONSERVATORSHIP SYSTEM

Iowa, like all states, has a guardianship and conservatorship system administered by the judicial branch of government. Guardianship has its roots in the doctrine of *parens patriae*, which can be traced back to 14th century England and the Crown's assertion of its power to protect the person and property of "idiots," "lunatics," and "minor heirs" by making them wards of the crown.⁽¹⁾ This doctrine eventually became the basis for the power of American courts to appoint guardians and conservators for vulnerable adults and minors.

The Iowa Code authorizes the court to appoint guardians and conservators for adults who lack decision-making capacity resulting in their inability to manage their personal and financial affairs. The Code also authorizes the court to appoint guardians and conservators for minors. The court-appointed guardian makes decisions about the care of the person subject to guardianship, and the court-appointed conservator makes decisions about the property and finances of the person subject to conservatorship.

The institution of adult guardianship and conservatorship has been characterized as having two faces: "It is protective yet oppressive, an instrument of beneficence that can at the same time bring a dire loss of rights."⁽²⁾

The Iowa Code provides the legal framework for the establishment of guardianships and conservatorships. The filing of a petition for appointment of a guardianship, a conservatorship, or both initiates the court process. There are statutory criteria that the court must determine are met by clear and convincing evidence in order to grant a guardianship or conservatorship petition.

Once established, the court is responsible for ongoing monitoring to ensure that protected persons are receiving proper care, that their property and finances are being managed properly, and that they are protected from abuse, neglect, and financial exploitation. The primary vehicle for monitoring is the court's review and approval of annual reports from guardians and annual reports together with accountings from conservators. In connection with the monitoring function, the court also may have to

determine whether a guardianship or conservatorship should be terminated or modified and whether a guardian or conservator should be removed.

The population subject to guardianships and conservatorships is a highly vulnerable population because it is made up of persons who are unable to care for and protect themselves. Many adults subject to guardianship and conservatorship have intellectual disabilities, Alzheimer's, and other dementias that put them particularly at risk for abuse, neglect and financial exploitation.⁽³⁾

In 2016, there were 22,754 Iowans subject to guardianships and conservatorships.⁽⁴⁾ It appears probable that guardianship and conservatorship case-loads will increase because of Iowa's large and growing aging population that suffers disproportionately from Alzheimer's and other conditions leading to the need for guardianships and conservatorships.⁽⁵⁾

While the number of pending, or open, guardianship and conservatorship cases is known, other basic data about the guardianship and conservatorship system has been limited. To obtain such data, Professor Josephine Gittler and her research assistants at the University of Iowa College of Law undertook a study of the system involving the review of over 4,000 guardianship and conservatorship case files. Appendix A contains a description of the study and its findings regarding guardianship and conservatorship proceedings, characteristics of persons subject to guardianships and conservatorships, and characteristics of guardians and conservators.⁽⁶⁾

II. OVERVIEW OF THE IOWA GUARDIANSHIP AND CONSERVATORSHIP REFORM TASK FORCE

A. ESTABLISHMENT OF THE TASK FORCE

On January 15, 2015, the Iowa Supreme Court issued an order establishing the Guardianship and Conservatorship Reform Task Force. 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."⁽⁷⁾

The Task Force is one of many efforts to reform state guardianship and conservatorship systems at both the national and state levels. The original impetus for these efforts—a series of media stories, reports and congressional hearings exposing the 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.⁽⁸⁾ In recent years, national judicial and court management organizations have been active advocates for reform.⁽⁹⁾ As of 2015, reform task forces, commissions, committees, etc., had been formed, often under the aegis of the judicial branch of government, in 25 states.⁽¹⁰⁾

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 laws and practices in other jurisdictions including standards and recommendations of national organizations,
- Develop recommendations for effective and efficient guardianship laws, practices, and procedures, and
- Develop recommendations to foster continuous improvement to the guardianship and conservatorship system to ensure it is responsive to future generations of Iowans.⁽¹¹⁾

B. TASK FORCE ORGANIZATION AND MEMBERSHIP

The Task Force was comprised of a Steering Committee, five Work Groups and the Resource Committee on Clinical Evaluation, the membership of which totaled seventy-two individuals from throughout the state.

The Task Force Steering Committee was responsible for overseeing the organization and activities of the Task Force. Justice Bruce Zager chaired the Steering Committee. Its members included judges, who had knowledge of and experience with the guardianship and conservatorship system, and representatives of the University of Iowa College of Law (Iowa Law) and the Drake University School of Law (Drake Law), which furnished extensive staff support and funding for the Task Force.

The five Task Force Work Groups were responsible for identifying issues and problems and for developing recommendations to address these issues and problems in several main areas. They included: (1) establishment of adult guardianships and conservatorships, (2) qualifications, duties and responsibilities of guardians and conservators, (3) court monitoring of adult guardianships and conservatorships, (4) minor guardianships and conservatorships, and (5) administration of the guardianship and conservatorship system.

The members of the Work Groups were a reflection 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.⁽¹²⁾

Judges chaired each of the five Work Groups, and Professor Josephine Gittler of the Iowa Law faculty and Professor Jerry Foxhoven of the Drake Law faculty acted as coordinators and reporters for each of the five Work Groups.

The Resource Committee on Clinical Evaluations was responsible for identifying issues and problems and 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. The Committee members were recognized experts in the clinical evaluation of decision-making capacity and functional limitations and abilities.⁽¹³⁾

C. TASK FORCE ACTIVITIES

In August and September of 2015, the Steering Committee widely circulated a request for suggestions and proposals for improvement of the guardianship and conservatorship system from any interested party.⁽¹⁴⁾ The Steering Committee solicited both written and oral testimony for a hearing on September 14, 2015 in Des Moines and for a hearing on September 23, 2015 in Iowa City.

In October of 2015, a Task Force website was created at Iowa Law to which all members of the Steering Committee, Work Groups and Resource Committee were afforded access. Resource materials such as national standards and model acts, state statutory surveys, reports of state reform task force studies, and reports were posted periodically on the website. The website also became a repository for the documents and materials of the Steering Committee, the Work Groups and the Resource Committee.

On October 29 and 30 of 2015, the Iowa Guardianship and Conservatorship Summit was held in Des Moines for members of the Steering Committee and Work Groups.⁽¹⁵⁾ The Summit was designed to furnish a foundation and broader context for Steering Committee and Work Group members. It featured recognized national experts on guardianship and conservatorship reform, and 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.

In January of 2016, the process of developing Task Force recommendations began. During the fifteen month period from January of 2016 to March of 2017, Work Group and Resource Committee members participated in 54 conference calls, responded to 23 e-mail surveys and reviewed 111 issue memos. In March of 2017, the preliminary recommendations developed by each Work Group were distributed to all Work Group members for their review and comments.

On April 6 and 7, 2017, the Task Force Final Plenary Meeting, attended by members of the Steering Committee, the Work Groups and the Resource Committee, was held in Des Moines.⁽¹⁶⁾ At the meeting, the chairs of each Work Group and the Resource Committee presented their recommendations for discussion and comments. After the Plenary Meeting, the comments were compiled and sent to the relevant Work Groups. During the period from May to June of 2017, the Work Groups finalized their recommendations. Professor Gittler, in her capacity as reporter for the Task Force Work Groups, assembled the final Work Group recommendations and drafted the comments to the recommendations, based on Work Group discussions and other resource materials.

III. TASK FORCE RECOMMENDATIONS

The Task Force 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. Certain overarching themes predominate in these recommendations. They can be summarized 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.

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 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 will require action by other stakeholders.

In developing recommendations, Task Force members were cognizant of the fact that the Judicial Branch has faced and is facing major budget constraints and funding shortfalls. The Task Force's focus, however, was not what could be done now with existing resources. Rather, its focus was what should be done in the short, intermediate, and long term, both with existing and additional resources.

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 the recommendations would bring about cost savings and enhance the cost-effectiveness of the system.

IV: TASK FORCE FINAL REPORT

Professor Josephine Gittler, in her capacity as Task Force reporter with the assistance of co-reporter, Professor Jerry Foxhoven, prepared the Task Force Final Report. Professor Gittler assembled the final Work Group recommendations, and she drafted the comments to the recommendations, based on Work Group discussions and resource materials. These comments, unlike the recommendations, were not reviewed and approved by the Task Force as a whole.

The Final Report is divided into five parts and appendices:

- Part One presents recommendations with comments relating to the establishment of adult guardianships and conservatorships.
- Part Two presents recommendations with comments relating to the establishment of minor guardianships and conservatorships.
- Part Three presents the recommendations with comments relating to guardian and conservator qualifications, duties, and standards of practice.
- Part Four presents recommendations with comments relating to court monitoring of guardianships and conservatorships.
- Part Five presents recommendations relating to administration of the guardianship and conservatorship system.
- Part Six presents recommendations with comments relating to clinical evaluations and judicial capacity determinations.

End Notes – Introduction

1. See Lawrence B. Custer, *The origins of the doctrine of parens patriae*, 27 Emory L.J. 195 (1978). See also Jenica Cassidy, *Restoration of rights in the termination of adult guardianship*, 23 Elder L.J. 83, 93 (2015).

2. Erica Wood, Pamela Teaster and Jenica Cassidy, ABA Commission on Law and Aging with the Virginia Tech Center for Gerontology, *Restoration of rights in adult guardianship* 6 (2017).
3. See Nora J. Baladerian, et al., Disability and Abuse Project, Spectrum Inst., *Abuse of people with disabilities: Victims and their families speak out: A report on the 2012 national survey on abuse of people with disabilities* (2013), <http://disability-abuse.com/survey/survey-report.pdf>; U.S. Dep't of Justice, *Elder justice roadmap: A stakeholder initiative to respond to an emerging health, justice, financial and social crisis* (2014), <https://www.justice.gov/elderjustice/file/829266/download>; U.S. Gov't Accountability Office, GAO-17-33, *Elder abuse: The extent of abuse by guardians is unknown, but some measures exist to help protect older adults* (2016) [hereinafter 2016 GAO Report]; U.S. Gov't Accountability Office, GAO-10-1046 *Guardianship: Cases of financial exploitation, neglect and abuse of seniors* (2010) [hereinafter 2010 GAO report]; U.S. Gov't Accountability Office, GAO-06-1086 T, *Little progress in ensuring protected for incapacitated elderly people* (2006).
4. E-mail from David K. Boyd, State Court Administrator, to Professor Josephine Gittler, Task Force Reporter, (July 6, 2017) (on file with Professor Gittler).
5. See Josephine Gittler, *The Iowa Guardianship and Conservatorship Study* in Appendix A at A:12.
6. *Id.*, at A:3.
7. The Iowa Supreme Court's order establishing the Task Force appears in Appendix B at A:19.
8. For a history of guardianship and conservatorship reform, see Sally Hurme and Erica Wood, *Introduction, Symposium, Third National Guardianship Summit: Standards of excellence*, 2012 Utah L. Rev. 1157.
9. See, e.g., Richard Van Duizend and Brenda K. Uekert (National College of Probate Court Judges), *National Probate Court Standards*, Standard 3.3.19. cmt. at 74 [hereinafter *National Probate Court Standards*]; National Association for Court Management, *Adult guardianship guide, a guide to plan, develop and sustain a comprehensive court guardianship and conservatorship program*. (2014); Nat'l Ctr. on 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*, at 3 (2016), <http://www.eldersandcourts.org/~media/Microsites/Files/cec/Guardianship%20Strategic%20Action%20Plan%202016.ashx>.
10. Erica Wood, *Iowa Guardianship and Conservatorship Summit, Past & current paths to improving guardianship* (PowerPoint presentation) (October, 2015) in Appendix C, at A:25.

11. Iowa Supreme Court order, *supra* note 7, at A:19.
12. See Iowa Supreme Court order (August 28, 2015), Appendix D at A:47; Iowa Guardianship and Conservatorship Task Force, Work Group Assignments and Membership in Appendix E, at A:53.
13. See Iowa Guardianship and Conservatorship Reform Task Force, Resource Committee on Clinical Evaluations, Membership in Appendix F, at A:61.
14. Iowa Guardianship and Conservatorship Reform Task Force, Request for Input in Appendix G, at A:65.
15. See, Iowa Guardianship and Conservatorship Summit, Program in Appendix H, at A:69.
16. See Iowa Guardianship and Conservatorship Reform Task Force, Final Plenary Meeting in Appendix I, at A:79.

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.

COMMENT

A major objective of the Task Force recommendations is to promote an optimal legal framework for the guardianship and conservatorship system in general and the establishment of guardianships and conservatorships in particular. More specifically, many of the Task Force recommendations, taken together, call for a comprehensive revision of the Iowa Probate Code provisions with respect to the establishment of guardianships and conservatorships for adults.

What the drafters of the National Probate Code Standards said about its recommended standards with respect to the establishment of guardianships and conservatorships is equally applicable to the Task Force recommendations:

The [recommended] standards . . . recognize the important liberty interests at stake in a guardianship/conservatorship proceeding and the due process protections appropriately afforded a respondent in conjunction with such a proceeding. These standards also recognize, however, that the great majority of these cases are not contested and that they are initiated by people of goodwill who are in good faith seeking to assist and protect the respondent. Indeed, the initiating petition may have been filed at the behest of or even by the respondent. Furthermore, in the great

majority of guardianship/conservatorship proceedings, the outcome serves the best interests of the respondent and an appointed guardian/conservator acts in the respondent's best interests. Nevertheless, the procedural protections described . . . are needed to protect the significant liberty interests at stake in these proceedings, and attempt to minimize, to the greatest extent possible, the potential for error and to maximize the completeness and accuracy of the information provided to probate courts.

Because it is the respondent's property rather than the respondent's personal liberty that is the subject of a conservatorship proceeding, the importance of this proceeding to the respondent is sometimes overlooked. Nevertheless, because diminished access to his or her property may dramatically affect the way in which the respondent lives, a conservatorship proceeding may have critical implications for the respondent. The [recommended] standards in this category are intended to ensure that the respondent's interests receive appropriate protection from probate courts while responding appropriately to the needs of the parties appearing before the court.⁽¹⁾

At the outset, Task Force members decided not to recommend revision of the Iowa Code provisions regarding the criteria, or basis, for appointment of guardians and conservators. Under Iowa Code sections 633.3(23)(a) and 633.552(2)(a), the court may appoint a guardian for a person whose "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." Under Iowa Code sections 633.3(23)(b) and 633.566(2)(a), the court may appoint a conservator for a person whose "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."

Task Force members, however, did decide to recommend revision of the Iowa Code provisions regarding the process and procedures for the establishment of guardianships and conservatorships. In the 1995 landmark decision, *In re Guardianship of Hedin*,⁽²⁾ the Iowa Supreme Court held that procedural due process protections should be afforded to persons alleged to be in need of guardianships and conservatorships. In response to the *Hedin* decision, the Probate Code was amended to extend procedural due process protections to such persons. Task Force members concluded that some of these provisions needed to be further amended to address issues and problems that have arisen in connection with guardianships and conservatorship proceedings.

Additionally, Task Force recommendations for amendments to the Iowa Probate Code are directed at making it easier to understand not only by judges, other court staff, and attorneys, but also by lay people who have an interest in the statutory law governing the establishment of guardianships and conservatorships. They include petitioners for guardianships and conservatorships, respondents to petitions and their family members and friends, clinicians and providers of services to respondents, and other stakeholders in the guardianship and conservatorship system.

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.

COMMENT

The Iowa Code currently uses the term “ward” to refer to a person for whom the court has appointed a guardian, a conservator or both a guardian and a conservator. The Task Force recommends replacement of this term with the term “person subject to guardianship” and “person subject to conservatorship.” It recommends the use of term “respondent” to refer to a person alleged to be in need of a guardianship or conservatorship.

The recommended terminology is that used in the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act,⁽³⁾ and it is consistent with the Third National Guardianship Summit Standards.⁽⁴⁾

The term “ward” is viewed as demeaning and even offensive by members of the disability community and providers of services to persons with disabilities. The terms “person subject to guardianship” and “person subject to conservatorship” are known as *person first language* because they refer to the person first and the disability second. Such *person first language* has become the preferred way of referring to people with disabilities.⁽⁵⁾

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.

COMMENT

Task Force Recommendations 1.3-1.7 set forth a series of recommendations to encourage the use of less restrictive/intrusive alternatives. These recommendations are consistent with the National Probate Court Standards,⁽⁶⁾ the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act,⁽⁷⁾ the National Guardianship Association Standards,⁽⁸⁾ and recommendations of national judicial and court management associations.⁽⁹⁾

A less restrictive alternative can be generally defined as “an approach to meeting an individual’s need which restricts fewer rights than would the appointment of a guardian or conservator.”⁽¹⁰⁾ Underlying the Task Force recommendations is the view that guardianships and conservatorships for persons with diminished decision-making capacity should be a last resort

with less restrictive alternatives being the preferred option whenever available and appropriate.

The use of less restrictive alternatives minimizes the infringement of a person's interests in autonomy and self-determination and the person's loss of numerous basic rights. Moreover, the use of less drastic alternatives conserves judicial resources, freeing up their use for cases most in need of judicial attention. In a period where the Iowa Judicial Branch is faced with budgetary constraints and funding shortfalls resulting in scarce judicial resources, the conservation of judicial resources is especially important.

Less restrictive alternatives to the establishment of a guardianship or conservatorship traditionally have included the appointment of a substitute decision-maker, such as an agent under a health care power of attorney, an agent under a (financial) durable power of attorney, or a representative payee appointed by the Social Security Administration or other federal agency. Alternatives also traditionally have included technology-related assistance and assistive devices that help persons with disabilities communicate and care for themselves. There is wide array of still other alternatives that may negate or delay the need for a guardianship or conservatorship including, but not limited to, crisis intervention and protective services, case management services, and money management programs. A recently emerged alternative is supported decision-making (SDM) "where people with disabilities use trusted friends, family members, and professionals to help them understand the situations and choices they face, so they can make their own decisions" ⁽¹¹⁾

To encourage the consideration of less restrictive alternatives, it is recommended that the Iowa Code should be amended so as to require: (1) that the petition states what alternatives have been considered and why there is not an alternative that would meet the respondent's needs, and (2) that the court makes findings in an order granting a petition as to what alternatives have been considered, and why, based on the pleadings, they are insufficient to meet the respondent's needs.

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.

COMMENT

Task Force Recommendations 1.8-1.13 set forth a series of recommendations, related to, but distinct from, the preceding recommendations, to encourage the use of limited guardianships and conservatorships. These recommendations are consistent with the National Probate Code Standards,⁽¹²⁾ the Uniform Guardianship, Conservatorship and Protective Arrangements Act,⁽¹³⁾ the National Guardianship Association Standards,⁽¹⁴⁾ the positions of state judicial and court management organizations,⁽¹⁵⁾ and the positions of disability organizations.⁽¹⁶⁾

A limited guardianship grants the guardian fewer powers than are statutorily authorized, or otherwise restricts the powers granted to the guardian, whereas a full or plenary guardianship grants the guardian all statutorily authorized powers.⁽¹⁷⁾ A limited conservatorship grants the conservator fewer powers than are statutorily authorized or otherwise restricts the powers granted to the conservator, whereas a full or plenary conservatorship grants the conservators all statutorily authorized powers.⁽¹⁸⁾

A finding by the court that a person has diminished decision-making capacity is a prerequisite for the appointment of a guardian or conservator. As, however, the *In Re Guardianship of Hedin* decision recognized, the ability of such persons “to manage their personal and financial affairs are diverse and amenable to growth and development.”⁽¹⁹⁾

The use of limited guardianships and conservatorships comports with extensive scientific knowledge about cognitive impairments and their effects on decision-making capacity. Based on a review of over 4,000 case files, the Iowa Guardianship and Conservatorship Study found that the single largest category of adults subject to guardianship and conservatorship—62% of the cases reviewed—had intellectual disabilities, and the second largest category— 10% of the cases reviewed—had Alzheimer’s or some other type of dementia.⁽²⁰⁾ The intellectual disabilities of protected persons may be mild, moderate, severe or profound.⁽²¹⁾ Similarly, the nature and extent of the cognitive impairment of protected persons with Alzheimer’s and other dementias vary, and although these conditions are progressive, they progress at different rates in different persons.⁽²²⁾

Protected persons may lack capacity in some domains but may possess capacity in other domains. They may be able to perform routine self-care activities and activities necessary for independent living but not have the capacity to make and implement decisions about health care or living arrangements (e.g., arranging to move to a continuing care community). They may be able to make some type of financial decisions (e.g., conduct cash transactions for necessities) but not have the capacity to make other types of financial decisions (e.g., making investments).

Iowa Code section 633.551(3) provides that in determining whether a guardianship or conservatorship is to be established, modified or terminated, the court must consider if a limited guardianship or conservatorship is appropriate and must make findings of fact to support the powers conferred on the guardians or conservators. Despite this directive, the use of limited guardianships and conservatorships is rare. The Iowa Guardianship and Conservatorship Study found that a limited guardianship or conservatorship had been established in only 3% of the cases reviewed.⁽²³⁾

The failure to use limited guardianships and conservatorship may be attributable, at least in part to the failure to furnish judges with professional evaluations of respondents that would enable them to tailor their orders to the different decision-making capacities and functional limitations and abilities of different respondents. Part Six of this Report sets forth recommendations with respect to professional evaluations and judicial capacity determinations.

The failure to use limited guardianships and conservatorships and also may be attributable to the fact that when a protected person has a progressive condition, a court order tailored to one stage of the condition may not be appropriate at another stage, necessitating a return, sometimes repeatedly,

to the court for modification of the terms of the order. The majority of protected persons, however, do not have conditions that are progressive. Moreover, even if a protective person has a progressive condition that will change over time, it does not necessarily follow that a limited guardianship or conservatorship is inappropriate.

The following case, in which a Task Force member represented a respondent to a conservatorship petition is illustrative:

My client, Bill, is a 90-year-old man diagnosed with dementia. Prior to a recent move to a nursing home, Bill had lived all his life on a farm. Bill talks in great detail about his farm and cattle operation . . . He derives a great deal of enjoyment from visiting with his custom-hire farmer who takes care of Bill's cattle, with direction from Bill.

At the hearing on the conservatorship petition, the nursing-home social worker testified that Bill suffers from depression . . . , that his only joy in life is his farm and cattle operation, and that it is essential for his mental, emotional, and physical well-being that he remain involved in making decisions about those matters. She testified that Bill had told her, "If they take away my cattle, I have nothing left to live for." She testified that Bill is unable to make, communicate, or carry out certain financial decisions . . . but he seems fully capable of making decisions about his cattle and farm operation.

The petitioner argued that a "limited conservatorship is not appropriate because dementia is a progressive disease, and we'll just end up back in court when Bill's decision-making ability deteriorates." But in my opinion, if Bill is able to make certain decisions at this time—decisions that are essential for his happiness and well-being—then his rights as to these matters should not be taken away for convenience's sake. It is true that Bill will incur legal fees if his condition worsens to the extent a later hearing is required, but he may well consider those fees money well spent.

In chambers following the hearing, the judge said that in his 30-year legal career, he had never been asked to consider a limited conservatorship.⁽²⁴⁾

To encourage the use of limited guardianships and conservatorships, the Task Force recommends that 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, and the Task Force recommends that that the Iowa Code should

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

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.

COMMENT

As previously noted, the Iowa Guardianship and Conservatorship Study found that the single largest category of adults subject to full, or plenary, guardianships and conservatorships consists of adults with intellectual disabilities.⁽²⁵⁾ Data from this Study also indicated that many of these adults had entered the guardianship and conservatorship system when they reached the age of majority and their parents were no longer legally entitled to make decisions for them. Task Force members, who have experience with this population, observed that young persons upon attaining adult status often are automatically channeled into the system even though they may not necessarily need a full guardianship or conservatorship.

In view of the foregoing, Task Force Recommendation 1.14 recommends that educational materials about alternatives to guardianships and conservatorships and limited guardianships and conservatorships for minors should be developed. The Task Force recommends these materials should be disseminated to families of minors with intellectual disabilities, to providers of services to these minors and their families, such as the Area Educational Agencies (AEAs) to attorneys who represent parties in guardianship and conservatorship proceedings, to court visitors (guardians ad litem), and to 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.

COMMENT

Task Force Recommendation 1.15 addresses the issue of whether an adult should be permitted to file a “voluntary” guardianship or conservatorship petition on his or her own behalf. Task Force members were closely divided regarding this issue. Consequently, Recommendation 1.15 includes two alternatives—Alternative A and Alternative B—for consideration by legislators and other interested persons.

Iowa Code section 633.557 is titled “Appointment of guardian on voluntary petition,” and Iowa Code section 633.572 is titled “Appointment of conservator on voluntary petition.” They both provide that guardians and conservators may be appointed by the court “upon the verified petition of the proposed ward, without further notice, if the proposed ward is other than a minor under the age of fourteen years, provided the court determines that such an appointment will inure to the best interest of the applicant.”

Other relevant provisions are Iowa Code section 633.552 titled “Petition for appointment of guardian” and Iowa Code 633.566 titled “Petition for appointment of conservator.” They both provide that “any person” may file a petition.

The Iowa Guardianship and Conservatorship Study collected data about the use of involuntary and voluntary petitions in adult guardianships and conservatorships. In 6% of cases reviewed there was a voluntary petition, and in 23% of the cases there was an

involuntary petition, but in 36% of the cases the type of petition could not be determined. ⁽²⁶⁾

Alternative A recommends that Iowa Code sections 633.557 and 633.572 should be repealed. The intended effect of this alternative is to prohibit voluntary guardianships and conservatorships.

Alternative B recommends that any adult should be entitled to file a petition on his or her own behalf. It, however, further recommends that procedural due process requirements now applicable to an involuntary petition should be applicable to a petition filed by an adult on his or her own behalf, and that any adult filing such a petition should be represented by counsel.

Task Force members who supported Alternative A took the position that it is inconsistent to allow a person to file a “voluntary” petition alleging that he or she needs a guardian or conservator due to diminished decision-making capacity. They also argued that voluntary petitions are subject to abuse and that an adult can be induced by a family member or others with questionable motives to file a “voluntary” petition that is not truly voluntary.

Task Force members who supported Alternative B took the position that some adults might have the capacity to decide to file a guardianship or conservatorship petition because they were aware they lacked the capacity to make some types of personal care or financial decisions. In taking this position, Task Force members relied on the previously mentioned scientific evidence that capacity is not an all or nothing phenomenon and that a person might possess decision-making capacity in some domains while lacking it in other domains. They argued that safeguards against abuse could be provided through applying procedural due process requirements, including representation by counsel, to cases in which an adult filed a petition on his or her own behalf.

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.

RELATED RECOMMENDATIONS

See Recommendation 1.5 requiring statement in petition regarding consideration of less restrictive/intrusive alternatives to guardianship or conservatorship.

See Recommendation 1.9 requiring statement in petition regarding limited guardianship or conservatorship.

COMMENT

Task Force Recommendations 1.16-1.18 set forth a series of recommendations with respect to the contents of guardianship and conservatorship petitions for adults. These recommendations are substantially consistent with the National Probate Court Standards ⁽²⁷⁾ and the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act. ⁽²⁸⁾

Iowa Code Section 633.552(2)(a) currently requires the petition to state that the respondent satisfies the statutory criteria for appointment of a guardian for an adult, and Iowa Code section 633.566(2)(a) currently requires the petition to state that the respondent satisfies the statutory criteria for the appointment of a conservator for an adult.

The Iowa Guardianship and Conservatorship Study found that the most petitions did not to state the factual basis for a guardianship or conservatorship petition. Chief Judge Lear, a Task Force member, commented on this practice from her perspective as a judge:

. . . [W]e often now see petitions that state merely the common statutory language for the establishment of a guardianship or conservatorship without providing the factual basis for the need for that guardianship or conservatorship . . . I have gotten into the habit of rejecting . . . petitions which do not provide me with any factual understanding of the need for the creation of the fiduciary relationship. I . . . request the preparation of an affidavit setting forth the facts and circumstances. . . . a number of judges in my district . . . also express frustration over the minimal information that we are presently provided in most petitions. Both before EDMS and after EDMS, there have always been attorneys who are very detail oriented and thorough and who have prepared such affidavits on a routine basis. However, there are an increasing number of attorneys who believe that the filing of a petition with boilerplate statutory language is sufficient for the establishment of a conservatorship or a guardianship.⁽²⁹⁾

Task Force Recommendation 1.16 provides that the Iowa Code should require the petition to contain a statement of the factual basis, related to the respondent's alleged incapacity and need for protection, for the establishment of a guardianship or conservatorship. Task Force members contemplated that this could take the form of a brief description of the nature and extent of the respondent's alleged decision-making incapacity and inability to care for himself or herself or to manage his or her financial affairs resulting in a need for protection. The Task Force also anticipated that supporting affidavit could be attached to the petition, and that a court order could be obtained, if appropriate, restricting access to such documentation.

Iowa Code Section 633.552 currently requires the petition to list the name and contact information for the "proposed ward," the "proposed guardian," and the "person or institution, if any, having the care, custody, or control of the proposed ward." Iowa Code Section 633.566 currently requires the petition to list the "proposed ward," the "proposed conservator," and the "person or institution, if any, having the care, custody or control of the proposed ward."

Recommendation 1.17 recommends that the Code require the listing not only of the respondent and the proposed guardian or conservator, but also other persons who may have an interest in the proceeding or who may have information of value to the court. They include the respondent's family

members—spouse, adult children, parents, siblings—and any adult with whom the respondent has resided for at least the six months prior to the filing of the petition. They also include any person responsible for the care or custody of the respondent, any legal representative, or representative payee of the respondent, and the person(s) designated under any powers of attorney or health care directives executed by the respondent. Recognizing that there might be others with an interest in the proceeding or with information of value to the court, Recommendation 1.18 provides that such persons may be listed in an attachment to the petition.

Prior Recommendation 1.5 provides that the petitioner should be required to 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 petitioner should be required to state why they are insufficient. Prior Recommendation 1.9 provides that 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.

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.

COMMENT

Task Force Recommendations 1.19-1.23 set forth a series of recommendations with respect to notice. Iowa Code section 633.554 and section 633.568 and Iowa Rules of Civil Procedure 1.301-1.315 govern notice in guardianship and conservatorship proceedings.

The Task Force recommendations regarding notice to an adult respondent, the proposed guardian or conservator, the respondent's spouse, and adult children conform to the requirements of the Iowa Code and the Iowa Rules of Civil Procedure. Iowa Code section 633.554 and section 633.568 require that if a respondent has no spouse, notice must be served on the respondent's adult children. Recommendation 1.21 recommends that the Iowa Code also require that if a respondent has no spouse, notice must be given to the respondent's parents because they, like the respondent's adult children, may well have an interest in the protection of the respondent and in ensuring that a guardianship or conservatorship is appropriate.⁽³⁰⁾

In addition, Recommendation 1.22 recommends that the Iowa Code should require that other categories of persons listed in the petition in accordance with Recommendation 1.17(b)-(d) receive notice regarding the filing of a petition. Recommendation 1.22 further recommends that the Iowa Code, should expressly provide that failure to give actual notice to such persons 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.

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.***

COMMENT

Task Force Recommendation 1.24 sets forth recommendations for hearings on guardianship and conservatorship petitions. This recommendation is based on the National Probate Code Standards⁽³¹⁾ and the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act.⁽³²⁾

Iowa Code section 633.555 and section 633.569 currently provide that the rules of civil procedure apply to hearings on petitions for guardianships and conservatorships. The Task Force Recommendation 1.24 recommends that Division XIII of the Probate Code, governing the opening of guardianships and conservatorships, should be revised to include specific requirements for the conduct of these hearings. This recommendation also proposes an array of specific hearing requirements.

It should be noted that, in the course of reviewing numerous case files, the Iowa Guardianship and Conservatorship Study discovered files in which there was no record of a hearing on the petition and no record of a waiver

of the respondent's right to a hearing, Additionally, there was a discussion among Task Force members about problematic hearing practices. One Task Force member indicated he was aware of instances in which involuntary guardianship petitions were granted without a hearing and instances in which there were *pro forma* hearings after counsel met with the judge in chambers.⁽³³⁾

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.

COMMENT

Iowa Code section 633.561 currently provides for the court to appoint an attorney "to represent the proposed ward" in a guardianship proceeding, and Iowa Code Section 633.575 currently provides for the court to appoint an attorney "to represent the proposed ward" in a conservatorship proceeding. These provisions and other provisions pertaining specifically to guardianships and conservatorships do not expressly authorize the appointment of a guardian ad litem.

Based on the Iowa Guardianship and Conservatorship Study's review of numerous guardianship and conservatorship court files, it appears that court-appointed attorneys sometimes played the role of counsel for the respondent, the role of guardian ad litem, or a combination of these roles. Task Force members who are judges and attorneys confirmed that there was a lack of clarity as to what role an attorney appointed pursuant to Iowa Code sections 633.561 or Iowa Code section 633.575 could and should play.

Therefore, Recommendation 1.25 states that 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). This recommendation further states that the Iowa Code should 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.***

COMMENT

Since the right to counsel is an essential element of constitutionally protected procedural due process guarantees, the Task Force members strongly supported the retention of Iowa Code Section 633.561 and Section 633.575 requiring the court to appoint counsel to represent the respondent in a guardianship or conservatorship proceeding. But Task Force Recommendation 1.27 provides that the Iowa Code should be amended so as to include a definition of the role of counsel for the respondent. More specifically, Recommendation 1.27 states:

- 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; and
- 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.

This definition of the role of counsel is derived from that in the Uniform Guardianship, Conservatorship and Protective Arrangements Act.⁽³⁴⁾

If the respondent has diminished decision-making capacity, his or her representation poses challenges for the attorney. According to the Iowa Rules of Professional Conduct, Rule 32:1:14 9(a), “When a client’s capacity to make adequately considered decisions in connection with representation is diminished . . . , the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.”

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.*

COMMENT

Task Force Recommendations 1.28-1.31 set forth a series of recommendations with respect to the appointment and role of the court visitor (guardian ad litem) who is appointed by the court and is an independent source of information for the court about the respondent and the appropriateness of establishing a guardianship or conservatorship for the respondent. The aim of these recommendations is to ensure that the court has the information it needs to determine whether to appoint a guardian or conservator, whom to

appoint as a guardian or conservator, and what powers to grant the guardian or conservator.

The Task Force recommends that the Iowa Code, court rules and other legal documents should use the term “court visitor” rather than the term “guardian ad litem.” One reason for the recommended change in terminology is that lay people tend to confuse the guardian ad litem with the guardian. In addition, “guardian ad litem” is a term used not only in guardianship and conservatorship proceedings, but also in different types of proceedings with somewhat different connotations. The recommended court visitor terminology is consistent with that of the National Probate Court Standards,⁽³⁵⁾ the Uniform Guardianship, Conservatorship, and Other Protective Proceedings Act,⁽³⁶⁾ and a number of more recently revised state guardianship and conservatorship statutes.⁽³⁷⁾

The Task Force recommends that the Iowa Code should provide that the court may appoint a court visitor if needed and appropriate. In other words, the appointment of a court visitor should be permissive with the judge having discretion as to whether to make such an appointment.

The concept of court visitor envisions a variety of persons being appointed depending on the nature of the case and the type of information that the court needs. Although the court may appoint an attorney as a court visitor, the court may appoint persons with other kinds of qualifications and expertise. Persons with backgrounds in disciplines other than law such as social work, counseling, psychology, nursing, and medicine also may be appropriate.

The Task Force also recommends that the Iowa Code should specify the required duties and responsibilities of the court visitor including visiting the respondent and, if possible, interviewing him or her. Other recommended duties include visiting the residence where the respondent will live if a guardian or conservator is appointed and obtaining relevant information about the respondent’s physical or mental condition. The court visitor also should undertake any other investigation that the court directs.

Once the court visitor completes his or her investigation for the court, the Task Force recommends that Iowa Code should require the court visitor to file a written report with the court. In the report, the court visitor should summarize the information collected and make recommendations regarding the appropriateness of appointing a guardian or conservator for the respondent. It should be noted that the Iowa Guardianship and Conservatorship Study found that in a significant number of the case files reviewed, there was no written report even though the file indicated that a

guardian ad litem had been appointed by the court.

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.

COMMENT

Task Force Recommendations 1.32-1.34 set forth recommendations with respect to standby guardianship and conservatorship petitions. Iowa Code section 633.560 authorizes the appointment of a guardian on a standby basis, and Iowa Code sections 633.59-633.597 authorize the appointment of a conservator on a standby basis. Task Force members agreed that standby petitions should be authorized, and that these Code provisions should be retained.

Recommendation 1.34 relates to situations where a minor with diminished capacity due to intellectual disabilities or some other condition will need an adult guardianship or conservatorship upon attaining adulthood. Confusion reportedly exists as to whether proceedings for the establishment of an adult guardianship or conservatorship can be commenced before a minor's eighteenth birthday to avoid a gap in the guardian's or conservator's authority. Recommendation 1.34 provides that Iowa Code should expressly authorize standby guardianships and conservatorships for minors approaching adulthood. The language of this recommendation is modeled on that of an Arizona statute.⁽³⁸⁾

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.

COMMENT

Task Force Recommendations 1.35-1.39 set forth recommendations with respect to emergency petitions for the appointment of a temporary guardian or conservator. These recommendations are substantially consistent with the National Probate Code Standards.⁽³⁹⁾

Emergency petitions seeking a temporary guardianship/conservatorship . . . have the virtue of addressing an urgent need . . . to provide needed assistance to a respondent that cannot wait until the hearing on appointment of a permanent guardian/conservator However, where abused, they have the potential to produce significant or irreparable harm to the interests of the respondent. When continued indefinitely, they bypass the procedural protections to which the respondent would be otherwise entitled.⁽⁴⁰⁾

Iowa Code section 633.558 currently provides that “[a] temporary guardian may be appointed, but only after a hearing on such notice, and subject to such conditions, as the court shall prescribe.” The language of Iowa Code 633.572 is the same except that it provides for the appointment of a temporary conservator. The Task Force recommendations, unlike the

current Code provisions, spell out the conditions under which the court should be authorized to appoint a temporary guardian or conservator and the procedure to be followed in appointing a temporary guardian or conservator.

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.

COMMENT

Task Force Recommendations 1.40-1.43 set forth recommendations primarily with respect to needed guidance for newly appointed guardians and conservators. Since most newly appointment guardians and conservators—many of whom are family members—know little about what being a guardian or conservator entails, the recommendations provide that the court's order of appointment should clearly specify the powers and the scope of the authority of the guardian or conservator, and the court should inform the guardian or conservator of their duties and responsibilities at the time of their appointment. See Part Three of this Report for a number of other recommendations dealing with guidance for guardians and conservators.

End Notes – Part One: Establishment of Adult Guardianships & Conservatorships

1. Richard Van Duizend and Brenda K. Uekert, National College of Probate Court Judges, National Probate Court Standards, Standard 3.3. cmt. [hereinafter National Probate Court Standards].
2. *In re Guardianship of Hedin*, 528 N.W.2d 567 (Iowa 1995).
3. National Conference of Commissioners on Uniform State Laws, Uniform Guardianship, Conservatorship and Other Protective Arrangements Act Section 102 (Draft for Approval) (2017) [hereinafter Uniform Guardianship Act].
4. Third National Guardianship Summit Standards and Recommendations, *reprinted* in 2012 Utah L. Rev. 1191, Recommendation #2.3 [hereinafter National Guardianship Summit Standards].
5. See Kathie Snow, *To ensure Inclusion, Freedom, and Respect for all, it's time to embrace People First Language* (2009), http://www.sccoe.org/depts/students/inclusion-collaborative/Documents/Person-First_Language_Article.pdf; The ARC, *Media Center: What is People First Language?* (n.d.), <https://www.thearc.org/who-we-are/media-center/people-first-language>.
6. National Probate Court Standards, Standards 3.3.2 and 3.3.10, *supra* note 1.
7. Uniform Guardianship Act Section 301, *supra* note 3.
8. National Guardianship Association Standards of Practice, Standard 8, http://www.guardianship.org/documents/Standards_of_Practice.pdf [hereinafter NGA Standards].
9. National Center on State Courts, *Adult guardianship initiative: An initiative of the NCSC's Center for Elders and the Courts and the CCI/COSCA Joint Committee on Elders and the Courts 2* (2016) [hereinafter NCSC/CCI/COSCA National Initiative].
10. Uniform Guardianship Act Section 102(13), *supra* note 3.
11. Peter Blanck and Jonathan C. Martinis, *"The Right to Make Choices": The National Resource Center for Supported Decision-Making*, 3 Inclusion 24, 24-25 (2015). See American Bar Association, *Practical tool for lawyers: Steps in supported decision-making* (2016); for resources regarding supported decision-making, see generally the website of the National Center for supported decision-making at <http://www.supporteddecisionmaking.org/>.
12. National Probate Court Standards, Standard 3.3.10, *supra* note 1.
13. Uniform Guardianship Act Section 301, *supra* note 3.

14. NGA Standards, Standard 8, *supra* note 8.
15. NCSC/CCJ/COSCA National Initiative, *supra* note 9, at 2.
16. See American Association on Intellectual Disabilities and Developmental Disabilities, *Autonomy, Decision-Making Supports, and Guardianship: Joint Position Statement of AAIDD and The Arc* (2016), <http://aaid.org/news-policy/policy/position-statements/autonomy-decision-making-supports-and-guardianship#.WX9B2bpFxPY>.
17. Uniform Guardianship Act Section 102(16), *supra* note 3.
18. Uniform Guardianship Act Section 102(15), *supra* note 3.
19. *In re Guardianship of Hedin*, 528 N.W. 2d 567, 573 (Iowa 1995) (quoting Sheryl Dicker, (quoting Sheryl Dicker, *Guardianship: Overcoming the Last Hurdle to Civil Rights For the Mentally Disabled*, . . . [4 U. Ark. Little Rock L. J. 485], 485-486 (1981)).
20. Josephine Gittler, The Iowa Guardianship and Conservatorship Study, in Appendix A at A:15.
21. See, e.g., Comm. To Eval. the Supp. Sec. Income Disability Program for Children with Mental Disorders, et al., *Mental Disorders and disabilities among low-income children* (Thomas F. Boat and Joel T. Wu eds.) 170-173 (2015); see generally, American Association on Intellectual and Developmental Disabilities, *Intellectual disability, definition, classification and systems of support* (11th ed. 2010).
22. See Jennifer Moye and Daniel C. Marsden, *Assessment of decision-making capacity in older adults: An emerging area of practice and research* 62 J. of Gerontology: Ser. B 3, 6-7 (2007). Stuart W.S. MacDonald, et al., *Trajectories of cognitive decline following dementia onset: What accounts for variation in progression*, 31 *Dementia Geriatric Cognitive Disorders* 202 (2011).
23. Josephine Gittler, The Iowa Guardianship and Conservatorship Study, in Appendix A at A:15.
24. E-mail from Breanna Young, Attorney, to Professor Josephine Gittler, Task Force Reporter, (March 18, 2016) (on file with Professor Gittler).
25. See notes 21-22 and accompanying notes.
26. Josephine Gittler, The Iowa Guardianship and Conservatorship Study, in Appendix A at A:14.
27. National Probate Court Standards, Standard 3.3.1, *supra* note 1.
28. Uniform Guardianship Act Section 502 (b), *supra* note 3.

29. E-mail from Kellyann Lekar, Chief District Judge, to Josephine Gittler, Task Force Reporter, (March 24, 2016) (on file with Professor Gittler).
30. Uniform Guardianship Act Section 302 cmt., *supra* note 3.
31. National Probate Court Standards, Standard 3.3.18, *supra* note 1.
32. Uniform Guardianship Act Section 303 and 403, *supra* note 3.
33. E-mail from Professor Jerry Foxhoven, Task Force Co-Reporter, to Professor Josephine Gittler, Task Force Reporter, (June 16, 2016) (on file with Professor Gittler).
34. Uniform Guardianship Act Sections 305 and 406, *supra* note 3.
35. National Probate Court Standards, Standard 3.3.4., *supra* note 1.
36. Uniform Guardianship Act Sections 304 and 405 *supra* note 3.
37. See ABA Commission on Law and Aging, Representation and investigation in Guardianship proceedings (2016).
38. Ariz. Rev. Stat. Ann. section 14-5301.03 (West 2012).
39. National Probate Court Standards, Standard 3.3.6, *supra* note 1.
40. National Probate Court Standards, Standard 3.3.6 cmt, *supra* note 1.

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.

COMMENT

Although Iowa Code section 633.552 specifies the substantive criteria that must be satisfied for the court to establish an adult guardianship, it does not specify any substantive criteria that must be satisfied for the court to establish a minor guardianship. Under 633.552, the status of being a minor, in and of itself, is sufficient for the establishment of a minor guardianship.

The Iowa Guardianship and Conservatorship Study, involving a review of over 4,000 guardianship and conservatorship files, found that 24% of all cases were minor guardianships.⁽¹⁾ The Study further disclosed that in the vast majority of these cases—82%—the basis for the guardianship was some type of parental problem, that is, a parental inability or unwillingness to exercise their parental rights and to care, supervise and protect a minor child.⁽²⁾

In the absence of substantive statutory criteria, the parties in a minor guardianship proceeding lack notice as to what must be shown for the court to appoint a guardian, and it means that granting of a minor guardianship petition is left to the court's discretion. Task Force members viewed the absence of substantive statutory criteria for the establishment of a minor guardianship as highly problematic, especially in cases where the minor child's parents have not consented to the establishment of a guardianship. Therefore, the Task Force recommends that the Iowa Code provide specific

statutory criteria that must be satisfied for 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.

COMMENT

The Task Force recommends that the Iowa Code authorize the court to appoint a guardian for a minor if there has been termination of parental rights or if both parents are deceased. A fifty state statutory survey found that these are typically the grounds stated for a minor guardianship.⁽³⁾

The Task Force also recommends that Iowa Code provide that if a custodial parent is deceased, the surviving parent should be preferred for appointment as a guardian and that preference should next be given to any person nominated as guardian by a will executed by the custodial parent. This recommendation incorporates Iowa Code section 633.559, which should be retained.

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.

COMMENT

The Task Force recommends that the Iowa Code authorize the court to appoint a guardian for a minor if the minor's parents consent to the establishment of the guardianship. This recommendation is consistent with the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act⁽⁴⁾ and a number of state minor guardianship statutes.⁽⁵⁾

Task Force members were concerned that parental consent to a minor guardianship might not be truly voluntary and discussed reports that parents were sometimes led to believe that a Juvenile Court child in need of assistance petition would be filed in Juvenile Court unless they consented to a guardianship. The Task Force recommendation contains detailed requirements to ensure that the parental consent is truly voluntary. These requirements are modeled on those of the Vermont guardianship statute.⁽⁶⁾

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.

COMMENT

Task Force Recommendation 2.9 addresses the issue of whether the court should be authorized to establish a minor guardianship without parental consent. Task Force members were closely divided regarding this issue. Consequently, Recommendation 2.9 includes two alternatives—Alternative A and Alternative B—for consideration by legislators and other interested persons.

Under Alternative A, the court would not be permitted to establish a minor guardianship without the consent of the minor parents. The only alternative in cases where it is alleged that a parent was not providing appropriate care, supervision, and protection for a minor child would be the filing of a child in need of assistance (CINA) petition in the Juvenile Court. “CINA” is the term

used in the Iowa Code to refer to what are generally known as abused, neglected and abandoned children, and Iowa Code Chapter 232 provides detailed substantive criteria for the adjudication of a minor as a CINA and for the termination of parental rights.

Under Alternative B, the court would be permitted to establish a minor guardianship in cases where there is some type of “parental problem” that does not rise to the level required for the minor’s adjudication as a CINA and for the termination of parental rights. Alternative B enunciates three limited substantive criteria for the appointment of a guardian for a minor without parental consent together with the high evidentiary standard of “clear and convincing evidence.” Under Alternative B, the court could make such an appointment if it finds by clear and convincing evidence:

- that the minor’s parents are unable or unwilling to exercise their parental rights and carry out their parental responsibilities resulting in the minor’s lack of the care necessary for his or her well-being and protection from serious harm, and that the appointment is in a minor’s best interest,
- that the minor has a de facto guardian, that the non-consenting parent has demonstrated a consistent lack of participation in the minor’s life and that the appointment is in the minor’s best interest, and
- that a living situation has been created for the minor that is intolerable, at least temporarily, even though it does rise to the level required for a CINA adjudication and termination of parental rights and that the appointment is in the minor’s best interest.

The language of Alternative B with respect to the substantive criteria for establishment of minor guardianship is taken from that of the Maine guardianship statute,⁽⁷⁾ the constitutionality of which the Maine Supreme Court has upheld.⁽⁸⁾

Task Force members discussed the possible implications of federal and state case law regarding the constitutionality of grandparent visitation statutes affecting parental rights and family privacy for a statute authorizing the establishment of a minor guardianship without parental consent. Task Force members also considered what other state statutes provide with respect to minor guardianships.

A survey of the statutes of 50 states and the District of Columbia disclosed that a majority of these statutes provide a guardian for a minor may be

appointed without parental consent.⁽⁹⁾ In addition, the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act provides that the court may appoint a guardian for a minor if the “court finds that the appointment is in the minor’s best interest and . . . that all parents of the minor are unwilling or unable to exercise the powers the court is granting the guardian.”⁽¹⁰⁾

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.

COMMENT

Task Force Recommendation 2.10-2.11 with respect to the contents of the petition in minor guardianship proceedings parallels prior Recommendations 1.16-1.17 with respect to the contents of the petition in adult guardianship and conservatorship proceedings. Recommendation 2.10, like Recommendation 1.16, provides that the petition should be required to state the factual basis for the requested establishment of a guardianship or conservatorship, and Recommendation 2.11, like Recommendation 1.17, provides that specified persons, who may have an interest in the guardianship proceeding or may have information of value to the court, should be required to be listed in the petition.

Since there may be custody proceedings, CINA proceedings or other related proceedings pending, Recommendation 2.12 provides that the petition should state whether there are related proceedings.

Recommendation 2.13 recognizes that the Iowa Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA) applies to minor guardianship proceedings and that the petition in such a proceeding must comply with UCCJEA requirements.

Recommendations 2.14 and 2.15 are directed at encouraging the Judicial Branch to develop and disseminate user forms that will assist persons filing petitions.

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.

COMMENT

Task Force Recommendations 2.16-2.19 with respect to notice in minor guardianship proceedings largely follow the National Probate Court Standards.⁽¹²⁾ In developing these recommendations, Task Force members had to deal with the issue of when a minor should receive notice. The notice recommendations include two alternatives for legislators and other public

policy makers to consider. One alternative provides that the minor should be entitled to notice if he or she is fourteen years of age or older. The other alternative provides that a minor should be entitled to notice if the court determines that he or she “has attained a sufficient age to understand the guardianship proceeding.”

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.

COMMENT

In developing Recommendations 2.20-2.23 with respect to hearing requirements, the main issue which Task Force members had to address was whether the presence and participation of the minor should be encouraged. According the drafters of the National Probate Court standards:

From the time of the Romans, children age 14 or older had a voice in selecting a guardian. This legal tradition is reflected in . . . many state statutes. There is growing recognition that presence and participation of a child in a proceeding determining residence and custody is important for both the child and the court . . . This has led some states to provide that minors of any age may not just formally object to a guardian but may also nominate a guardian if they are “of sufficient maturity to form an intelligent preference” [citation omitted]. While a judge is not required to follow the preferences of a minor regarding the appointment of a guardian . . . , it is good practice to at least ask the children or youth for their views.⁽¹²⁾

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

COMMENT

The Task Force recommendations with respect to the appointment of counsel for a minor parallels its recommendation with respect to the appointment of counsel for an adult. Thus the Task Force recommends that the Iowa Code should require the court to appoint counsel to represent a minor as well as an adult in guardianship proceedings unless they are represented by retained counsel.

The Task Force recommendation with respect to the role of counsel for the minor likewise parallels its recommendation with respect to the role of

counsel for the adult. Specifically, the Task Force recommends:

- 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
- that 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.***

COMMENT

The Task Force recommends that the Iowa Code should authorize the court to appoint a court visitor, if needed and appropriate, not only in an adult guardianship proceeding but also in a minor guardianship proceeding. The Task Force recommends that 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 because of potential conflict between the role of the counsel for the minor and role of the court visitor.

The Task Force recommendations with respect to the court visitor's duties and responsibilities in a minor guardianship proceeding and in an adult guardianship proceeding are generally consistent. But the recommended duties and responsibilities of the court visitor differ in the two types of proceedings because of differences between the status, condition, and needs of minors and those of adults.

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.*

COMMENT

The Task Force recommends that the court should appoint counsel for the parent if a petition for a minor guardianship is filed without parental consent, if the parent of the minor is financially unable to retain counsel, and if the parent requests counsel. This recommendation is substantially similar to a provision of the Uniform Guardianship, Conservatorship and Protective Arrangement Act.⁽¹³⁾ Task Force members thought that if a parent objected to appointment of a guardian and was financially unable to retain counsel, it was important for the court to appoint counsel because the guardianship proceeding could result in the parent's loss of the custody and control of the minor. However, they recognized that there would be objections to their recommendation on cost grounds.

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.

COMMENT

Task Force Recommendations 2.32-2.35 with respect to emergency appointments of temporary guardians for minors parallel Task Force Recommendations 1.35-1.39 with respect to emergency appointments of temporary guardians for adults. The Task Force recommendations relating to emergency appointments of temporary guardians for minors are consistent with the National Probate Court Standards.⁽¹⁴⁾

As the drafters of the National Probate Court Standards pointed out:

Emergency petitions seeking a temporary guardianship . . . for a minor require the court's immediate attention. Ordinarily such petitions would arise when both parents are deceased, or when there is written consent from the custodial parent, but there is not time to serve the non-custodial parent before significant decisions must be made for the minor such as enrollment in school or medical treatment, or when for some other reason the safety of the minor is threatened and there is no one including the relevant child protection agency willing or authorized to act.

Because not only the minor's safety but also parental and other important rights are involved, emergencies, and the expedited procedures they may invoke require probate courts to remain closely vigilant for any potential due process violation and any attempt to use the emergency proceedings to interfere with an investigation or proceeding initiated by the relevant child protection agency.⁽¹⁵⁾

Since there are situations in which the emergency appointment of a temporary guardian on an emergency basis may be necessary, the Task Force recommends that the Iowa Code should authorize the court to make emergency appointments. The Task Force recommendations, however, limit the conditions under which such appointments can be made and detail the procedures to be followed for such appointments.

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.*

COMMENT

Differences between minor guardianships and adult guardianships led the Task Force to develop separate recommendations for their establishment. The Task Force, however, concluded that there were not significant differences between minor conservatorships and adult conservatorships that warranted the development of separate recommendations for their establishment. Hence the recommendations with respect to the establishment of adult conservatorship in Part one of this Report should be considered

applicable to the establishment of minor conservatorships with two exceptions.

One exception is the statutory criteria that must be satisfied to establish a minor guardianship, and Recommendation 2.37 sets forth the recommended statutory criteria for minor guardianships. The other exception is the contents of the petition for a minor conservatorship, and Recommendation 2.38 sets forth the recommended petition contents for a minor conservatorship.

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.

COMMENT

Task Force Recommendations 2.41-2.46 concern statutory authorization of the use of a parental power of attorney as an alternative to a minor guardianship or conservatorship. A parental power of attorney can be generally

defined as a legal document in which a parent delegates his or her powers regarding the custody, care, and property of a minor child to a third person.

The Iowa Code Chapter 144B provides for health care powers of attorney for adults, and Iowa Chapter 633B provides for durable (financial) powers of attorney for adults. The Iowa Code, however, does not expressly authorize parental powers of attorney for minor children. As a result, the only way a parent legally may be able to delegate parental authority to a third party is through the court's appointment of a guardian or conservator for the minor.

The Task Force recommends that the Iowa Code be amended so as to give parents the option of executing a power of attorney temporarily delegating full or partial parental authority to a third party without court intervention. The Task Force recommends that a parental power of attorney be limited to six months in duration to cover situations where the parent is temporarily unavailable for a variety of reasons (e.g. vacation, military service, treatment of physical or mental problems, etc.). The Task Force also recommends that an agent under a parental power of attorney be permitted to consent to routine or emergency health care but not be permitted to consent to a minor's abortion or sterilization, or to the withholding or withdrawal of life sustaining treatment from the minor.

End Notes – Part Two: Establishment of Minor Guardianships & Conservatorships

1. Josephine Gittler, The Iowa Guardianship and Conservatorship Study in Appendix A, at A:14.
2. *Id.* at A:16.
3. See Josephine Gittler et al., State statutory survey basis/criteria for establishing minor guardianship without parental consent (2016) (on file with Professor Gittler, Task Force Reporter). [hereinafter Minor Guardianship Statutory Survey].
4. National Conference of Commissioners on Uniform State Laws, Uniform Guardianship, Conservatorship and Other Protective Arrangements Act Section 201 (Draft for Approval) (2017) [hereinafter Uniform Guardianship Act].
5. See Minor Guardianship Statutory Survey, *supra* note 3.
6. VT. Stat. Ann., tit. 14, section 2626 (2014).
7. Me. Rev. Stat. Ann. Titl. 18-A, section 5-204(c) (2012).
8. See *In re Guardianship of Chamberlain*, 118 A.3rd 229 (Me.2015).

9. See Minor Guardianship Statutory Survey, *supra* note 3.
10. Uniform Guardianship Act section 201, *supra* note 4.
11. Richard Van Duizend and Brenda K. Uekert, National College of Probate Court Judges, National Probate Court Standards, Standard 3.5.2. (2013) [hereinafter National Probate Court Standards].
12. National Probate Court Standards, Standard 3.5.5, *supra* note 12.
13. Uniform Guardianship Act section 204, *supra* note 4.
14. National Probate Court Standards, Standard 3.5.3, *supra* note 12.
15. *Id.*

PART THREE

GUARDIANS & CONSERVATORS

FOR ADULTS AND MINORS:

QUALIFICATIONS/DUTIES/STANDARDS

I. BACKGROUND

Guardians and conservators are a heterogeneous group of persons and organizational entities. The four main categories of guardians and conservators are family members, professional guardians and conservators, public guardians and conservators, and volunteers. They may be generally defined as follows:

- Family members are persons related by blood or affinity to persons subject to guardianship and conservatorship (e.g., parents and grandparents, children, siblings, and spouses) and others who have the equivalent of a family relationship with such protected persons such as domestic partners.
- Professional guardians and conservators provide guardianship and conservatorship services usually in multiple cases on a continuing basis and are compensated for these services. They include private agencies, organizations and individuals.
- Public guardians and conservators are governmental agencies and programs and their employees that provide guardianship and conservatorship services.
- Volunteers are persons who are not related to protected persons and do not receive compensation for their services. Volunteers may be utilized by public guardianship and conservatorship programs to provide guardianship and conservatorship services.

The Iowa Guardianship and Conservatorship Study involving a review of over 4,000 guardianship and conservatorship case files found that most guardians and conservators were family members. Family members constituted

81% of the guardians for adults, 83% of the guardians for minors, 39% of the conservators for adults, and 83% of the conservators for minors.⁽¹⁾

Being a guardian or conservatorship can be both rewarding and challenging. Guardians and conservators must make decisions for adults and minors who cannot make decisions for themselves. Some are routine, but others are difficult and complex. Some of the tasks that guardians and conservators must undertake require minimal effort and time, but others require a great deal of effort and time.

Newly appointed guardians and conservators—the majority of whom are family members—frequently are unaware of what their responsibilities are, and they frequently lack the assistance and support they need to carry out their responsibilities.

It is not surprising that guardian and conservator behavior ranges “from very good and even heroic to abusive and . . . [even] criminal.”⁽²⁾ Most guardians and conservators are undoubtedly honest and well-intentioned but some are dishonest and ill intentioned.

The relationship between the court and guardians and conservators has been termed “a critical partnership.”⁽³⁾ The court appoints them and grants them the authority to make decisions on behalf of the persons subject to a guardianship or conservatorship. They in turn are accountable to the court for their performance as guardians and conservators.

The goal of this partnership should be to ensure that persons subject to guardianship and 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. The Iowa guardianship and conservatorship system can promote achievement of this goal in several ways:

- the court should screen prospective guardians and conservators to ensure that they are qualified to serve as guardians and conservators;
- guardians and conservators should be furnished guidance regarding the mandatory legal duties and the accepted standards of practice for guardians and conservators;
- guardians and conservators should receive education and training regarding these duties and standards of practice;

- guardians and conservators should receive the assistance and support they need to carry out their responsibilities, and
- the court should effectively monitor guardianships and conservatorships throughout their duration.

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.

COMMENT

Task Force Recommendations 3.1-3.5 are intended to ensure that judges have the information they need to determine the qualifications of persons seeking appointment as guardians and conservators. More specifically, it is recommended that background checks of prospective guardians and conservators be required and that judges be given any relevant background check information for consideration in determining their suitability for appointment.

At present, the Iowa Code does not require prospective guardians and conservators to undergo background checks. In contrast, state law does require persons such as prospective employees of health care facilities, child care providers and school employees, including school bus drivers, to undergo background checks prior to their employment.⁽⁴⁾

The National Probate Court Standards recommends that probate courts should request a background check on all prospective guardians and conservators, with the exception of certain financial institutions, before an appointment is made.⁽⁵⁾ The majority of states and the District of Columbia now mandate criminal background checks.⁽⁶⁾

The drafters of the National Probate Code Standards have stated that the rationale for this recommendation is that “[g]iven the authority of guardians and conservators, the opportunities for misuse of that authority and the occurrence of the abuse and exploitation of vulnerable adults around the country, requiring prospective guardians and conservators to undergo a thorough criminal history . . . check is an appropriate safeguard.”⁽⁷⁾

It is recommended that the Iowa Code also require that prospective guardians and conservators undergo an Iowa criminal history check and checks of the Iowa Dependent Adult Abuse Registry, Child Abuse Registry and Sex Offender Registry. When appropriate, the court should be authorized to request an additional national background check or a background check in another state.

The recommended background check requirement should be applied to all prospective guardians and conservators with the exception of Iowa financial institutions with trust powers. The exemption of these institutions is warranted for several reasons. The primary reasons are that their employees are bonded and undergo checks by the bond carrier, that they

are subject to regulation by federal and state authorities, and that their trust departments are regularly examined in connection with federal and state regulations.⁽⁸⁾

Task Force members concluded that a background check disclosing a criminal conviction or other misconduct should not automatically disqualify persons for appointment as guardians and conservators. Rather, they concluded that the judge should evaluate any negative background check information about a person and evaluate its relevance to the person's suitability for appointment. But it is recommended that guidelines and criteria should be developed for making these determinations.

In implementing the Task Force recommendations regarding background checks, use can be made of Iowa's single contact repository (SING). A SING request via the internet can be made for a combined check of Iowa criminal history information, Iowa Central Abuse Registry information and Iowa Sex Offender Registry information.⁽⁹⁾

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.

COMMENT

Task Force Recommendations 3.6-3.8 deal with conservator bonds and alternatives to bonds to protect persons subject to conservatorship against the loss of their assets by conservators. These recommendations are consistent with the National Probate Court Standards⁽¹⁰⁾ and the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act.⁽¹¹⁾

Iowa, like many states, statutorily requires conservators to post a surety bond.⁽¹²⁾ Iowa Code section 633.169 provides that “every fiduciary”—which includes a conservator—“shall execute and file with the clerk a bond with sufficient surety or sureties” that “shall be conditioned upon the faithful discharge of all of the duties of the fiduciary’s office.” Iowa Code section 633.175 further provides that the court “shall not exempt a conservator from giving bond in a conservatorship with total assets of more than twenty-five thousand dollars, excluding real property, unless it is a voluntary conservatorship in which the petitioner is eighteen years of age or older and has waived bond in the petition.”

Despite the Iowa Code requirement that conservators be bonded, it appears that the court usually waives this requirement. The Iowa Guardianship and Conservatorship Study conducted an extensive review of files of a number of conservatorship cases and found that bonds were required in 11% of cases and were waived in 63% of cases. There was no information about whether bonds were required or waived in the files of 26% of the cases.⁽¹³⁾ This study also found considerable variation in practices among judges regarding the waiver of a bond. Judges and attorneys, who were members of the Task Force Work Group responsible for developing bond recommendations, concurred with these findings in light of their personal experiences and observations.

It is recommended that the Iowa Code require all conservators, 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. Financial institutions with Iowa trust powers should be exempt from this requirement for essentially the same reasons they are exempt from the recommended background check requirement.⁽¹⁴⁾

The Task Force members decided not to recommend an exemption from the bonding requirement for conservators in cases where the value of the conservatorship assets is below a certain “de minimis” amount. This decision was based on the recognition that the loss of even a relatively small amount of assets can have devastating consequences for persons subject to conservatorship who are wholly dependent upon the lost assets to cover their expenses and needed care.

The Task Force members also decided not to recommend an exemption from the bonding requirement for parents serving as conservators for their minor children. This decision was based on reports from Task Force members indicating that parents are more likely, rather than less likely, than

other conservators to misuse conservatorship assets. For example, Jim Holter, a Task Force member and vice-president of a major bonding company reported: “Loss activity for bonding companies historically has been higher on minor conservatorships than on adult conservatorships. Since conservators of minors are often parents, this indicates that parents are not necessarily better risks and in fact may be poorer risks.”⁽¹⁵⁾

During discussions about bonding, some Task Force members complained that bonds for conservators are difficult to obtain. Evidence to the contrary, however, is indicated by data from a bonding company with a significant share of the Iowa market. This data disclosed that the company had a 94% approval rate of bond applications for conservators in a recent three year period.⁽¹⁶⁾ A related but distinct complaint of some Task Force members was that the cost of bonds is too great for use in many conservatorship cases. Data, however, from the aforementioned company disclosed that the overall premium of a bond ranges from 0.74% to 0.76% of penal sum, which is based on bondable assets and typically excludes the value of real property.⁽¹⁷⁾

Although it is recommended that all conservators, other than financial institutions with Iowa trust powers, should be required to post a surety bond, it is recommended that the court should be authorized 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. One possible alternative is the creation of a restricted account for conservatorship assets in a financial institution which requires a court order for any withdrawal of funds by the conservator. Another possible alternative is the creation of two accounts: a blocked account that houses the majority of conservatorship assets and a working account for annual expenses, which is refunded annually pursuant to a court order, after that court has reviewed and approved an accounting from the conservator.

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.

COMMENT

Recommendations 3.9 and 3.10 deal with the certification of guardians and conservators for adults and minors. Certification of guardians and conservators typically involves several components: (1) background checks, (2) eligibility requirements with respect to education and/or relevant experience, (3) an examination, and (4) a continuing education requirement.⁽¹⁸⁾ As of 2015, twelve states had statutes requiring some form of certification or licensing, usually for private professional guardians and conservators and sometimes for other types of guardians and conservators.⁽¹⁹⁾

It is recommended that certification should be required for three categories of guardians and conservators: (1) private professional guardians and conservators, other than financial institutions with Iowa trust powers, (2) public guardians and conservators, and (3) volunteers in multiple cases. This recommendation is intended to ensure that persons appointed as guardians and conservators in multiple cases have been adequately screened and possess the knowledge, skills, and experience necessary for performance of their roles as guardians and conservators.

Task Force members discussed whether certification should be required for the family members who make up the vast majority of guardians and conservators. It was decided not to recommend their certification because it could prove unduly burdensome for some family members and could hinder the recruitment and retention of family members to serve as guardians and conservators.

Recommendation 5.33 and the accompanying comment deals with the establishment of a certification program and process. See Part Five of this Report for the related recommendation and comment.

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.

COMMENT

Task Force Recommendations 3.11 and 3.12 deal with the court’s appointment of guardians and conservators for adults. Iowa Code sections 633.559 and 633.571 currently authorize the court to appoint as a guardian or conservator for an adult any qualified and suitable person that is willing to serve in that capacity. It is recommended that these provisions, giving the court broad discretion in the appointment of guardians and conservators, be retained. But it is recommended that these provisions be amended to conform with the current 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.”

Task Force Recommendation 3.13 pertains to preferences for the court’s appointment of guardians and conservators for minors. These preferences, starting with parents of a minor, currently set forth in Iowa Code sections 633.559 and 633.571 should be retained.

Task Force Recommendation 3.14 recommends that the Judicial Branch adopt a court rule requiring 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 and that 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.

COMMENT

Task Force Recommendations 3.15-3.18 deal with guardian and conservator mandatory legal duties, standards of practice for guardians and conservators, and the respective roles of the Iowa Code and court rules in providing them with guidance in this regard. These recommendations are derived from the Third National Guardianship Standards.⁽²⁰⁾

The recommendations distinguish between the mandatory legal duties of guardians and conservators and their standards of practice. It is recommended that the former be clearly stated in the Iowa Code and that the latter be clearly stated in court rules.

Additionally, it is further recommended that at the time of appointment, guardians and conservators should receive a concise statement of these duties and standards and that after their appointment, these duties and standards should be explained in educational materials and educational activities for them.

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.

COMMENT

Task Force Recommendations 3.19-3.21 deal with the relationship of guardians and conservators with the court. While it is the responsibility of the court to issue an order that sets forth the powers of the guardian or the conservator, it is the responsibility of the guardian or the conservator to perform their duties as set forth in the court's order. After appointment, it is the responsibility of the guardian or conservator to report periodically to the court, and it is responsibility of the court to monitor the guardianship or conservatorship throughout its duration.

Under the Task Force recommendations, guardians and conservators have: (1) a duty to submit initial plans, initial property inventories, and annual reports and annual accountings with the court for review and approval, (2) a duty to report to the court any change in the decision-making capacity and functional abilities and limitations of the protected person, and (3) a duty to report to the court and the Department of Human Services the suspected abuse, neglect, and financial exploitation of a person subject to guardianship and conservatorship. These recommendations parallel more detailed Recommendations 4.2-4.5 and accompanying comments with respect to the duty of guardians and conservators to report to the court, which are presented in Part Four of this Report.

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.*

COMMENT

Recommendations 3.22-3.27 enunciate core standards of practice for guardians and conservators. They are drawn primarily from the National Guardianship Association Standards,⁽²¹⁾ the Third National Guardianship Summit Standards,⁽²²⁾ and the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act.⁽²³⁾

The core standards include two basic principles. First, guardians and conservators should respect the dignity of adults and minors subject to guardianship and conservatorship. Second, guardians and conservators should promote, to the extent reasonably possible, the self-determination of adults subject to guardianship and conservatorship by involving them in decisions that affect them and by considering their wishes, values, and preferences in making decisions on their behalf.

Another set of core standards sets forth principles—the substituted judgment principle and the best interest principle—to guide the decision-making of guardians and conservators on behalf of adults subject to guardianship and conservatorship. The substituted judgment principle 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. The best interest principle 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 protected person’s best interest.

It is recommended that the standards for guardian and conservator decision-making should emphasize a preference for the use of the substituted judgment principle unless there is no basis for its use in which case the best interest principle should be used. It should be noted that two recognized authorities on standards for decision-making have developed guidance for guardians and conservators in applying these principles in different factual situations.⁽²⁴⁾

Still another set of core standards relates to the maintenance of contact with adults and minors subject to guardianship and conservatorship by guardians and conservators. These standards provide that guardians and conservators for protected persons with whom they are not living should

maintain regular contact with them through visits and other means of communication.

Similarly, these standards provide that guardians and conservators for adults and minors should support contact between them and their family and friends of protected persons in accordance with their preferences. Iowa Code sections 633.637A and 633.635(2)(d), which currently recognize the right of an adult subject to guardianship to have consensual contact with other persons, are consistent with this standard and should be retained. These standards also expressly provide that guardians for minors should provide or arrange for the provision of the opportunity for regular visitation, communication, and interaction of the minor with his or her parents except under certain limited circumstances.

An additional core standard provides that guardians and conservators for adults and minors should make a good faith effort to cooperate with other substitute decision-makers for them. Recommendations 3.39-3.42 and the accompanying comment specifically concern the relationship between the guardian and the agent under a health care power of attorney for an adult subject to guardianship.

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.

COMMENT

Task Force Recommendations 3.28-3.36 deal with residential decision-making by guardians on behalf of persons subject to guardianship.⁽²⁵⁾ They are drawn primarily from the Third National Summit Standards,⁽²⁶⁾ and the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act,⁽²⁷⁾ and are substantially consistent with the National Guardianship Association Standards.⁽²⁸⁾

It has been observed that “[f]ew things are as important as where you live, where you call home.”⁽²⁹⁾ Thus, residential decisions that a guardian makes for a protected person have a major impact—either positive or negative—on their lives and is often one of the most difficult decisions a guardian has to make. There are two general types of residential options for protected persons: home and community-based options or institutional options, with a variety of potential options within each of these two categories.

Authority of guardian to make residential decisions for adults and minors

Although Iowa Code section 633.635 currently authorizes the court to grant the guardian the power to make residential decisions, it requires the guardian to obtain prior court approval for decisions that entail moving the protected person’s existing permanent residence to a new residence that is more restrictive of his or her liberties than the existing residence. Recommendation 4.8 and the accompanying comment specifically address prior court approval for the guardian’s residential decisions and are presented in Part Four of this Report.

Guardian residential decision-making for adults

The Task Force recommendations of standards for a guardian’s residential decision-making for adults may be summarized as follows:

- In view of the basic principle that guardians should promote the self-determination of protected persons, it is recommended that the guardian should involve the protected person, to the extent reasonably feasible, in the process of residential decision-making.

- It is recommended that, in making residential decisions, the guardian should use the substituted judgment and best interest principles, as stated in Recommendation 3.24.
- It is recommended that in choosing a residence for the protected person, the guardian should give priority to home or other community-based settings unless they are inconsistent with the protected person's goals, preferences, and needs and should consider the proximity of the setting to the people and activities that are important to the protected person.

After a guardian chooses a permanent residential arrangement for a protected person, the guardian should monitor the residential arrangement and take appropriate action if it does not continue to meet the protected person's goals, preferences, and needs. In addition, the guardian should make reasonable efforts to maintain the protected person's established social and support networks during the person's temporary absences from their permanent residence for reasons such as a need for hospital care or a need for skilled nursing care.

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.

COMMENT

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

Task Force Recommendations 3.37-3.38 deal with the authority of guardians to make health care decisions on behalf of adults and minors subject to guardianship. Iowa Code section 633.635 currently authorizes the court to grant the guardian the power to make health care decisions for adults and minors. It, however, is recommended that this Code section be amended to clarify that the court is authorized to grant the guardian the power to consent specifically 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.

While Iowa Code section 633.635 authorizes the court to grant the guardian the power to make health care decisions, it requires the guardian to obtain prior court approval for certain types of decisions, namely decisions to consent to the withholding and withdrawal of life-sustaining treatment and provision of “major elective surgery” or “other non-emergency major medical procedures.” Recommendations 4.19 and 4.20 and the accompanying comments specifically address prior court approval for the guardian’s health care decisions and are presented in Part Four of this Report.

Relationship between guardian and agent under health care power of attorney

Recommendations 3.39-3.42 deal with the relationship between a guardian and an agent for health care decision-making designated under a health care power of attorney. Iowa Code Chapter 144B authorizes a competent adult, the principal, to execute a durable power of attorney for health care designating another adult, the attorney-in-fact, to make health care decisions on behalf of the principal. Section 144B.6 states that the attorney-in-fact “has priority over any other person including a guardian appointed pursuant to Chapter 633 to act for the principal in all matters of health care.” But Iowa Code section 633.635, authorizing the court to grant the guardian the power to make health care decisions, does not presently reflect or reference section 144B.6.

It is recommended that the relationship between a guardian and an attorney-in-fact designated under a valid power of attorney for health care be

clarified. Accordingly, it is recommended that section 633.635 be revised so as to reflect and to reference section 144B.6.

If a durable power of attorney for health care remains in effect after the appointment of a guardian, it is recommended that the attorney-in-fact, who makes health care decisions for an adult subject to guardianship, should keep the guardian informed of such decisions; it is recommended the guardian should be authorized to petition the court to construe the power of the attorney-in-fact, or review his or her conduct under the power of attorney; and it is recommended that 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 an attorney-in-fact 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

Task Force Recommendations 3.43-3.45 enunciate standards for health care decision-making by guardians on behalf of adults subject to guardianship.⁽³⁰⁾ These standards are substantially consistent with the Third National Guardianship Summit Standards,⁽³¹⁾ the National Guardianship Association Standards,⁽³²⁾ and the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act.⁽³³⁾

Standards for guardian health care decision-making are basically similar to those for guardian residential decision-making. Given the basic principle that the guardians should promote the self-determination of adults subject to guardianship, it is recommended that the guardian should involve such protected persons to the extent reasonably feasible in the process of health care decision-making, and it is recommended that the guardian should apply the substituted judgment and best interest principles with a preference for the substituted judgment principle, as stated in Recommendation 3.24. Additionally, it is recommended that 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.***

COMMENT

Task Force Recommendations 3.46-3.52 deal with conservator financial decision-making for adults and minors subject to conservatorship. These recommendations are intended to provide conservators with broad guidance in making financial decisions with respect to the property of such protected persons and managing their property.⁽³⁴⁾ They are based in part on the Third National Guardianship Summit Standards⁽³⁵⁾ and the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act.⁽³⁶⁾

It is recommended as a general principle that the conservator manage the financial affairs of the protected person in a way that maximizes his or her dignity, autonomy, and self-determination. Other recommendations provide that, in making financial decisions, the conservator should, in effect, apply the substituted judgment and the best interest principles, and a recommendation provides the conservator should value the well-being of the protected person over the preservation of the estate.

Several of the recommendations relate to the conservator's status as a fiduciary. Iowa Code 633.3(17) currently includes a conservator in its definition of fiduciary. This means that the conservator must exercise "a high standard of care" in making financial decisions for the protected person and managing the protected person's property.⁽³⁷⁾

One of these recommendations specifically concerns the conservator's decisions about investments on behalf of the protected person. It states that the conservator should apply state law regarding prudent investment practices including Iowa Code section 633.A.4302.

Another recommendation provides that the conservator should avoid conflicts of interest and self-dealing and the appearance of conflicts of interest and self-dealing, but it does not require the conservator to act solely for the benefit of the protected person. Rather, the recommendation provides that the conservator should act so as not to create a conflict of interest or to engage in self-dealing that impairs the conservator's ability to act impartially in the interest of the protected person. Underlying this

recommendation is the recognition that most conservators are family members “who have inherent conflicts of interest” with the protected person such as “joint property ownership and inheritance expectations.”⁽³⁸⁾

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.

COMMENT

Task Force Recommendations 3.53-3.55 deal with fees for guardians and conservators.⁽³⁹⁾ They are derived in part from the Third National Guardianship Summit Standards⁽⁴⁰⁾ and state statutes and court rules in other states.⁽⁴¹⁾

Fair and adequate compensation is important in attracting, enabling and retaining qualified persons to serve as guardians and conservators, especially in cases involving the expenditure of substantial time and effort. But excessive fees are unjustifiable and can drain the resources of persons subject to guardianship and conservatorship, which are needed for their expenses and care.

Task Force Recommendation 3.53 states as a general principle that guardians and conservators are entitled to reasonable compensation and lists ten factors for the court to consider in determining the reasonableness of fees for guardians and conservators, other than financial institutions with Iowa trust powers. The recommended list is intended to give guidance both to guardians and conservators in preparing fee requests and to the court in reviewing fee requests. It is contemplated that these recommendations would be implemented through an Iowa Code provision, a court rule or both.

The remaining recommendations with respect to fees concern the court's responsibility to monitor conservator fees and they concern the responsibility of conservators to notify the court of the impending exhaustion of the assets of the person subject to conservatorship.

End Notes – Part Three: Guardianships and Conservatorships for Adults and Minors: Qualifications/Duties/Standards

1. Josephine Gittler, The Iowa Guardianship and Conservatorship Study in Appendix A, at A:17.
2. Mary Jo. Quinn, *Guardianships of adults, achieving justice, autonomy and safety* 71 (2005)
3. Sally Hurme & Erica Wood, *Introduction, Symposium, Third National Guardianship Summit: Standards of Excellence*, 2012 Utah L. Rev. 1157, 1174.
4. See Iowa Department of Human Services, Provider Record Checks for Child Care (n.d.), <https://dhs.iowa.gov/childcare/provider-record-checks>; Iowa Department of Inspections and Appeals, Record Checks, Frequently asked questions (2014), https://diahfd.iowa.gov/DIA_HFD_WEB/cmsDocDir/2014_08%20Background%20Checks%20FAQs%20UPDATE.pdf Iowa School Finance Information Services, Iowa Background Checks Requirements for school districts (2013), www.iowaschoolfinance.com/Guidance.
3. Sally Hurme & Erica Wood, *Introduction, Symposium, Third National Guardianship Summit: Standards of Excellence*, 2012 Utah L. Rev. 1157, 1174.
5. See, e.g., Richard Van Duizend and Brenda K. Uekert, National College of Probate Court Judges, National Probate Court Standards, Standard 3.3.12. [hereinafter National Probate Court Standards].
6. See Sally Hurme, ABA Commission on Law and Aging, *Criminal and credit background checks for guardians* (2016).
7. National Probate Court Standards, Standard 3.3.12 cmt., *supra* note 3.
8. E-mail from Michel Nelson, Senior Vice President, Iowa Savings Bank, to Professor Josephine Gittler, Task Force Reporter, (June 15, 2017) (on file with Professor Gittler).
9. Office of the Chief Information Officer, Iowa Single Contact Repository, https://ocio.iowa.gov/sites/default/files/documents/2015/05/sing_id_request3.pdf. A SING Fact Sheet indicates that the fee for a combined search is \$15.00. *Id.*
10. National Probate Court Standards, Standard 3.3.15, *supra* note 3.
11. National Conference of Commissioners on Uniform State Laws, Uniform Guardianship, Conservatorship and Other Protective Proceedings Act Section 416 (Draft for Approval) (2017) [hereinafter Uniform Guardianship Act].

12. See Mary Jo Quinn & Howard S. Krooks, *The relationship between the guardian and the court*, 2012 Utah L. Rev. 1611, 1649-1650.
13. For a description of this study, see Josephine Gittler, *The Iowa Guardianship and Conservatorship* in Appendix A, at A:3.
14. See E-mail from Michel Nelson, *supra* note 6, and accompanying text.
15. E-mails from Jim Holter, Vice-President Commercial Surety, Merchants Bonding Company, to Professor Josephine Gittler, Task Force Reporter, (June 28, 2017) (on file with Professor Gittler).
16. *Id.*
17. *Id.*
18. For a survey of state certification laws and their requirements for certification, see Sally Hurme, ABA Commission on Law and Aging, *State guardian certification (2015)* [hereinafter Hurme 2015 Survey] and Sally Hurme, Iowa Guardianship and Conservatorship Summit, Certification of Guardians/Conservators (PowerPoint presentation) (October 29 2015) (on file with Professor Josephine Gittler, Task Force Reporter).
19. Hurme 2015 Survey, *supra* note 16.
20. Third National Guardianship Summit Standards and Recommendations, *reprinted* in 2012 Utah L. Rev. 1191, Recommendation #1.1 & #1.3 [hereinafter National Guardianship Summit Standards]; see generally Karen E. Boxx & Terry W. Hammond, *A call for standards: An overview of the current status and need for guardian standards of conduct and code of ethics*, 2012 Utah L. Rev. 1207.
21. National Guardianship Association Standards of Practice, Standards 7, 9 & 13, http://www.guardianship.org/documents/Standards_of_Practice.pdf [hereinafter NGA Standards].
22. National Guardianship Summit Standards, Standard #1.2, Standard #1.3, Recommendation #1.5, & Recommendation #2.2, *supra* note 18.
23. Uniform Guardianship Act Section 313, *supra* note 9.
24. See Linda S. Whitten & Lawrence A. Frolik, *Surrogate Decision-Making Standards for Guardians: Theory and Reality*, 2012 Utah L. Rev. 1491.
25. For a description of residential option and relevant federal and state policies, a state statutory analysis and a discussion of the challenges faced by guardians in

making residential decisions, *see* Naomi Karp & Erica Wood, *Choosing home for someone else: Guardian residential decision-making*, 2012 Utah L. Rev. 1445, 1445.

26. National Guardianship Summit Standards, Standards #6.1-6.11, *supra* note 18.

27. Uniform Guardianship Act Section 314, *supra* note 9.

28. NGA Standards, Standard 12, *supra* note 20.

29. Naomi Karp & Erica Wood, *supra* note 24, at 1445.

30. For a history of legal substituted health care decision-making and discussion of the issues surrounding guardian health care decision-making, *see* Kim Dayton, *Standards for health care decision-making: Legal and practical considerations*, 2012 Utah L. Rev. 1329.

31. National Guardianship Summit Standards, Standards #5.1-5.6, *supra* note 18.

32. NGA Standards, Standard 17, *supra* note 20. NGA Standards, Standard 14-15, *supra* note 20.

33. Uniform Guardianship Act Section 314, *supra* note 9.

34. For a detailed review and analysis of standards for conservator financial decision-making, *see* Robert B. Fleming & Rebecca C. Morgan, *Standards for financial decision-making: Legal, ethical and practical issues*, 2012 Utah L. Rev. 1275.

35. National Guardianship Summit Standards, Standards #4.1-4.14, *supra* note 18.

36. Uniform Guardianship Act Section 418, *supra* note 9.

37. *Fiduciary*, Black's Law Dictionary (10th ed. 2014).

38. National Conference of Commissioners on Uniform State Laws, Uniform Power of Attorney Act Section 114 cmt. (2006).

39. For a discussion of issues with respect to guardian and conservator fees, *see* Catherine Seal & Spencer Crona, *Standards for guardian fees*, 2012 Utah L. Rev. 1575.

40. National Guardianship Summit Standards, Standards # 3.1 & # 3.2, Recommendations #3. 2, #3.4, & # 3.6, *supra* note 18.

41. In developing the fee recommendations, Task Force members used as a resource a survey of state statutes and court rules in Catherine Seal & Spencer Crona, *supra* note 38, at 1604-1610

PART FOUR

COURT MONITORING OF ADULT & MINOR GUARDIANSHIPS & CONSERVATORSHIPS

I. BACKGROUND

Iowa courts have an ongoing responsibility to monitor adult and minor guardianships and conservatorships. The goal of monitoring is to ensure the well-being and protection of adults and minors subject to guardianship, the protection of the property of adults and minors subject to conservatorship, and the accountability of their guardians and conservators.

As noted previously, guardianship has its roots in the doctrine of *parens patriae* under which the state has the power to protect those who cannot protect themselves.⁽¹⁾ A concomitant of the *parens patriae* doctrine is a proactive protective stance on the part of the court in guardianship and conservatorship cases, particularly in carrying out its monitoring role. This stance “is somewhat at odds with the traditional passive stance of probate courts” which do not act “until some interested person invokes [their] power to secure resolution of a matter.”⁽²⁾ As, however, the Commission on National Probate Court Standards points out: “Although probate courts cannot be expected to provide daily supervision of the guardian’s or conservator’s action, they should not assume a passive role, responding only to the filing of a complaint.”⁽³⁾

The court monitoring function is of critical importance given the vulnerability of adults and minors subject to guardianship and conservatorship and their need for protection. There is evidence that persons with intellectual disabilities, Alzheimer’s and other dementias who comprise the vast majority of the adult guardianship and conservatorship population are especially likely to become victims of abuse, neglect and financial exploitation,⁽⁴⁾ and there is evidence that abuse, neglect and financial exploitation of such adults by their guardians and conservators is a serious problem.⁽⁵⁾ For example:

- A 2010 Government Accountability Office (GAO) report highlighted cases of misappropriation and misuse of conservatorship assets in

several states, one of which was an Iowa case in which “[a] CPA with known financial problems was appointed as conservator of two seniors and used his position to misappropriate \$167,325.”⁽⁶⁾ The GAO report found that, in most of these cases, courts had failed to adequately monitor conservators after appointment.

- A 2012 story in a Burlington, Iowa newspaper described the case of a mother and daughter who had been appointed as the guardian and conservator for a handicapped relative and who abused him and stole more than \$50,000 from him. The story related that the women “only checked on him once a month,” that “they rarely gave him more than \$10,” and that “his neighbors would bring him canned goods because he always ran out of food.”⁽⁷⁾

Despite the importance of the court monitoring function, a national survey of state judges and administrators, conducted by the National Center on State Courts, found that “[a] number of courts are unable to adequately monitor guardianships [and conservatorships] as a result of insufficient staffing and resources.”⁽⁸⁾ Other studies and reports likewise have documented serious deficiencies in court monitoring.⁽⁹⁾

Task Force recommendations are directed at strengthening the monitoring of guardianships and conservatorships by Iowa courts and assisting them to engage in more effective and efficient monitoring. These recommendations reflect model acts and standards with respect to court monitoring, reforms instituted in other states to improve court monitoring and widely recognized court monitoring best practices.

The time frame for implementation of recommendations—short, intermediate, or long term—will vary depending on the resources required for their implementation. Some will involve little or no resources, whereas others will involve significant resources.

II. GENERAL COURT MONITORING STANDARDS

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

- (a) 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,***
- (b) ensuring compliance by guardians and conservators with***

- statutory requirements and with the terms of court orders,*
- (c) determining whether guardianships and conservatorships should be continued, modified, or terminated, and*
 - (d) 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.*

COMMENT

Recommendation 4.1 sets forth a general standard for court monitoring of adult and minor guardianships and conservatorships. It substantially adopts the general monitoring standard of the Third National Guardianship Summit Standards.⁽¹⁰⁾

Under subsections (a)-(c) of the recommendation, the court must (1) review and approve plans, inventories, reports, and accountings, (2) enforce compliance with statutory requirements and with the terms of court orders applicable to guardianships and conservatorships, and (3) determine whether guardianships and conservatorships should be modified or terminated.

Subsection (d) of the recommendation further states that, when needed and appropriate, the court should independently assess the status and well-being of the persons and property of adults subject to guardianship and conservatorship. This subsection, as well as the recommendation as a whole, calls for the court to play a proactive protective role in monitoring guardianships and conservatorships—a role reflecting the *parens patriae* doctrine which has historically informed monitoring guardianships and conservatorships.

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:

- (a) the status and condition of the protected adult, and*
- (b) 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.

COMMENT

Task Force Recommendations 4.2-4.7 address the duty of guardians of

adults to report periodically to the court during the duration of the guardianship. The chief way in which the court traditionally has monitored guardianships has been through the review and approval of reports submitted by guardians.

It is recommended that the Iowa Code require the guardian of an adult to file an initial care plan for the protected adult with the court within 60 days after appointment. Iowa Code section 633.669 currently requires guardians to file initial, annual and final reports. But the Code does not require guardians to file an initial care plan. The recommendation for a new initial care plan requirement is consistent with the recommendations of the National Probate Court Standards,⁽¹¹⁾ the Third National Guardianship Summit Standards,⁽¹²⁾ the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act,⁽¹³⁾ and the National Guardianship Association Standards of Practice.⁽¹⁴⁾

The plan's purpose is to encourage the guardian to think through what the needs of the protected adult are at present and what they may be in the foreseeable future and then to develop a plan to meet those needs. The plan's purpose also is to enable the court to ascertain whether the guardian is engaging in appropriate planning for the protected person and to furnish the court with "a benchmark for measuring the [future] performance and assessing the appropriateness of the decisions and actions by the guardian/conservator."⁽¹⁵⁾

In developing the initial care plan, it is recommended that the guardian, to the extent reasonably possible, engage in a person-centered planning process. Such a process is aimed at maximizing the self-determination of the protected adult and emphasizes collaboration with the protected adult and the protected adult's family, friends and others with whom he or she has a significant relationship.⁽¹⁶⁾

The initial care plan should describe the protected adult's status, condition, and his or her needs. It is recommended that the plan contain the following information:

- the living arrangements for the protected adult that the guardian expects to arrange, facilitate, or continue,
- the health, educational and social services, the activities and any other supports for the protected adult that the guardian expects to arrange, facilitate, or continue,
- the anticipated nature and frequency of the guardian's visits and

communication with the protected adult,

- 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
- the goals for the protected adult and how the guardian anticipates achieving those goals.

The plan should specifically, rather than generally, describe the protected adult's status and condition and his or her needs. For example, the living arrangements for a young adult with intellectual disabilities may be quite different than that for an older adult with progressive Alzheimer's.

Changes may need to be made in an initial care plan over time, and substantial changes should be noted in the guardian's annual reports.

The Judicial Branch should adopt a standardized form for the initial care plan for the use of guardians. See Appendix J for a model care plan form which Task Force members developed and the Task Force approved.

It also is recommended that the Judicial Branch should revise the existing form for the guardian's annual report (Iowa R. Prob. P. 7.11, Form 2). The Iowa Guardianship and Conservatorship Study, involving a review of over 4,000 guardianship and conservatorship case files, found that many annual reports lacked specificity and detail about the status, condition, and needs of protected persons and the decisions and actions of the guardian. Judges and other Task Force members agreed that the reports all too often do not contain sufficient information for meaningful court monitoring. Therefore, it is recommended the annual report form be redesigned and revised. See Appendix K for a model annual report form which the Task Force members developed and the Task Force approved.

The initial care plan form and the annual report form should be user-friendly. It is particularly important that these forms be user-friendly for the many guardians who are family members and who are not represented by an attorney. Detailed instructions about how to use these forms should be attached to the forms.

Other Task Force recommendations call for furnishing more guidance to guardians about their legal and ethical duties, including their duty to file initial care plans and annual reports with the court. See Part Three of the Task Force Report.

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:***
 - (i) the minor's living arrangement and care that the guardian expects to arrange, facilitate or continue,***
 - (ii) the health, educational, vocational and social services and activities that the guardian expects to arrange, facilitate, or continue on behalf of the minor,***
 - (iii) 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,***
 - (iv) the anticipated nature and frequency of the guardian's visits and communication with the minor and activities on behalf of the minor, and***
 - (v) 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.

COMMENT

Task Force Recommendations 4.8-4.11 address the duty of guardians of minors to report periodically to the court during the duration of the guardianship. These recommendations are essentially the same as the preceding Recommendations 4.2-4.7 with respect to the duty of guardians of adults to report to the court.

It is recommended that the Iowa Code require the guardian of a minor to file an initial care plan with the court within 60 days after appointment; it is recommended that the Judicial Branch adopt a new standardized form for the initial care plan specifically for the use of guardians of minors; and it is recommended that the Judicial Branch adopt a new standardized form for the annual report specifically for the use of guardians of minors.

There is currently one annual report form (Iowa R. Prob. P. 7.11, Form 2) for both adult guardianships and minor guardianships. It, however, is recommended that there be separate forms for adult guardianships and minor guardianships.

See Appendix L for a model care plan form for the use of guardians of minors and see Appendix M for a model annual report for use by guardians of minors. These forms were developed by Task Force members and approved by the Task Force.

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.

COMMENT

Task Force Recommendations 4.12-4.15 address the duty of conservators of adults and minors to report periodically to the court during the course of a conservatorship. These recommendations parallel Recommendations 4.2-4.11 with respect to guardians.

It is recommended that the Iowa Code require a conservator to file an initial financial management plan, together with a property inventory, within 60 days after appointment. Iowa Code sections 633.670-633.671 currently require the filing of initial property inventories and annual reports and accountings. The Code, however, does not require the filing of an initial financial management plan. The recommendation of a new financial management plan requirement is consistent with the recommendations of the National Probate Court Standards,⁽¹⁷⁾ the Third National Guardianship Summit Standards,⁽¹⁸⁾ the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act,⁽¹⁹⁾ and the National Guardianship Association Standards of Practice.⁽²⁰⁾

A conservator's initial financial management plan, like a guardian's initial care plan, has two related but distinct purposes. One purpose is to encourage the conservator to think through what the needs of the protected person for financial management are at present and what they may be in the foreseeable future and then to develop a plan for meeting those needs. Another purpose is to enable the court to determine whether the conservator has put in place an appropriate plan and to furnish the court with a benchmark for assessment of the conservator's performance over time.

The financial management plan should describe how the conservator plans to protect, manage, expend, and distribute the property of the protected person and pay for the expenses of the protected person. The plan should

contain specific, rather than general, information about the individual situation of the protected person. For example, the management of the limited income and assets of a young person with a mental illness may be quite different from the management of the sizable income and assets of an elderly adult with dementia and other health problems. Since a conservator's initial financial management plan may change over time, substantial changes should be noted in the conservator's annual reports.

It is recommended that the Judicial Branch adopt a standardized initial financial management plan form for the use of conservators. It also is recommended that the existing form for the annual report of a conservator (Form 4 of Probate Procedure Rule 7.11) should be revised. These forms, like the forms for guardians, should be user-friendly.

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:

- (a) specialized software for the electronic entry and submission of itemized transaction information and documentation of transactions by conservators,***
- (b) use of factors (red flags) that are predictive of cases where there is a higher risk of misappropriation and misuse of assets by conservators,***
- (c) 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***
- (d) 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).

COMMENT

The aim of Task Force Recommendations 4.16-4.18 is to improve conservatorship monitoring in order to prevent, identify, and redress the financial exploitation of adults and minors subject to conservatorship. This exploitation may take the form of misappropriation, misuse, and mismanagement of their property. When conservators appointed by the court use their position to engage in financial exploitation of protected adults, it harms not only them but also the judicial system by undermining the public's trust and confidence in the system.⁽²¹⁾

In recent years, the importance of protecting the property of persons subject to conservatorship through court monitoring has received increasing attention. The Iowa Judicial Branch does not collect and report data regarding the total dollar value of the assets under conservatorship. Four states, however, have collected and reported such data for adult and minor conservatorships. Extrapolating from this data, it is estimated that the total dollar value of assets under conservatorship in Iowa is over \$517 million.⁽²²⁾

The assets of person subject to conservatorship can represent a temptation to conservators. Although this has been a largely hidden problem, there are numerous media stories, reports and studies about cases of conservatorship financial exploitation.⁽²³⁾

It is recommended that the Iowa Judicial Branch develop a pilot project modeled on the innovative and successful Minnesota Conservator Account Auditing Program (CAAP),⁽²⁴⁾ and it is recommended that the pilot program adopt or adapt four main elements of CAAP.

The first CAAP element is an online conservator account reporting application, known as MyMN Conservator. Minnesota conservators use this application in the electronic filing of inventories and annual accountings, which allows them to enter and to submit itemized transaction information and documentation of transactions. Instructions for conservators are available within the application and in a series of YouTube video tutorials.

The second CAAP element is the use of red flags, or factors, that are predictive of the cases where there is higher risk of misappropriation and misuse of assets. These red flags are programmed into the application. When an accounting is filed by a conservator, the application reviews the accounting in its entirety for these flags.

Such predictive analytics permits the third CAAP element of the use of differential case management with different levels of review of the accountings that conservators submit depending upon the predicted risk of misappropriation and misuse of assets. This, in turn, permits more effective and efficient allocation of court resources for monitoring of conservatorships.

The fourth CAAP element is an audit unit staffed by persons with accounting expertise who conduct intensive reviews of high risk cases and periodic reviews of other cases. The CAAP audit unit operates on a statewide basis, but it is possible to have audit units that operate on a district basis.

The National Center on State Courts is conducting the Conservatorship Accountability Project⁽²⁵⁾ which provides technical assistance to states to replicate Minnesota's CAAP and which has been endorsed by the Joint Committee on Elders of the Conference of Chief Justices and the Conference of Chief Court Administrators and the Court.⁽²⁶⁾ After a competitive application process, the Iowa Judicial Branch and the judicial branches of Indiana, Nevada, New Mexico, and Texas were designated as project participants.⁽²⁷⁾

A major focus of the Conservatorship Accountability Project is the development, testing and validation of red flags based on Minnesota CAAP data. The red flags, originally developed for CAAP, were based on anecdotal information, which could not be validated, but new and different flags—some of which are somewhat counterintuitive in terms of being risk indicators—have been developed, tested and validated and they will be further refined.⁽²⁸⁾

The Conservatorship Accountability Project is also furnishing technical assistance to participating state judicial branches to adapt the software for MyMN Conservator, the Minnesota online conservator account reporting application. The project participants' adoption of the MyMN Conservator software has proved more difficult than originally anticipated. Three participating states are employing internal IT staff, contractors, or a combination thereof, to adapt the Minnesota software or to develop a different software, and a Conservatorship Accountability Project implementation manual is being prepared which should assist states in adapting and developing software.⁽²⁹⁾

The Iowa Judicial Branch initially designated Blackhawk County in Judicial District One and Pottawattamie County in Judicial District Four as the sites for the recommended pilot project modeled on CAAP. Because of budget constraints and funding shortfalls, the Iowa Judicial Branch decided not to move forward with the pilot project. Nevertheless, it is recommended that the Iowa Judicial Branch should continue to have as a goal the development

of a pilot project and should continue to participate in the Conservatorship Accountability Project.

The foregoing recommendations should be considered in conjunction with Recommendations 3.1-3.5 and accompanying comments which are presented in Part Three of the Task Force Report. These recommendations taken together are directed at preventing and reducing financial exploitation on the part of conservators not only by enhancing court monitoring of conservatorships but also by enhancing screening of prospective conservators prior to their court appointment.

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.

COMMENT

Recommendation 4.19 pertains to waivers of the reporting requirements for guardians and conservators of adults and minors. Recommendation 4.20 addresses extensions of time for filing of plans, inventories, reports and accountings by guardians and conservators, and Recommendation 4.21 addresses enforcement of filing requirements.

Iowa Code sections 633.669, 633.670 & 633.671 currently require the filing of reports by guardians and the filing of inventories, reports, and accountings by conservators. But these Code provisions do not expressly either allow or prohibit the waiver of these requirements, and the Rules of Probate Procedure are silent as to the waiver of these requirements.

Task Force members report that practices regarding waivers vary between judicial districts and between judges within a judicial district. The Iowa Guardianship and Conservatorship Study involving the review of over 4,000 court files disclosed that, in a significant number of these cases, the court had granted waivers of reporting requirements.⁽³⁰⁾

It was the consensus of Task Force members who considered the permissibility of waivers that waivers negatively impact the court's ability to fulfill its monitoring function. The following communication from Chief District Court Judge Lekar is illustrative:

Oversight and monitoring are vital to the duty of the judicial branch to persons under guardianship or conservatorship. Waiver of the obligation to file annual reports represents a failure to fulfill that duty. Yearly reporting is not unduly onerous to those who take on the fiduciary capacity of serving as a guardian and conservator and helps serve as a reminder to them of the seriousness of the obligations they have undertaken. Oversight and review of those annual reports is integral to the duties of our district court judges in protecting the interests of our vulnerable citizens under guardianship or conservatorship. The entry of an order that waives the duty to file an annual report or allows for the filing of annual reports on a time period in excess of one year (such as every second, third, or fifth year) threatens the rights and well-being of persons under guardianship or conservatorship and unacceptably complicates the jobs of clerks of court who are responsible for assisting the judges in seeing that reports are timely filed.⁽³¹⁾

It is recommended that waivers of filing requirements no longer be permitted. It is suggested that the Judicial Branch consider implementation of this recommendation through the addition of a new rule to the Rules of Probate Procedure.

It also is recommended the court grant extensions of time for filing only for good cause shown and that policies and practices be developed to avoid repeated extensions of time of filing deadlines in a case. This recommendation is the outgrowth of a concern about cases in which the court is unable to perform its monitoring function on an annual basis as contemplated by the Iowa Code because of extensions of time for filing.⁽³²⁾ For example, the Iowa Guardianship and Conservatorship Study disclosed that, in a significant number of the case files reviewed, extensions of time for filing had been repeatedly granted with the reasons for extensions frequently being unclear.⁽³³⁾

In addition, it is recommended that the court should enforce filing requirements through sanctioning guardians and conservators who fail to comply with the requirements provided they receive fair notice of failure to file and the opportunity to cure the 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).

COMMENT

Recommendation 4.22 pertains to restrictions on a guardian's residential decision-making. These recommendations specifically delineate when a guardian must obtain prior court approval for a change in the permanent residence of a person subject to guardianship.

The Task Force recommends the replacement of existing Iowa Code section 633.635(2)(a), which provides that prior court approval is required for "[c]hanging . . . the ward's permanent residence if the proposed new residence is more restrictive of the ward's liberties than the current residence." The intent of this provision is to ensure that a protected person is not moved to a permanent residence that substantially restricts his or her liberty unless it is necessary.

It is, however, reported that it is not always clear to guardians and judges as to what constitutes a change in residence that is "more restrictive of the ward's liberties than the current residence." This problem has been exacerbated by the blurring of the lines between different types of residential settings. For example, nursing homes traditionally have been secure facilities that place restrictions on a resident's ability to leave and to have visitors,

but some assisted living facilities now have locked “memory units” for residents with dementia.

The purpose of the Task Force recommendation is to clarify when a guardian’s residential decision-making requires prior court approval by specifying that such approval must be obtained if a protected person’s permanent residence is to be changed to “a nursing home, other secure facility, or secure portion of a facility restricting his or her ability to leave or have visitors.” The language of this recommendation is based on that of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act.⁽³⁴⁾

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.”

COMMENT

Recommendations 4.23 and 4.24 pertain to restrictions on a guardian’s health care decision-making. These recommendations specifically delineate the type of health care decisions for which a guardian must obtain prior court approval.

The Task Force recommends the retention of existing Iowa Code section 633.635(2)(c). It provides that a guardian must obtain prior court approval to “[c]onsent to the withholding or withdrawal of life-sustaining procedures in accordance with Chapter 144A.” The consensus of Task Force members was that judicial review of such decisions ought to be required because of their gravity, complexity, and difficulty.

The Task Force recommends the replacement of existing Iowa Code section 633.635(2)(b) which provides that a guardian must obtain prior court approval for “[a]rranging the provision of major elective surgery or any

other nonemergency major medical procedure.” This section goes on to state:

“major elective surgery” and “nonemergency major medical procedure” do not include the provision to the ward of professional care, counseling, treatment, or services limited to the provision of routine physical and dental examinations and procedures under anesthesia, if the use of anesthesia is necessitated by the physical or mental disability of the ward, and if the anesthesia is provided within the scope of the health care practitioner’s scope of practice.

One reported problem with this requirement is that it is not always clear to guardians and judges as to what should be considered “major surgery” or a “major medical procedure” for which prior court approval must be obtained. Another reported problem with this requirement is that it puts judges in the position of “second guessing” determinations by physicians that a surgery or a procedure is medically necessary. Still another reported problem with the requirement is that it may impede needed care and increase its costs. For example, in a communication to the Task Force, a representative of University of Iowa Health Care wrote:

It has been the experience of University of Iowa Health Care that this requirement imposes material barriers to a ward’s receipt of effective, timely care. Specifically, almost all guardians with whom UI Health Care providers interact are unaware of this requirement. This situation is stressful and emotional for patients and their families, often requiring them to obtain counsel, which increases the cost of health care because it requires the patient to remain in the hospital while awaiting court approval to proceed to care which has been identified as the recommended/standard of care protocol and to which the guardian has consented after participating in the informed consent process. The approval process can take a very long time and patients’ health often degrade in the interim while they await authority to perform the procedure. These cases do not involve extraordinary or unusual types of care. Rather, they involve standards of care therapies that simply aren’t emergent but cannot be considered minor. There are a large number of these cases, so the problem they pose is significant. ⁽³⁵⁾

The Task Force specifically recommends the replacement of existing Iowa Code section 633.635(2)(b) with a narrower and more restrictive provision listing the specific types of non-emergency elective surgeries and procedures requiring prior court approval. Prior court approval is recommended for abortion and sterilization because of their invasive nature, because of their impact on the reproductive capacity of a protected person, and

because they may be violative of the protected person's values and their moral, ethical, and religious beliefs.

A 2014 statutory survey of the 50 states and the District of Columbia disclosed that no other state had a requirement like the Iowa Code requirement of prior court approval of major elective surgery or any other non-emergency major medical procedure. The survey did disclose that twenty-two states had statutes taking the recommended approach of listing specific invasive interventions requiring prior court approval. The statutes of other states vary as to the interventions requiring prior court approval. They list one or more of the following: abortion, sterilization, removal of bodily organs, amputation of a limb, experimental medical procedures and experimental drugs, psychosurgery, convulsive (electroshock) therapy, and behavior modification programs involving adverse stimuli.⁽³⁶⁾

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.

COMMENT

Task Force recommendations 4.25-4.30 recognize that making determinations with respect to termination and modification of adult guardianships and conservatorships is part of the monitoring function of the court. It is recommended that the court periodically should review whether guardianships or conservatorships should be terminated or modified.

In Iowa, as in other states, most adults who become subject to guardianships and conservatorships remain so until their deaths. Consequently, guardianships and conservatorships cases continue in effect for long periods of time. The Iowa Guardianship and Conservatorship Study found that 11% of cases had been in effect for 16-20 years, 25% had been in effect for 21 years or more, and the oldest cases in five of the counties surveyed had originally been filed in the 1960s.⁽³⁷⁾

There has been growing concern, particularly among advocates for individuals with disabilities, brain injuries, and mental illnesses, about barriers to challenging the continuation of guardianships and conservatorships and bringing about restoration of the rights of adults subject to guardianship and

conservatorship. Among the barriers cited in an in-depth 2017 study are: (1) a general lack of knowledge about the termination option and procedures, (2) the failure of courts to regularly review whether a guardianship or conservatorship should be terminated, (3) the difficulty often encountered by persons seeking termination in gaining access to the court, and (4) the fact that many persons seeking termination do not have assistance of counsel.⁽³⁸⁾

The standard for termination set forth in the recommendation is a finding by the court that the grounds required by the Iowa Code for appointment of a guardian or conservator are no longer satisfied. Under Iowa Code sections 633.3(23)(a) and 633.552(2)(a), the court may appoint a guardian for a person whose “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.” Under Iowa Code sections 633.3(23)(b) and 633.566(2)(a), the court may appoint a conservator for a person whose “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.”

The recommended standard for termination is essentially the standard set forth in Iowa Code section 633.675. It also is consistent with the standard set forth in the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act.⁽³⁹⁾

Among the situations that may lead a court to terminate a guardianship or conservatorship are those in which a protected person regains the capacity to make decisions. For instance, a protected person with a brain injury, who receives rehabilitative services, may eventually recover. The protected person also may regain the capacity to make decisions due to other factors such as an improved medical condition or the effective use of medications.⁽⁴⁰⁾

Other situations in which the court may terminate a guardianship or conservatorship are those in which a protected person no longer needs the assistance of a guardian or conservator because decision-making supports for the person become available. The Iowa Court of Appeals decision in *In re Guardianship of F.W. Jr.* is illustrative.⁽⁴¹⁾ The Court of Appeals upheld the termination of the guardianship and conservatorship of an older man with cognitive impairment and quoted with approval the lower court’s conclusion that “[a]lthough there are many things he can no longer do for himself, he is financially able and willing to secure third-party assistance when needed.”⁽⁴²⁾

A survey of case law in other states identified still another type of situation in which a court may terminate a guardianship or conservatorship. According to this survey, termination may sometimes occur because “additional evidence becomes available to show that the person does not meet (perhaps never met) the legal standard of an incapacitated person.”⁽⁴³⁾

Iowa Code section 633.551(3) mandates consideration of the appropriateness of a limited guardianship or conservatorship in modification proceedings, but it does not expressly set forth a standard for modification. It is recommended that the standard for modification should be a finding by the court that the powers granted to a guardian or conservator are either more or less than needed in view of the decision-making capacity and the functional abilities and limitations of a protected person, the availability of third-party assistance and supports for the protected persons or other circumstances. This recommended standard for modification is consistent with the standard set forth in the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act.⁽⁴⁴⁾

Although the Iowa Code authorizes termination and modification proceedings, it does not detail the procedures to be followed in such proceedings. Filing a formal petition for termination or modification may be difficult for persons subject to guardianship and conservatorship. Therefore, it is recommended that other persons with an interest in their welfare, as well as their guardians and conservators, should be able to initiate a proceeding through a written communication to the court. It must be emphasized that the decision as to whether to hold a hearing based on a written communication rather than a formal petition is permissive rather than mandatory and is left to the discretion of the court.

The purpose of this recommendation is to facilitate the court’s consideration of the appropriateness of termination and modification of guardianships and conservatorships without placing an undue burden on the court’s limited resources. The recommendation is generally consistent with the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act.⁽⁴⁵⁾

It also is recommended that in termination and modification proceedings, the court should follow the same procedures to safeguard the rights of a protected person as apply to safeguard the rights of a respondent to a guardianship or conservatorship petition, including the right to be represented by counsel. The recommendation is consistent with Uniform Guardianship, Conservatorship and Other Protective Arrangements Act.⁽⁴⁶⁾

Recommendations regarding the burdens of proof and the standard of proof applicable to termination and modification proceedings, conform to the requirements of the Iowa Supreme Court decision, *In re Guardianship of Hedin*,⁽⁴⁷⁾ and they conform to Iowa Code sections 633.67 and 633.675(1)(c) subsequently enacted in response to the *Hedin* decision.

It should be noted that the primary issue to be decided by the court in termination and modification proceedings is often whether the protected person has the capacity sufficient to make and carry out personal care decisions or financial decisions or both. To make an informed decision about this issue, the court generally may need access to a clinical evaluation of the protected person by a qualified professional. Recommendations 6.7 and 6.8 indicate that the court should have the authority to order a clinical evaluation of a protected person or to order the production of documents regarding such an evaluation. These recommendations with accompanying comments are presented in Part Six of this Report.

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.

COMMENT

Task Force Recommendations 4.31-4.33 recognize that making determinations with respect to removal of guardians and conservators is part of the court monitoring function, and Iowa Code section 633.65 authorizes the court to remove a fiduciary, which includes a guardian or conservator, for failure to perform his or her duties or comply with the terms of a court order.

It is recommended that not only a person subject to guardianship and conservatorship but also other persons with an interest in the protected person's welfare should be able to initiate a proceeding through a written communication to the court as well as formal petition. Here again, it must be emphasized that the decision as to whether to hold a hearing based on a written communication rather than a formal petition is permissive rather than mandatory and is left to the discretion of the court. This recommendation is substantially consistent with the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act.⁽⁴⁸⁾

It also is recommended that an adult subject to guardianship or conservatorship seeking removal should be entitled to representation by counsel in accordance with Recommendation 1.26 in Part One of this Report. These recommendations are substantially consistent with Uniform Guardianship, Conservatorship and Other Protective Arrangements Act.⁽⁴⁹⁾

End Notes – Part Four: Court Monitoring of Adult & Minor Guardianships & Conservatorships

1. See TASK FORCE REPORT, INTRODUCTION, at 1.
2. Naomi Karp. & Erica Wood, AARP Public Policy Institute & ABA Commission on Law and Aging, *Guardianship monitoring: A national survey of court practices* 31 (2006).
3. Richard Van Duizend and Brenda K. Uekert, National College of Probate Court Judges, *National Probate Court Standards*, Standard 3.3.19 cmt. [hereinafter *National Probate Court Standards*].
4. See Nora J. Baladerian, et al., Disability and Abuse Project, Spectrum Inst., *Abuse of people with disabilities: Victims and their families speak out: A report on the 2012 national survey on abuse of people with disabilities* (2013), <http://disability-abuse.com/survey/survey-report.pdf>; U.S. Dep't of Justice, *Elder justice roadmap: A stakeholder initiative to respond to an emerging health, justice, financial and social crisis* (2014), <https://www.justice.gov/elderjustice/file/829266/download>; U.S. Gov't Accountability Office, GAO-17-33, *Elder abuse: The extent of abuse by*

guardians is unknown, but some measures exist to help protect older adults (2016) [hereinafter 2016 GAO Report]; U.S. Gov't Accountability Office, GAO-10-1046 Guardianships: Cases of financial exploitation, neglect and abuse of seniors (2010) [hereinafter 2010 GAO report]; U.S. Gov't Accountability Office, GAO-06-1086 T, Guardianships: Little progress in ensuring protected for incapacitated elderly people (2006).

5. One source of information about guardianship and conservatorship abuse is media stories and investigative reports. See, e.g., Sharyl Attkisson, *Investigation into guardianship abuse*, CBS News, Dec. 13, 2010; Arian Campo-Flores and Ashby Jones, *Abuse plagues system of legal guardians for adults*, Wall St. J., Oct. 30, 2015; Emily Gurnon, *Guardianship in the U.S.: Protection or Exploitation*, Forbes, May 23, 2016; Patrick Michels, *Who guards the guardians?*, Texas Observer, July 6, 2016. Another source of information is government reports. See, e.g., 2010 GAO Report, *supra* note 4; 2016 GAO Report, *supra* note 4; Disability Rights Nebraska, *Guardianship reform needed*, State Auditor's Office (press release, (n.d.)), http://www.disabilityrightsnebraska.org/what_we_do/guardianship_reform/guardianship_abuse.html/title/state-auditor-s-office-press-release. Still another source of information is congressional hearings. See, e.g., *Trust betrayed: Financial abuse of older Americans by guardians and others in power: Hearing Before the S. Select Comm. On Aging*, 114th Cong (2016), <https://www.aging.senate.gov/hearings/trust-betrayed-financial-abuse-of-older-americans-by-guardians-and-others-in-power>. An additional source of information is the National Association to Stop Guardianship Abuse website, <https://stopguardianabuse.org/victims/>.

6. 2010 GAO Report, *supra* note 4, at 12.

7. John Mangalonzo, *Mother and daughter charged with theft*, Burlington Hawk Eye, January 11, 2012, at 4A; See *In the Matter of Luth*, No. GCPROO3665 (Iowa Dist. Ct., Des Moines Cnty., Aug.4, 2011).

8. Brenda K. Uekert, National Center for State Courts, *Adult guardianship court data and issues: results from an online survey* 5 (2010).

9. See, e.g., Naomi Karp, N. & Erica Wood, *supra* note 2; National Association for Court Management, *Adult guardianship guide, a guide to plan, develop and sustain a comprehensive court guardianship and conservatorship program* 11 (2014).

10. Third National Guardianship Summit Standards and Recommendations, *reprinted* in 2012 Utah L. Rev. 1191, Recommendation #2.3 [hereinafter National Guardianship Summit Standards].

11. National Probate Court Standards, Standard 3.3.16, *supra* note 3.

12. National Guardianship Summit Standards, Standard #2.2, *supra* note 10.

13. National Conference of Commissioners on Uniform State Laws, Uniform Guardianship, Conservatorship and Other Protective Arrangements Act, Section 316 (Draft for Approval) (2017) [hereinafter Uniform Guardianship Act].
14. National Guardianship Association Standards of Practice, Standard 13, http://www.guardianship.org/documents/Standards_of_Practice.pdf [hereinafter NGA Standards].
15. National Probate Court Standards, Standard 3.3.16 cmt., *supra* note 3.
16. For a discussion of the origins of and reasons for a person-centered planning process and its characteristics, see A. Frank Johns, Person-Centered planning in guardianship: A little hope for the future, 2012 Utah L. Rev. 1541.
17. National Probate Court Standards, Standard 3.3.16, *supra* note 3.
18. National Guardianship Summit Standards, Standard #2.2, *supra* note 10.
19. Uniform Guardianship Act Section 419, *supra* note 13.
20. NGA Standards, Standard 18, *supra* note 14.
21. *See Trust betrayed: Financial abuse of older Americans by guardians and others in power: Hearing before S. Select Comm. on Aging*, 114th Cong. (2016) (statement of Cathy Boyko, Manager, Minnesota Conservator Accounting Auditing Program, at 2) [hereinafter Boyko statement].
22. As of 2015, Idaho had \$21 million of assets per 100,000 population, Minnesota had \$17 million, Texas had \$15 million and Delaware had \$13 million. E-Mail from Brenda Uerkert, Director, Center for Elders and the Court and Principal Court Research Consultant, National Center on State Court, to Professor Josephine Gittler, Task Force Reporter, (June 30, 1917) (on file with Professor Gittler). In these four states, the average amount of assets under conservatorship per 100,000 of population is \$16,665 million. As of 2016, Iowa has a population of 3,134,693. U.S. Census Bureau (2017). Quick Facts, <https://www.census.gov/quick-facts/fact/table/IA/PST045216>.
23. *See supra* note 5 and accompanying text.
24. For a detailed description of the Conservator Account Auditing Program, see Boyko testimony, *supra* note 21 and Minnesota Judicial System, *Conservator Account Auditing Program*, <http://www.mncourts.gov/Help-Topics/Guardianship-and-Conservatorship.aspx#tab05CAAP>.
25. For a detailed description of the Conservatorship Accountability Program, see Center for Elders and the Courts (CEC), National Center on State Courts, *Conservatorship Accountability Project* (2017), <http://www.eldersand-courts.org/Guardianship/Conservatorship-Accountability-Project.aspx> [hereinafter

CAP description] *and see* Brenda K. Uekert, et al., NACM Annual Conference, *Conservatorship Accountability Project (CAP)—Using software and data to modernize processes* (2016), <https://vimeo.com/175413475> [hereinafter 2017 NACM conference presentations].

26. National Center on 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).

27. CAP description, *supra* note 25.

28. 2017 NACM conference presentations, *supra* note 25.

29. E-mail from Brenda Uekert, National Center on State Courts, to Professor Josephine Gittler, Task Force Reporter, (June 30, 2017) (on file with Professor Gittler).

30. For a description of the study, *see* Josephine Gittler, *The Iowa Guardianship and Conservatorship Study* in Appendix A, at A:3.

31. E-mail from Kellyann Lekar, Chief District Court Judge, to Professor Josephine Gittler, Task Force Reporter, (July 26, 2017) (on file with Professor Gittler).

32. Under Iowa Code section 633.669, a guardian must file a report with the court annually within ninety days of the close of the reporting period and under Iowa Code 633.670, a conservator must file a report and accounting annually within ninety days of the close of the reporting period.

33. For a description of the study, *see* Josephine Gittler, *The Iowa Guardianship and Conservatorship Study* in Appendix A, at A:3.

34. Uniform Guardianship Act section 314(e)(4), *supra* note 13.

35. E-mail from Joseph Clamon, Associate Vice President for Legal Affairs, University of Iowa Health Care, to Professor Josephine Gittler, Task Force Reporter, (February 21, 2017) (on file with Professor Gittler); *See* E-mail from Dick Steffen, Assistant General Counsel, Law Department, Unity Point Health, to Joseph Clamon, Associate Vice President for Legal Affairs, University of Iowa Health Care, (June 22, 2017) (on file with Professor Gittler).

36. American Bar Association Commission on Law and Aging, *Guardian health care decision-making authority and statutory restrictions* (2014); *see* Karna Sandler, *A guardian's health care decision-making authority: Statutory restrictions*, 35 *Bifocal* 106 (2014).

37. Josephine Gittler, The Iowa Guardianship and Conservatorship Study in Appendix A, at A:11.
38. Erica Wood et al., ABA Commission on Law and Aging with the Virginia Tech Center for Gerontology, *Restoration of rights in adult guardianship*, 10-14 (2017); For a state statutory survey regarding termination of adult guardianships and conservatorships, see Jenica Cassidy, *State statutory authority for restoration of rights in termination of adult guardianship*, 34 Bifocal 123 (2013).
39. Uniform Guardianship Act sections 319 & 431, *supra* note 13.
40. Erica Wood, *supra* note 38, at 20.
41. *In re Guardianship of F.W. Jr.*, No. 2-570/11-1574, 2012 WL 5355801 (Iowa Ct. App. 2012 (unpublished table decision)).
42. *Id.* at 7.
43. Erica Wood, *supra* note 38, at 20.
44. Uniform Guardianship Act sections 319 & 431, *supra* note 13.
45. *Id.*
46. *Id.*
47. *Hedin v. Gonzalez*, 528 N.W.2d 567 (Iowa 1995).
48. Uniform Guardianship Act sections 318 & 430, *supra* note 13.
49. *Id.*

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.

COMMENT

Task Force Recommendations 5.1-5.2 address the issues of what judicial resources should be allocated to guardianship and conservatorship cases and how judges should be assigned to these cases. In a period of scarce judicial resources due to budgetary constraints and funding shortfalls, these are critical issues, the response to which will have a major impact on the success of efforts to reform the guardianship and conservatorship system.

Under the Iowa Code, the Probate Court within the District Court has jurisdiction over guardianship and conservatorship cases.⁽¹⁾ District judges sitting in probate have jurisdiction in all probate cases,⁽²⁾ and district associate judges may exercise jurisdiction over probate matters not requiring notice and hearing.⁽³⁾ Although the Iowa Code authorizes the appointment of full-time associate probate court judges,⁽⁴⁾ only one full-time associate probate judge position exists in Iowa, serving Polk County in District 5C.

District judges are appointed to serve in one of eight judicial districts. In the course of a year, they rotate through the different counties within that district and preside over a docket of cases in the county where they are sitting including, but not limited to, probate cases.

The Task Force recommends that two basic goals guide the allocation of judicial resources and the assignment of judges in guardianship and conservatorship cases. The first goal is that judges should have the knowledge and experience needed for decision-making with respect to guardianship and conservatorship cases and the opportunity to develop expertise with respect to these cases over time. The second goal is that there should be continuity and consistency in judicial decision-making with respect to these cases.

Judicial expertise with respect to guardianship and conservatorship cases promotes informed decision-making about the establishment of guardianships and conservatorships and efficient processing of these cases in accordance with statutory and case law and best practices. Continuity and consistency in judicial decision-making in guardianship and conservatorship cases likewise promotes informed decision-making in these cases and efficiency in their processing. Such expertise and continuity and consistency is particularly important in the ongoing judicial monitoring of the over 22,000 already established guardianships and conservatorships, which continues until their closure, usually after a number of years.⁽⁵⁾ In contrast, judges

generally have no such ongoing monitoring responsibility in criminal and civil cases, other than certain types of juvenile court cases.

The existing approach to guardianships and conservatorships cases with generalist judges deciding not only matters in these cases but also a wide array of other matters in criminal and civil cases, limits their opportunities to develop guardianship and conservatorship expertise. Moreover, the rotation of judges through counties in a particular district results in a lack of continuity and consistency in judicial decision-making with respect to these cases. Instead, multiple judges are typically involved in a single case and “must be serially informed of the facts and circumstances of the case during its pendency.”⁽⁶⁾

One option that the Task Force recommends be considered in each judicial district is the adoption of the “one judge/one case” approach with individual case assignments. If this option was adopted, it would mean a single judge could be assigned to cover a given case over time. The Electronic Document Management System (EDMS), which permits judges and attorneys access to documents from any location, facilitates the adoption of this approach.

Judicial districts currently have different policies and practices regarding individual case assignments.⁽⁷⁾ Responses to an informal Task Force survey of chief district judges indicated that they vary in their receptivity to the use of individual case assignments for guardianship and conservatorship cases.⁽⁸⁾

Another option that the Task Force recommends be considered in each judicial district is the assignment of a judge or judges, to cover guardianship and conservatorship matters, on a full- or part-time basis, for a specified period of time. This option could be implemented, either district-wide or for one or more counties within a district, depending upon guardianship and conservatorship caseloads. It is contemplated that the chief district judge in each district would have the option of selecting interested judges for such assignments and would have the discretion to make such assignments under the conditions and for the period of time that they deem appropriate.

The Task Force recommendations are the outgrowth of concerns similar to those that led the Iowa Civil Justice Reform Task Force’s recommendation of a specialty business court to the Supreme Court and the Iowa Supreme Court’s subsequent creation of the Business Specialty Court Pilot Project.⁽⁹⁾ It, however, must be emphasized that Task Force is not recommending the creation of a specialty court for guardianship and conservatorship cases. Rather, the Task Force is recommending consideration of the assignment of

specialized judges to sit as probate court judges within the District Court and handle guardianship and conservatorship matters.

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.

COMMENT

The Iowa Code currently gives the Probate Court within the District Court jurisdiction over minor guardianship cases as well as other guardianship and conservatorship cases. The Task Force recommends that jurisdiction over minor guardianship cases be transferred from the Probate Court to the Juvenile court and that a new Juvenile Court jurisdictional category of “child in need of guardianship” proceedings be created. (The Task Force recommends that the Probate Court continue to have jurisdiction over minor conservatorship cases and cases involving both a guardianship and a conservatorship for a minor).

The Task Force members that developed this recommendation unanimously and strongly endorse it, and this recommendation was reviewed and approved by the Task Force as a whole. There are three major interrelated reasons for this recommendation: (1) the expertise of juvenile court judges in the type of parental and family problems at issue in minor guardianship cases, (2) the Juvenile Court’s *parens patrie* philosophy and its “one judge/one family” approach to the handling of cases, and (3) the overlap between the Probate Court’s minor guardianship jurisdiction and the Juvenile Court’s child in need of assistance jurisdiction.

Iowa Code, Chapter 232 currently gives the Juvenile Court within the District Court jurisdiction over child in need of assistance proceedings. As was previously mentioned, “child in need of assistance” (CINA) is the term used in the Iowa Code to refer to what are generally known as abused, neglected, and abandoned children. Iowa Code Chapter 232 details the criteria for the

adjudication of as minor as a CINA and the dispositional alternatives available to the court after a child is adjudicated as a CINA. Iowa Code section 232.101A provides that the court under some circumstances may establish a guardianship for the child, transfer jurisdiction over the child's guardianship to the probate court, and then close the juvenile court case.

Juvenile court judges have a great deal of expertise in dealing with problems of parental and family dysfunction and conflict because of their experience with CINA cases. These are the type of problems at issue in most minor guardianship cases. As was previously noted, the Iowa Guardianship and Conservatorship Study, which entailed a review of over 4,000 guardianship and conservatorship files, found that 24% of all cases were minor guardianships,⁽¹⁰⁾ and that in the vast majority of these cases—82%—the basis for the guardianship was a parental inability or unwillingness to fulfill their responsibilities regarding the custody, care, and supervision of a minor child.⁽¹¹⁾

Just as guardianship has its roots in the *parens patriae* doctrine,⁽¹²⁾ the juvenile court has its roots in this doctrine, leading to a proactive protective stance on the part of the Juvenile Court judges.⁽¹³⁾ Most importantly, the Juvenile Court, unlike the Probate Court, has adopted the “one judge/one family” approach, i.e., a judge is assigned to follow a specific case providing continuity and consistency in its handling.

Task Force members were made aware of minor guardianships cases involving vulnerable children in which needed Probate Court monitoring was lacking. Task Force members expressed special concern about the lack of needed monitoring of guardianships of minors whom the Juvenile Court had found to CINAs. They were of the view that the Juvenile Court “one judge/one family” approach would foster and facilitate the needed monitoring in such cases.

Task Force members also identified as a problem, the existing overlap between the Probate Court's minor guardianship jurisdiction and the Juvenile Court's CINA jurisdiction. A CINA proceeding may sometimes be more appropriate than a minor guardianship proceeding, and a minor guardianship proceeding may sometimes be more appropriate than a CINA proceeding. Task Force members concluded that Juvenile Court judges are best able to determine whether a minor guardianship proceeding is more appropriate than a CINA proceeding and vice versa.

Comments from two Task Force members—one an attorney and the other a judge—explain why they, along with other Task Force members, support

the recommendation regarding Juvenile Court jurisdiction over minor guardianship cases.

The attorney made the following comment:

I practice primarily in probate, and have been involved in six guardianships for minor children as guardian ad litem, attorney for a proposed minor ward, or attorney for a petitioner. Each of these cases had the following in common:

- The hearing on the guardianship petition was very brief (under 5 minutes).
- No testimony was heard from the proposed guardian or the minor child (where old enough to express preferences).
- No findings as to the best interests of the child were entered into the record.
- The Probate Code's requirements for a guardianship were met because (a) the proposed ward was a minor child, and (b) all notice and other procedural requirements were met, and as such, the guardianship was granted.

I practice in a judicial district where the judges take these matters seriously, and consider them carefully. But the Probate Code does not provide any comprehensive mechanism for addressing the child's best interests or ensuring the child's needs are met. [Juvenile] . . . courts already have structures in place to address the child's best interest in CINA matters, and would be much better positioned to handle guardianships for minors.⁽¹⁴⁾

The judge made the following comment:

A minor guardianship case in which I became involved illustrates why we need to review current laws and practices regarding minor guardianships. A probate clerk, who was concerned that no action had been taken on a minor guardianship case, brought me the file and asked for my advice as to what to do with it. A seven year old boy had apparently been adjudicated a CINA. The juvenile court order designated an older sister to serve as guardian; the case was transferred to the district court; a district court order was entered without further hearing appointing the sister as the guardian and the juvenile court case was closed.

The required annual reports were not filed for several years, and the delinquency notices sent to the guardian were returned because there was no forwarding address. I called the Department of Human Services (DHS) but was told that DHS had “no idea” where the child was. DHS followed up and found that the child’s record had been sent to Chicago, but further investigation indicated that the child had not been enrolled in any Chicago school.

This greatly concerned me for several reasons. * * * First and foremost, the juvenile court case was closed and the supervision of and services for the child were terminated immediately upon the district court’s approval of the guardianship. There was no ongoing monitoring of the guardianship to ensure that the child’s were being met. I would like to suggest we consider at a minimum that minor guardianships be handled by the juvenile court. ⁽¹⁵⁾

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.

COMMENT

Task Force Recommendations 5.4-5.7 are intended to encourage the utilization of specialized court staff to support judges in monitoring guardianships and conservatorships. As a national survey of state court judges and court administrators found, “[s]pecialized court staff are essential to raising guardianship [and conservatorship] monitoring standards.”⁽¹⁶⁾

It is recommended, as a general principle, that 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. It is specifically recommended that the district court administrator in each district should designate clerks with expertise in the management of guardianship and conservatorship caseloads to assist other clerks of court and their staffs in one or more counties within a district.

Since financial expertise is generally required to review conservators’ inventories, initial management plans, annual reports and accountings, it is recommended that consideration should be given to creating specialized clerk positions to assist judges in these reviews. Clerks in such positions should receive the training needed to provide this assistance.

In connection with conservatorship monitoring, it is further recommended that the Judicial Branch should establish an audit unit staffed by persons with accounting expertise as part of a recommended pilot project to improve conservatorship accounting. The recommended pilot project is described in Recommendations 4.16-4.18 and the accompanying comment, which is presented in Part Four of this Report.

In making these recommendations, Task Force members are cognizant that their implementation may be challenging as a result of budgetary constraints and funding shortfalls. In view, however, of the importance of specialized court staff in improving court monitoring of guardianship and conservatorships, the recommended specialized court staff should remain a goal.

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.***

COMMENT

Task Force Recommendation 5.8 is intended to encourage the utilization of court-managed and court-sponsored volunteer programs to supplement court staff to enhance the court's ability to monitor guardianships and conservatorships and to furnish assistance to guardians and conservators in fulfilling their responsibilities.

Faced with limited resources, courts throughout the country have turned to court-managed and court-sponsored volunteer programs to supplement court staffs. Several reports of national judicial and court management organizations highlight exemplary volunteer programs.⁽¹⁷⁾

Volunteer programs were originally created to provide assistance to the courts with monitoring of guardianships and conservatorships. Common volunteer activities include updating guardianship and conservatorship case files and assisting the court in reviewing annual reports and accountings.

The focus of volunteer programs has increasingly become the provision of assistance to individual guardians and conservators in fulfilling their responsibilities. The provision of such assistance, together with guidance and education as to their responsibilities, can prevent poor performance on the part of guardians and conservators whom the court may eventually have to remove.⁽¹⁸⁾ The activities of programs assisting guardians and conservators range from helping them to file required forms with the court to helping

them identify community resources for a person subject to guardianship or conservatorship.

In 2014, the University of Iowa College of Law initiated the Iowa Guardianship & Conservatorship Assistance & Monitoring Program in collaboration with the Sixth Judicial District and funded in part with a state appropriation.⁽¹⁹⁾ The Project's objectives were to obtain information and data about the guardianship and conservatorship system, to provide information and education to guardians and conservators about their statutory duties and fiduciary responsibilities and about the availability of community resources for persons subject to guardianship and conservatorship. The project's objective also included assisting the court in reviewing annual reports and accountings. Faculty-supervised law students participated in the project, and it was anticipated that social work and business students might eventually participate. Two main factors hampered accomplishment of these objectives. First, a significant number of guardianship and conservatorship case files needed to be updated, and, second, annual reports often did not contain sufficient information for meaningful review.

Given the potential benefits of utilization of volunteers, it is recommended that judicial districts sponsor volunteer programs, using student volunteers, modeled on the Iowa Guardianship and Conservatorship Assistance & Monitoring Pilot Project in collaboration with the University of Iowa College of Law and the Drake University School of Law. Additionally, it is recommended that judicial districts sponsor volunteer programs using other types of volunteers in collaboration with other organizational entities.

It also is recommended that court-sponsored programs be expressly authorized to visit persons subject to guardianships and conservatorships at their place of residence to verify their condition and status. Judges currently must rely upon reports filed by guardians and conservators about the status and condition of protected persons and their property, which may not always be accurate. "The American Bar Association, Conference of State Court Administrators and Conferences of Chief Judges 'all agree that whether the information is of a financial or personal nature, steps must be taken to verify the disclosures made by the guardian.' "⁽²⁰⁾ Visits to protected persons are an authorized activity of some volunteer programs in other states.⁽²¹⁾

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.***

COMMENT

Task Force Recommendations 5.9-5.16 set forth a series of recommendations for specialized education and training of judges and court staff with responsibilities regarding guardianships and conservatorships. As the National Association for Court Management has pointed out:

Managing an adult guardianship [and conservatorship] caseload requires specialized training of judges, judicial officers and court staff. The complexity of capacity hearings, the loss of rights for alleged incapacitated individuals, potential for abuse, and the

court's obligation to provide active monitoring make guardianships [and conservatorships] unique among civil cases. Despite the need for training, many state judicial education programs offer few opportunities for judges and court staff to learn about the dynamics and best practices associated with guardianships [and conservatorships].

The lack of judicial training is associated with greater use of full guardianships, questionable monitoring practices and difficulties identifying and replacing poor performing guardians [and conservators].⁽²²⁾

There was general agreement among Task Force members that more education and training for judicial branch personnel is needed, and the overall thrust of the Task Force recommendations is that the Judicial Branch should ensure that needed specialized education and training are made available for Judicial Branch personnel.

It is recommended that methods of education and training for Judicial Branch personnel should be expanded. Educational and training opportunities for judicial personnel traditionally have taken the form of in-person educational sessions at conferences and meetings. Unfortunately, judicial personnel must take time away from work to attend conferences and meetings, and expenditures for them can be considerable. Future education and training opportunities should take advantage of webinars, websites, videos, and other appropriate technologies. Written materials, such the Probate Bench Book and the Probate Section of the Clerk's Manual, are an important source of information about guardianship and conservatorship laws, procedures and best practices, but they also should be disseminated electronically and periodically updated.

It is recommended that State Court Administration should also identify and collaborate with other possible sources of needed education for Judicial Branch personnel. Task Force members identified a variety of organizational entities with educational and training expertise and/or expertise regarding guardianships and conservatorships with which State Court Administration might collaborate in the planning and implementation of training activities.

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.

COMMENT

Task Force Recommendations 5.17-5.22 set forth a series of recommendations regarding education for guardians and conservators. It is recommended, as a general goal, that the Iowa Judicial Branch ensure that guardians and conservators are provided sufficient ongoing multi-faceted education to achieve the highest quality of guardianship and conservatorship services possible. This recommendation is derived from the Third National Guardianship Summit Standards⁽²³⁾ and is consistent with the National Probate Code standards.⁽²⁴⁾ It is particularly critical that the many Iowa guardians and conservators who are family members receive training about their roles and responsibilities.

States are increasingly statutorily mandating that guardians and conservators receive training.⁽²⁵⁾ Iowa, however, currently does not mandate such training.

It is recommended that in providing and arranging for the provision of education and training to guardians, the Judicial Branch should collaborate with and take advantage of resources from other appropriate organizational agencies. There are a growing number of programs in other states that can serve as models for development of education and training for Iowa guardians and conservators.⁽²⁶⁾

It is recommended that certain basic topics be covered in education and training for Iowa guardians and conservators and it is recommended that websites, videos, social media, as well as, the more traditional written materials, and in-person educational sessions and meetings be employed for their education and training.

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.

COMMENT

In addition to Judicial Branch personnel and guardians and conservators, there are other participants in guardianship and conservatorship system that should receive needed education. As Recommendations 5.23-5.24 indicate, it is particularly important that attorneys and court visitors receive needed education because of their key role in guardianship and conservatorship proceedings.

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.

COMMENT

Recommendation 5.25 calls for the Iowa Judicial System to collect, analyze, and report state level data regarding guardianship and conservatorship cases. State level data collection, analysis, and reporting has several functions.

As a leading expert on court administration has explained, data about guardianship and conservatorship cases “is fundamental to all court management tasks, driving decisions on staffing, budget, technology and training.”⁽²⁷⁾ Data goals related to these tasks should include the documentation of case-loads and trends and the development and use of performance measures.

Data is also fundamental in generating support for the guardianship and conservatorship system by diverse external stakeholders, legislators and other public policy makers, and the general public. In a period of state fiscal crisis and budget constraints, it is especially important that there be full and accurate state level data demonstrating the critical role the Iowa guardianship and conservatorship system plays in protecting highly vulnerable Iowans and demonstrating the need of the Iowa Judicial Branch for resources to maintain and improve this system.

Data, likewise, is fundamental to the identification of issues and problems with the guardianship and conservatorship system which are of a systemic

nature. Such data is essential in laying the foundation for the planning and implementation of systemic reforms.

The lack of state level data about guardianship and conservatorship cases is a longstanding and widespread problem throughout the country.⁽²⁸⁾ Therefore, it is not surprising that basic state level data about Iowa guardianship and conservatorship cases is lacking. For example, statistical reports, which the State Court Administration produces, contain data as to the total number of pending (open) Iowa guardianship and conservatorship cases, but these reports do not distinguish between adult and minor cases.⁽²⁹⁾

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. Research assistants reviewed over 4,000 guardianship and conservatorship case files from ten counties in five judicial districts for more than two years to obtain detailed quantitative and qualitative data about numerous aspects of the functioning of the system as a whole.⁽³⁰⁾ This study led to the identification of a series of systemic issues and problems that was shared with Task Force members and informed their discussions and the development of their recommendations.

A continuing need, however, exists for the Judicial Branch to collect, analyze, and report state level data about the guardianship and conservatorship system, and a prerequisite for doing this is an increased investment in information technology and information technology staff.

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.

COMMENT

Task Force Recommendations 5.26-5.27 were developed in response to the problem of guardianship and conservatorship case files that are not current and require updating. This problem occurs in cases where guardians and conservators have failed to comply with requirements to file reports with the court on an annual basis. As a consequence, the court lacks information about their current location and status and that of the protected persons for whom they are acting as guardians and conservators, and the court cannot discharge its obligation with respect to the monitoring of these guardianships and conservatorships.

Iowa Code section 633.32 and Rule of Probate Procedure 7.6 delineate mandatory procedures for follow-up of delinquent reports. They require the clerk to notify guardians and conservators and their attorneys of delinquent reports, and the clerk must report the delinquencies to the presiding judge that are not cured in response to these notices. Attorneys representing guardians and conservators may be reported to the Iowa Attorney Disciplinary Board for failure to cure delinquencies which is an incentive for attorneys to cure deficiencies on behalf of the guardians and conservators whom they represent.⁽³¹⁾

But the existing procedure for follow-up of delinquent reports is sometimes not effective in *pro se* cases where guardians and conservators are not represented by counsel. The Iowa Guardianship and Conservatorship Study found that there were a significant number of *pro se* cases in which annual reports had not been filed for two or more years and sometimes for many years. In these cases, the U.S. Postal Service had frequently returned delinquency notices from the clerk marked “addressee unknown.”

Two Task Force members—a district court administrator and a probate clerk—shared a variety of methods that could be used for locating guardians, conservators, and protected persons.⁽³²⁾ The process of locating them, however, can be difficult and time-consuming, and some counties do not have the court staff to devote to the process. One possible alternative to the use of court staff for this purpose is the use of a court-sponsored volunteer program.

In view of the foregoing, the Task Force recommends that statewide policies and procedures should be developed for annual review and updating of case files in order to ensure that they are current and to ensure the closure or transfer of cases as needed and appropriate. Additionally, the Task Force recommends that 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.

COMMENT

Recommendation 5.28 is directed at fostering and facilitating the more extensive use of standardized forms.⁽³³⁾ Standardized forms can be helpful to persons who play a role in the establishment of guardianships and conservatorships (e.g., judges and other court personnel, petitioners and their attorneys, respondents and their attorneys, court visitors, clinicians who evaluate respondents, and proposed guardians and conservators). Standardized forms also can be helpful to those who play a role in the court monitoring of guardianships and conservatorships (e.g., judges and court staff, guardians and their attorneys, conservators and their attorneys, persons subject to guardianships and conservatorships and their attorneys and other persons with an interest in their welfare). The websites of some state judicial branches contain numerous forms for use in both the establishment and monitoring of guardianships and conservatorships.⁽³⁴⁾

The Task Force recommends that the Supreme Court create a committee to revise existing forms and to develop new forms that reflect the recommendations of the Task Force. A particular focus of the Task Force has been forms for the guardian's initial care plan and annual reports and the forms for the conservator's initial financial management plan and inventory, annual reports and accountings. See Recommendations 4.6-4.7, 4.10-4.11 and 4.14-4.15 and Appendices J-M.

The Task Force also recommends that the development and revision of forms be carried out by representatives of the Judicial Branch in collaboration with representatives of other major stakeholders in the guardianship and conservatorship system. The longstanding collaboration between the Judicial Branch and the Iowa State Bar Association in the development and revision of forms should be continued. In addition to

obtaining input from attorneys, input should be obtained from guardians and conservators, the majority of whom are lay people and many of whom are not represented by attorneys. Disability advocates, advocates for the elderly, and others who interact with the system on a regular basis, also can make a valuable contribution to form development and revision.⁽³⁵⁾

Standardized forms that will be used by self-represented persons unfamiliar with legal terminology and court procedures should be user-friendly. Many guardians and conservators, the majority of whom are family members, fall in this category, as do many persons subject to guardianships and conservatorships and other persons interested in their welfare. User-friendly forms should be written in plain language, have easily readable type, and be comprehensible by persons with different educational levels and from different backgrounds. Experts should review forms and instructions to ensure that they are comprehensible by persons from a variety of backgrounds and with differing educational levels and then should be pilot tested.

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.

COMMENT

Recommendations 5.29-5.32 pertain to the provision of public guardians and conservators for adults and minors, who need guardians and conservators, do not have anyone able, willing, and suitable to serve in this capacity, and do not have the financial resources to compensate a professional to serve in this capacity. A public guardianship and conservatorship program may be generally defined as a program that provides or arranges for the provisions of persons to serve as guardians and conservators, is administered by a governmental entity, and is publicly- funded.⁽³⁶⁾

Although most guardians and conservators are family members, family members are not always available or suitable for appointment. No family members may live in the area who can serve as guardians or conservators; family members may be unwilling to serve because of “family feuds” or other similar family dynamics; family members may be unwilling to serve because they view the attendant requirements as too burdensome; they may not be competent to serve; and they sometimes may pose a risk of abuse, neglect, or financial exploitation of the relative in need of a guardian or conservator. A problem cited by some Task Force members is the aging and death of parents who are guardians and conservators of their adult children.⁽³⁷⁾

Task Force members agreed that there is an unmet need for public guardians and conservators throughout the state. Task Force members, especially judges and attorneys, recounted personal experience with cases, or were aware of cases where this was a problem. The following comment from Judge Danielson is typical:

During my nearly two decades as a judge, finding qualified people to serve as guardians and conservators for an incapacitated person has been an on-going problem. One of my cases this year is a perfect example. At the hearing, clear and convincing evidence was presented that the proposed ward was incompetent and that he needed to be discharged from the hospital where he had received medical care and be placed in some type of supervised facility. He had family in the area but they were not suitable for appointment as his guardian. The Assistant County Attorney reported that she had contacted the Des Moines Office of Substitute Decision-Maker and was told it could not take the case. A hospital representative said that no plan for placement could be pursued without authorization to release the patient’s records and medical information to potential placement facilities and that authorization would have to be signed by a court-appointed

guardian. This created a real catch 22. Due to the urgency of the situation, the guardian ad litem agreed to be appointed as guardian but only for the limited purpose of signing the papers necessary for his placement in another facility upon discharge from the hospital.⁽³⁸⁾

The Task Force also heard from other individuals about the unmet need for public guardians and conservators.⁽³⁹⁾

Most states have statutes that expressly authorize a public guardianship and conservatorship program. Statutorily authorized programs fall into four main categories in terms of their administration: (1) a court model, (2) an independent state agency model, (3) a social service agency model, and (4) a county model.⁽⁴⁰⁾ Guardianship and conservatorship reform efforts in several states have led to the establishment of court administered public guardianship and conservatorship programs.⁽⁴¹⁾

Programs vary widely from state to state as to the persons they use to serve as public guardians and conservators. Some use volunteers; some use staff; some use a combination of staff and volunteers; and some contract with other entities for services.⁽⁴²⁾

The Task Force identified three existing programs for public guardians and conservators in Iowa, albeit there may be others at the local level. These programs are the Iowa Office of Substitute Decision-Maker (OSDM), the Blackhawk County Office of Public Conservatorship, and a Volunteer Program of the Polk County Department of Human Services (DHS) and Polk County Attorney.

Iowa Code section 231E.2, enacted in 2005, established the OSDM within the Department of Aging “to provide substitute decision-making services to adults when no private substitute decision-maker is available,” and Iowa Code section 231.6 authorizes the court to appoint OSDM as guardian or conservator for an adult. OSDM’s staff members, located in Des Moines, serve as guardians and conservators. OSDM received a state appropriation of \$350,000 for fiscal year 2017-2018.⁽⁴³⁾

The Polk County Department of Human Services (Polk County DHS) in collaboration with the Polk County Attorney’s Office maintains a pool of approximately 150 volunteers who serve as public guardians and conservators for DHS clients. These volunteers often are responsible for multiple cases. Polk County DHS and the Polk County Attorney’s Office receives no direct state funding for its volunteer program.⁽⁴⁴⁾

The Blackhawk County Office of Conservator is administered by the Black Hawk County Attorney's Office and takes referrals from a variety of sources. Staff members are appointed to serve as guardians and conservators, and they furnish administrative assistance and guidance to family members serving as guardians and conservators. The Office of Conservator receives no direct state funding.⁽⁴⁵⁾

The Table below indicates the total number of court appointments for which each of the foregoing programs was responsible during the two year period of 2015-2016.⁽⁴⁶⁾

**Public Guardianship and Conservatorship Programs
Court Appointments
2015-2016**

Program	2015	2016	TOTAL
Office of Substitute Decision-Maker	9	7	16
Polk County Volunteer Program	38	27	65
Black Hawk County Office of Conservatorship	78	82	160

It is recommended that public guardians and conservators should be made available at the local level in each of Iowa's judicial districts. Given the extent of the need for public guardians and conservators in Iowa, it appears that the utilization of volunteers to serve as guardians and conservators is the most feasible and cost-effective way to meet this need.

Therefore, it is recommended that statewide standards with respect to the qualifications and training of volunteers should be developed and that volunteers should be recruited and trained in accordance with these standards. It is further recommended that once volunteers are appointed, they should receive legal assistance and other types of support that they may require to carry out their duties and responsibilities.

It is further recommended that state funds be provided to the Judicial Branch for a statewide public guardianship and conservatorship program to make public guardians and conservators available at the local level in each judicial district. The rationale for this recommendation is that the Judicial Branch is in the best position to assess the need for public guardianship services in each judicial district which it is anticipated will vary from district to district, and to allocate funding for such services to each judicial district. It also is recommended that the option of subcontracting with appropriate entities and individuals for services in each judicial district should be explored.

In addition, it is recommended that a public guardianship and conservatorship program administered by the Iowa Child Advocacy Board (ICAB) be developed specifically for minors. The rationale for this recommendation is that the staff of the ICAB already has expertise in recruiting, training, and supporting community volunteers to serve in court-sponsored programs for children such as the Court Appointed Special Advocates Program (CASA).⁽⁴⁷⁾

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.

COMMENT

Task Force Recommendation 3.9, which is presented with accompanying comment in Part Three of the Task Force Report, recommends (1) certification of private professional guardians and conservators, with the exception of financial institutions with Iowa trust powers, (2) public guardians and conservators, and (3) volunteers in multiple cases. This recommendation is intended to ensure that persons whom the court appoints as guardians and conservators for adults and minors in multiple cases have been adequately screened and possess the knowledge, skills, and experience necessary for performance of their roles as guardians and conservators.

There are different models for administration of state certification programs for guardians and conservators.⁽⁴⁸⁾ In some states, the Office of State Court Administrator or some other entity administers the program.⁽⁴⁹⁾ Other states utilize the Center on Guardianship Certification for certification of guardians and conservators.⁽⁵⁰⁾

The Center on Guardianship Certification is the only national certification board for guardians and conservators. To be eligible for certification, an applicant must satisfy educational and/or experiential requirements, verify they have not engaged in disqualifying conduct, and pass an examination. Once certified, they must be periodically recertified, and they can be decertified after a due process disciplinary procedure. As of 2015, the Center had certified over 2,000 individuals, most of whom are professional guardians and public guardians.⁽⁵¹⁾

Task Force Recommendation 5.33 recommends that the Iowa Judicial Branch (State Court Administration) consider contracting with the Center on

Guardianship Certification to operate the program. Contracting with the Center to certify Iowa guardians and conservators would permit the Judicial Branch to take advantage of the Center's well-established certification program and the expertise of its staff. In response to an inquiry from the Task Force, a representative of the Center indicated that it could contract with the Judicial Branch to operate a certification program and that the program could be self-funded without cost to the Judicial Branch through fees paid by the applicants for certification.⁽⁵²⁾

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.

COMMENT

Recommendation 5.34 calls for the Judicial Branch to establish a citizen complaint process for persons subject to guardianship and conservatorship and other interested persons. This recommendation adopts the standard for establishment of a complaint process of the National Probate Code Standards.⁽⁵³⁾

The primary rationale for a citizen complaint process is to ensure that possible problems in the performance of guardians and conservators and suspected cases of abuse, neglect, and financial exploitation of persons subject to guardianship and conservatorship are brought to the attention of the court. A citizen complaint process contributes to the transparency and accountability of the guardianship and conservatorship system and by so doing builds and maintains public confidence in the system.

The Association for Court Management has described the complaint processes established by other state judicial branches, and has outlined three steps to be taken in establishment of a complaint process.⁽⁵⁴⁾ The first step entails examination of existing practices for the handling of complaints and the development of procedures for submission of a complaint; the second step entails putting in place internal protocols for responding to complaints; and the third step entails the review and evaluation of the complaint process. The National Probate Code Standards cautions that in designing a complaint process, “care should be taken to ensure that an unrepresented person is able to use it, that the court receives the necessary information, and that the process is flexible enough to accommodate emergency or urgent circumstances.”⁽⁵⁵⁾

Recommendation 5.35 calls for collaboration between the Judicial Branch and the Department of Human Services (DHS) in developing protocols for the reporting of suspected cases of “dependent adult abuse” and “child abuse” of persons subject to guardianship and conservatorship. As it has been previously mentioned, the guardianship and conservatorship population is highly vulnerable and at greater risk of such abuse than the general population.⁽⁵⁶⁾

The Iowa Code mandates that DHS receive and investigate reports of “dependent adult abuse” and “child abuse,” which are statutorily defined, and the Code authorizes DHS to provide services to the abuse victims.⁽⁵⁷⁾ Protocols developed for the reporting of suspected abuse of persons subject to guardianship and conservatorship to DHS by Judicial Branch personnel should provide clear guidance as to when a report should be made, who should make a report, and how a report should be made.

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.

COMMENT

Recommendations 5.36-5.39 address the mediation of contested guardianship and conservatorship cases. Mediation has been broadly defined as “a process in which an impartial third party facilitates communication and negotiation and promotes voluntary decision-making by the parties to the dispute.”⁽⁵⁸⁾ A core principle of mediation is self-determination by the parties to the mediation—“the act of coming to a voluntary, uncoerced decision in which each party makes free and informed choices as to the process and outcome.”⁽⁵⁹⁾

Mediation has potential advantages for the parties in contested guardianship and conservatorship cases. Mediation can offer a faster and less expensive alternative to litigation; mediation can result in more satisfactory resolution of a conflict than litigation by giving the parties the freedom to shape an agreement which meets their interests and goes beyond what the court could order; mediation proceedings, in contrast to court proceedings, are private and confidential; and mediation may be more helpful than a formal court hearing in cases where there is divisive family conflict by fostering better communication and building consensus among family members, which preserves rather than damages their relationships.⁽⁶⁰⁾

Mediation in contested guardianship and conservatorship cases also has potential advantages for the judicial system. The chief advantage being that it reduces the expenditure of scarce judicial resources on these cases and permits their use for other matters.

The caveat is that mediation may be inappropriate in some cases. For example, it may not be suitable when there is a conflict as to whether a guardianship petition should be granted, or as to who should be appointed as a guardian because the respondent to the petition does not have the capacity to mediate, or because of the existence of a power imbalance between the respondent and his or her family members. Some authorities also fear that the informality of mediation may undermine the protection of an individual’s rights that is the underpinning of formal judicial proceedings.⁽⁶¹⁾

The use of mediation is becoming more common in contested guardianship and conservatorship cases, and courts in a number of states now mandate or offer mediation services in these cases.⁽⁶²⁾ Mediation may be used to resolve conflicts both at the time a guardianship or conservatorship petition is filed and after a guardian or conservator has been appointed.⁽⁶³⁾

The Task Force recommends that the court should be authorized by statute and/or a court rule to refer a contested guardianship or conservatorship case to mediation. At present, the Iowa Judicial Branch has no court-connected, statewide mediation program, albeit there are judicial districts in which there are family law and small claims mediation programs. In 2016, the Supreme Court approved the Polk County Probate Mediation Pilot Project (Polk County Pilot Project) and as a result, the Polk County probate judge is now authorized to order mediation in contested probate cases, including guardianships and conservatorship cases.⁽⁶⁴⁾ The Polk County Bar Association administers the Polk County Pilot Project, which maintains a panel of 50 mediators and which is funded through user fees paid by the recipients of mediation services.⁽⁶⁵⁾

It is recommended that court rules set forth requirements for any additional efforts like that in Polk County to make mediator services available in contested guardianship and conservatorship cases. More specifically, it is recommended that court rules should set forth requirements regarding the types of cases eligible for referral to mediation and the procedures to be followed in making referrals. It also is recommended that these rules should set forth requirements to ensure the competence and accountability of mediators, including adherence to accepted ethical standards.

This recommendation reflects the widespread and generally accepted view that courts have a special responsibility to ensure the competence and accountability of mediators participating in court-connected mediation programs.⁽⁶⁶⁾ The principal way in which court-connected mediation programs have attempted to fulfill this responsibility is through requiring mediators to satisfy specified criteria with respect to their qualifications.⁽⁶⁷⁾ In developing rules to ensure the competence and accountability of mediators, the Judicial Branch can draw upon the experience of the Polk County Pilot Project and other court-connected civil mediation programs.

The Task Force recommends that each judicial district identify, to the extent possible, resources for the administration and funding of mediation services for use in contested guardianship and conservatorship cases. In making this recommendation, Task Force members were aware that not every district can draw upon the resources that the Polk County Pilot Program draws upon for mediation services. Nevertheless, the long term goal should be to

establish a statewide program of mediation services under the auspices of the Iowa Judicial Branch in collaboration with other appropriate organizational entities.

End Notes – Part Five: Administration of Guardianship & Conservatorship System

1. Iowa Code section 633.10(3) (2017).
2. Iowa Code section 602.6101 (2017).
3. Iowa Code section 602.6306(2) (2017).
4. Iowa Code sections 633.20B(1) & (2) (2017).
5. E-mail from David K. Boyd, State Court Administrator, to Professor Josephine Gittler, Task Force Reporter, (July 6, 2017) (on file with Professor Gittler).
6. Iowa Civil Justice Reform Task Force, *Reforming the Iowa civil justice system* 23 (2012).
7. *Id.* at 24-25.
8. E-mail from Chief Judge Jeffrey Larson to Professor Josephine Gittler, Task Force Reporter, (March 2016) (on file with Professor Gittler).
9. See Iowa Civil Justice Reform Task Force, *supra* note 6, at 23-26, 93-107; Iowa Sup. Ct., *In the Matter of Establishment of the Iowa Business Specialty Court Pilot Project, Memorandum of Operation* (December 21, 2012).
10. See Recommendation 2.1 and accompanying text in Part Two of this report.
11. See Recommendation 2.9 and accompanying text in Part Two of this Report.
12. See Introduction of this Report, *supra* at 1 and Part Three of this Report, *supra* at 89.
13. See Barry C. Feld, *Cases and materials on juvenile justice administration* 2 (3rd ed. 2009); see generally Herbert H. Lou, *Juvenile courts in the United States*, 1-21 (1927).
14. Telephone Interview with and E-mail from Breanna Young, Attorney and to Professor Josephine Gittler. Task Force Reporter, (May 9, 2016).
15. Telephone Interview and E-mail from Cynthia Danielson to Professor Josephine Gittler, Task Force Reporter (May 9, 2016).

16. Brenda K. Uekert, National Center for State Courts, *Adult guardianship court data and issues: results from an online survey* 4 (2010), http://www.guardianship.org/reports/Guardianship_Survey_Report.pdf.
17. National Association for Court Management, *Adult guardianship guide, a guide to plan, develop and sustain a comprehensive court guardianship and conservatorship program* 15-16 (2014) [hereinafter Adult Guardianship Guide]; Richard Van Duizend and Brenda K. Uekert, National College of Probate Court Judges, National Probate Court Standards, Standard 3.3.17 cmt. [hereinafter National Probate Court Standards]; Brenda K. Uekert, *supra* note 16, at 27.
18. See Recommendations 4.31 and accompanying text in Part Four of this Report.
19. National Health Law and Policy Resource Center, University of Iowa College of Law, Iowa Guardianship & Conservatorship Assistance & Monitoring Project (2014).
20. Adult Guardianship Guide, *supra* note 17, at 15 (quoting W.A. Solomon-Cuthbert, *Guardianship monitoring: Helping the forgotten speak*, 49 (n.d.)).
21. Adult Guardianship Guide, *supra* note 17, at 15-16.
22. *Id.* at 27 (citing Brenda K. Uekert, *supra* note 16).
23. Third National Guardianship Summit Standards and Recommendations, *reprinted* in 2012 Utah L. Rev. 1191, Recommendation # 2.4 [hereinafter National Guardianship Summit Standards].
24. See, e.g., National Probate Court Standards, Standard 3.3.14, *supra* note 17.
25. See National Probate Code Standards, Standard 3.3.14 cmt., *supra* note 17; Adult Guardianship Guide, *supra* note 17, at 29-30.
26. See Adult Guardianship Guide, *supra* note 17, at 29-30; National Probate Court Standards, Standard 3.3.14 cmt., *supra* note 17; Brenda K. Uekert, *supra* note 16, at 22-23.
27. Brenda K. Uekert, Iowa Guardianship and Conservatorship Summit, *Planning, developing and sustaining a comprehensive guardianship and conservatorship program* (PowerPoint presentation) (October 29, 2015) (on file with Professor Josephine Gittler, Task Force Reporter).
28. See Brenda K. Uekert, *supra* note 16, at 4.
29. E-mail from David K. Boyd, State Court Administrator, to Josephine Gittler, Task Force Reporter, (July 7, 2017) (on file with Professor Gittler).

30. Josephine Gittler, Iowa Guardianship and Conservatorship Summit, *Iowa Guardianship and Conservatorship System* (PowerPoint presentation) (October 29, 2015) (on file with Professor Josephine Gittler, Task Force Reporter).
31. Iowa Sup. Ct., *In the matter of the Attorney Disciplinary Board and the Grievance Commission of The Supreme Court Of Iowa, 2016 Annual report* 8 (February 1, 2017)
32. See Seventh Judicial District Probate Procedure Document (n.d.) (on file with Professor Gittler, Task Force Reporter); E-mail from Rhonda Bentley, Probate Clerk, to Professor Josephine Gittler, Task Force Reporter (April 6, 2016) (on file with Professor Gittler).
33. See generally, Center on Court Access to Justice for All, Access Brief No. 2, *Access Brief: Forms and document assembly* (2012).
34. See, e.g., Michigan Courts, Index of SCAO-approved forms for use in guardianship cases, <http://courts.mi.gov/Administration/SCAO/Forms/Pages-/Guardian.aspx>; Minnesota Judicial Branch, Court forms, guardianship/conservatorship, <http://www.mncourts.gov/GetForms.aspx?-c=21>. See National Center for State Courts, Self-representation, state links (n.d.), <http://www.ncsc.org/topics/access-and-fairness/self-representation/state-links.aspx>
35. Center on Court Access to Justice for All, *supra* note 36, at 2.
36. See Ashley Brosius and Alison Davis, Public guardianship programs, survey and analysis 8 (2014) (on file with Josephine Gittler, Task Force Reporter); see Pamela B. Tester, et al., Public guardianship: In the best interests of incapacitated people? 5-6 (2010).
37. Brenda K. Uekert, *supra* note 16, at 16-17.
38. E-mails from Cynthia Danielson, Senior District Court Judge and Member of Task Force Steering Committee, to Professor Josephine Gittler, Task Force Reporter, (April 17 and July 12, 2017) (on file with Professor Gittler).
39. See, e.g., Written statement from Kendall R. Watkins, General Counsel for Iowa Health Care Association, to Steering Committee, Iowa Guardianship and Conservatorship Reform Task Force, (September 14, 2015) (on file with Professor Gittler, Task Force Reporter). It should be noted that the listserv of the Probate Section of the Iowa Bar Association periodically has postings seeking someone to serve as a guardian or conservator for a person who does not have family to do so.
40. ABA Commission on Law and Aging, *State Public Guardianship and Guardianship of Last Resort Citations* (2016), https://www.americanbar.org/content/dam/aba/administrative/law_aging/CHAR_TStatePublicGuardianshipStatutes.authcheckdam.pdf. For a compilation of and

description of the provisions of these statutes, *see* Ashley Brosius and Alison Davis, *supra* note 39, at 49-83.

41. Pamela B. Tester et al., *supra* note 39, at 22-25; Ashley Brosius and Alison Davis, *supra* note 39, at 9-10.

42. *See* Pamela B. Tester, et al., *supra* note 39, at 6.

43. H.F. 653, 87th Gen. Assemb. (Iowa 2017). OSDM received state funding from 2006 to 2008, but was defunded in 2009. Prior to being defunded, it engaged primarily in educational activities and it did not provide public guardianship and conservatorship services. *See* National Health Law and Policy Resource Center, Substitute Decision-Making Initiative at <https://nhlp.law.uiowa.edu/iowa-substitute-decision-making-initiative>. The General Assembly reinstituted funding of OSDM in 2014. 2014 Iowa Acts 486, 487.

44. Interview with and E-mail from Jeanine Downey, Legal Assistant, Polk County Attorney's Office, to Josephine Gittler, Task Force Reporter, (September 23, 2016) (on file with Professor Gittler).

45. Interviews with and E-mail from Dave Mason, Assistant County Attorney, Black Hawk County Attorney's Office, to Josephine Gittler, Task Force Reporter, (September 23, 2016)(on file with Professor Gittler).

46. Figures cited were obtained from the following sources: E-mail from Tyler Eason, Director, OSDM, to Josephine Gittler, Task Force Reporter, (September 21, 2016) (on file with Professor Gittler); E-mail from Dave Mason, *supra* note 48; E-mail from Jeanine Downey, *supra* note 47.

47. *See* Child Advocacy Board, CASA Advocate, <https://childadvocacy.iowa.gov/casa-advocate>.

48. *See* Sally B. Hurme, Iowa Guardianship and Conservatorship Summit, *Certification of guardians and conservators* (PowerPoint presentation) (October 29, 2015) (on file with Professor Josephine Gittler, Task Force Reporter).

49. For example, the Arizona Supreme Court maintains a Certification and Licensing Division, which administers the Fiduciary Licensing Program. This program certifies individuals who serve as court-appointed guardians and conservators. *See* Arizona Judicial Branch, *Fiduciary Licensing Program*, <https://www.azcourts.gov/cld/Fiduciary-Licensing-Program>.

50. *See* Sally Hurme, *supra* note 51.

51. For detailed information about the Center for Guardianship Certification and its certification of guardians and conservators, *see* Center for Guardianship Certification, <http://www.guardianshipcert.org/>.

52. Memo from Sally Hurme, Board Member, Center for Guardianship Certification, to Professor Josephine Gittler, Task Force Reporter (April 27, 2016) (on file with Professor Gittler).
53. National Probate Code Standards, Standard 3.3. 18, *supra* note 17.
54. Adult Guardianship Guide, *supra* note 17, at 24-27.
55. National Probate Code Standards, Standard 3.3.18 cmt., *supra* note 17.
56. See Part Four of this Report, *supra* at pp. 89-90.
57. Iowa Code Ch. 235B (2017) mandates the reporting of suspected cases of dependent adult abuse to DHS and delineates its responsibilities after receipt of a report. Iowa Code Ch. 232 (2017) mandates the reporting of suspected cases of child abuse to DHS and delineates its responsibilities after receipt of a report.
58. American Arbitration Association, the American Bar Association and the Association for Conflict Resolution American, Model Standards of Conduct for Mediators pmbl. (2005).
59. *Id.* at Standard 1.
60. See Mary F. Radford, *Is the use of mediation appropriate in adult guardianship cases?* 31 Stetson L. Rev. 611, 639-660 (2005); Janice Grant, *Guardianship mediation*, 1 Marq. Elder's Advisor 27, 29 (1999); Pablo Leal, *Is it appropriate to use mediation in guardianship cases?* Prezi presentation (n.d.). For an evaluation of four guardianship mediation programs, see Susan J. Butterwick, et al., Center for Social Gerontology, *Evaluating mediation as a means of resolving adult guardianship cases* 6-7 (2001)
61. See Janice Grant, *supra* note 63, at 29; Mary F. Radford, *supra* note 63, at 639-660; Pablo Leal, *supra* note 63.
62. National Probate Court Standards, Standard 2.5.1 cmt., *supra* note 17.
63. See Susan J. Butterwick, et al., *supra* note 63, at 6-7; Mary F. Radford, *supra* note 63, at 31, 661-667.
64. Iowa Dist. Ct., 5th Jud. Dist., *In The Matter Of Court-Ordered Mediation In Probate Matters*, Administrative Order 2016-6 (February 25, 2016).
65. E-mail from Joseph Harris, Administrator, Polk County District Court Mediation Program, to Josephine Gittler, Task Force Reporter, (on file with Professor Gittler) (July 10, 2017).
66. See Josephine Gittler, *Court-connected general civil justice mediation programs: Issues and options with respect to mediators in Iowa Civil Justice Reform*

Task Force, Reforming the Iowa civil justice system, Appendix H at H: 1-4-5 (2012) and authorities therein cited.

67. *Id.* at H: 8.

PART SIX

CLINICAL EVALUATIONS & JUDICIAL CAPACITY DETERMINATIONS

I. BACKGROUND

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

The court needs, and often lacks, appropriate information about the decision-making capacity and functional abilities and limitations of adults in order to make informed decisions in accordance with statutory criteria about the following:

- Whether to grant a petition for a guardianship or conservatorship,
- Whether to establish a full or a limited guardianship or conservatorship, and
- Whether an established guardianship or conservatorship should be modified or terminated.

B. RESOURCE COMMITTEE FINDINGS

As was noted previously, the Task Force established a Resource Committee on Clinical Evaluations (Resource Committee). The Resource Committee was responsible for identifying issues and problems and 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. The Committee members were recognized experts in the clinical evaluation of decision-making capacity and functional limitations and abilities.

The Resource Committee made the findings below related to judicial determinations of the capacity and functional abilities and limitations of adults alleged to be in need of a guardianship or conservatorship and adults for whom a guardianship or conservatorship has been established.

Capacity: Legal and Clinical Perspectives

1. The terms “capacity,” “decision-making capacity,” and “incapacity” are used in both legal and clinical contexts.
2. In a legal context, “capacity” refers to a judicial determination that an adult lacks the ability to make decisions and/or to perform certain functions.
3. In a clinical context, “capacity” refers to a clinician’s judgment as to whether a person can make specific decisions and/or perform certain functions.
4. A clinical judgment about a person’s capacity is not a legal finding, but it often is relevant and important evidence in legal proceedings, especially guardianships and conservatorships proceedings.

Capacity Variability

5. The capacity of adults may vary depending on the decision or activity involved. An individual may be able to make some decisions in some domains and perform some activities, but not others.
6. The capacity of adults may change over time.
7. The capacity of adults may be affected by a variety of factors (e.g., time of day, stress, familiarity of surroundings, medications, etc.).

Clinical Evaluations of Decision-Making Capacity and Functional Limitations and Abilities

8. Qualified professionals use different methods, procedures, and tools to conduct comprehensive evaluations of the decision-making capacity and functional limitations and abilities of adults depending on the particular adult being evaluated and the particular decisions and functions that are the focus of the evaluation.
9. There are a number of standardized tools used to screen for and to assess cognitive and functional impairments of adults. Many of these tools are intended for specialized rather than global use; some are designed to test particular populations, and some are designed to test capacity and functioning in specific domains and for specific activities.
10. There are publicly administered and funded Iowa agencies, institutions and organizations with programs that have developed, or adopted,

standardized screening and assessment tools for the populations they serve. These programs include, but are not limited to, the Medicaid waiver program for persons with intellectual disabilities, the Medicaid elderly waiver program, and special education and vocational rehabilitation programs for youths with intellectual disabilities who are transitioning from minor to adult status.

11. It appears likely that the aforementioned programs and other public health, human services, educational and vocational rehabilitation programs serve a significant number of adults who become subject to guardianship and conservatorship proceedings. Existing evaluations of such adults conducted by and for these programs may contain information that is relevant to the judicial determination of their decision-making capacity and functional limitations and abilities. The caveat is that these evaluations are not done for the purpose of guardianship and conservatorship proceedings and that they may not reflect the current status of the person evaluated which may have changed since the evaluation was completed.

12. Individuals with different professional identities may have received the education and training and have the experience that qualifies them to conduct comprehensive evaluations of the decision-making capacity and functional limitations and abilities of adults and to screen and to assess adults for cognitive and functional impairments. They include: (1) primary care physicians, geriatricians, and psychiatrists, (2) adult, geriatric and psychiatric nurse practitioners, (3) neuro-psychologists and other licensed psychologists, and (4) licensed social workers with medical, health, gerontological, mental health, substance abuse, or psychiatric specialties. But not all individuals within these professional categories have the requisite education, training, and experience to conduct these types of evaluations.

Availability of clinicians and practitioners to conduct evaluations

13. There is an unmet need for clinicians and practitioners, particularly in rural and other underserved areas of Iowa, who are qualified to conduct evaluations of the decision-making capacity and functional abilities and limitations of adults.

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.

COMMENT

Task Force Recommendation 6.1 encourages judges to use the highly regarded framework for capacity determinations developed for judges under the auspices of and with the support of the American Bar Association, the American Psychological Association and the National College of Probate Judges.⁽¹⁾

Under this framework, the judge should conduct a comprehensive assessment of the capacity of an adult that is based on information, if applicable, about the following six factors:

- (a) Judges should require information about the adult's specific medical condition that may be or is affecting his or her decision-making capacity.
- (b) Judges should require information about the adult's cognitive impairment, i.e., whether the person is "unable to receive and evaluate information or make or communicate decisions."
- (c) Judges should require information about the adult's functional limitations and abilities affecting routine self-care activities (e.g., eating, bathing, dressing, toileting, walking, and continence) and activities that are necessary for independent living (e.g., use of means of communication and transportation, shopping, meal preparation, housework, and management of medications and personal finances).
- (d) Judges should require information about whether the adult's decisions are consistent with his or her life patterns and expressed values and preferences. Decisions that appear irrational may not be if they are consistent with such patterns, values, and preferences.
- (e) Judges should require information about whether the adult is at risk of harm, the nature and extent of any risk of harm, and the

level of supervision needed to avoid harm occurring to the person.

- (f) Judges should require information about whether means are available to enhance the adult's capacity through appropriate decision-making support, services, and technological assistance, and if so, whether a guardianship or conservatorship is needed.⁽²⁾

Recommendation 6.2 states as a general principle that, in cases where information from an evaluation is needed, judges should be provided with such information based on an evaluation that employs accepted and validated procedures, methodologies, and tools that are appropriate for the person being assessed. It must be emphasized that different procedures, methodologies, and tools may be appropriate for persons with different conditions and problems (e.g., persons with intellectual disabilities, persons with Alzheimer's disease and other types of dementias, persons with brain injuries and persons with mental illnesses).

Recommendation 6.3 states as a general principle that 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. It must be emphasized that individuals with different professional identities may be qualified to conduct evaluations in different types of cases involving adults with different types of problems.

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 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.***

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

COMMENT

Task Force Recommendations 6.4—6.7 pertain to the authorization of court ordered evaluations in guardianship and conservatorship proceedings. The Task Force specifically recommends that 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 the purpose of determining whether to appoint a guardian or a conservator for the adult and for the purpose of determining whether to establish a full or a limited guardianship or conservatorship for the person, and
- 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.

The Task Force Recommendations are consistent with the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act,⁽³⁾ the National Probate Court Standards⁽⁴⁾ and a number of other state statutes.⁽⁵⁾

The Iowa Code currently does not authorize court-ordered evaluations in guardianship or conservatorship proceedings. The Iowa Code, however,

does authorize court-ordered evaluations and examinations in other types of proceedings, namely child in need of assistance proceedings,⁽⁶⁾ proceedings for the involuntary hospitalization of persons with mental illness,⁽⁷⁾ and proceedings for the involuntary commitment or treatment of persons with a substance-related disorder.⁽⁸⁾

Although court-ordered evaluations can furnish the court with information of value to them in making determinations in guardianship and conservatorship proceedings, the privacy of the person evaluated and the evaluation information should be protected to the extent possible. Accordingly, the Task Force recommends that evaluation records should be confidential and sealed subject to limited exceptions.

The Task Force also recommends that the Judicial Branch adopt a standardized form for the collection and synthesis of relevant and needed professional evaluation information. The members of the Resource Committee agreed to develop a model form with the assistance of the Institute for Guardianship and Conservatorship at the University of Iowa College of Law.

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.

COMMENT

As it has been pointed out, adults alleged to be in need of guardianships and conservatorships and adults for whom guardianships and conservatorships have been established already may have been evaluated by and for publicly-administered and funded programs, and these evaluations may have resulted in information relevant to judicial determinations of their decision-making capacity and functional limitations and abilities in guardianship and conservatorship proceedings.

In order to save the expense and time which the conduct of a court-ordered evaluation entails, the Task Force recommends that the Iowa Code should authorize the court to order the production of documents containing the results of a pre-existing professional evaluation for the court's use in making determinations in guardianship and conservatorship proceedings. The court, however, should exercise caution in using information from pre-existing evaluations which were not done for the purpose of guardianship and conservatorship proceedings and which may not reflect the current status of the person evaluated. 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 a standardized form.

It should be noted that the Task Force recommendations are not inconsistent with the Health Insurance Portability and Accountability Act (HIPAA).

Although HIPAA and the implementing regulations restrict the disclosure of protected health care information, they permit disclosure of protected health information in response to a court order.⁽⁹⁾

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.

COMMENT

Task Force Recommendations 6.12-6.13 pertain to the education of judges and attorneys about the use of professional evaluations in guardianship and conservatorship proceedings. A critical need exists for education of judges about assessment procedures, methods, and tools to evaluate decision-making capacity and functional abilities and limitations and how to interpret

and use the information generated by professional evaluations in guardianship and conservatorship proceedings. The Judicial Branch should make such education an integral component of judicial education for judges with responsibilities for guardianship and conservatorship cases. A critical need likewise exists for education of attorneys who represent parties in guardianship and conservatorship proceedings about capacity and evaluation of capacity and functioning. Providers of continuing legal education should likewise make such education available to such attorneys.

Task Force Recommendation 6.15 is the outgrowth of the Resource Committee's finding that there is a lack of clinicians and practitioners, particularly in rural and other underserved areas of Iowa, who are qualified to conduct evaluations is a major problem. The Task Force recommends that an education program be developed and implemented to expand the pool of clinicians and practitioners qualified to conduct evaluations who 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.

End Notes – Part Six: Clinical Evaluations and Judicial Capacity Determination:

1. See American Bar Association Commission on Law and Aging, American Psychological Association and National College of Probate Judges, *Judicial Determination of Capacity of Older Adults In Guardianship Proceedings, A Handbook for Judges* (2006), http://www.americanbar.org/content/dam/aba/administrative/law_aging/2011_aging_bk_judges_capacity_longer_version.authcheckdam.pdf.
2. *Id.* at 4-6.
3. National Conference of Commissioners on Uniform State Laws, Uniform Guardianship, Conservatorship and Other Protective Proceedings Act Sections 306 and 407 (Draft for Approval) (2017).
4. See, e.g., Richard Van Duizend and Brenda K. Uekert, National College of Probate Court Judges, National Probate Court Standards, Standard 3.3.9 (2013).
5. See ABA Commission on Law and Aging, *Role of clinical evaluation professionals in adult guardianships proceedings: Survey of state statutes* (2016).
6. Iowa Code section 232.98 (2017)
7. Iowa Code section 229.10 (2017)
8. Iowa Code section 125.80 (2017)

9. *See* Health Insurance Portability and Accountability Act, Privacy Rule Exception
45 CFR 164.512(e) (1) (i) (2016).

APPENDICES

APPENDIX A

Josephine Gittler, The Iowa Guardianship and Conservatorship Study A:3

APPENDIX B

Iowa Supreme Court (January 14, 2015) A:19

APPENDIX C

Erica Wood, Past and Current Paths to Improving Guardianship A:25

APPENDIX D

Iowa Supreme Court Order (August 28, 2015) A:47

APPENDIX E

Task Force Work Groups, Assignments and Membership A:53

APPENDIX F

Task Force Resource Committee on Clinical Evaluation, Membership A:61

APPENDIX G

Task Force Request for Input A:65

APPENDIX H

Iowa Guardianship and Conservatorship Summit Program A:69

APPENDIX I

Task Force Final Plenary Meeting Program A:79

APPENDIX J

Initial Care Plan for Adult, Model Form A:83

APPENDIX K

Annual Report for Adult, Model Form A:89

APPENDIX L

Initial Care Plan for Minor, Model Form A:95

APPENDIX M

Annual Report for Minor, Model Form A:101

APPENDIX A

JOSEPHINE GITTLER, THE IOWA GUARDIANSHIP AND CONSERVATORSHIP STUDY

IOWA GUARDIANSHIP AND CONSERVATORSHIP STUDY & PROFILE OF GUARDIANSHIP AND CONSERVATORSHIP SYSTEM



Josephine Gittler
Wiley B. Rutledge Professor of Law
University of Iowa College of Law

July 2017

Study Overview

- Study conducted by Professor Josephine Gittler and Research Assistants at the University of Iowa College of Law.
- Probate Court Guardianship and Conservatorship case files (paper & EDMS) reviewed.



Study Overview

- Data collected and analyzed includes:
 - Multiple data items
 - Quantitative data
 - Qualitative data
 - Follow up data collection & analysis
- Identification of systemic issues and problems.
- Relevant data available to Task Force Work Groups.

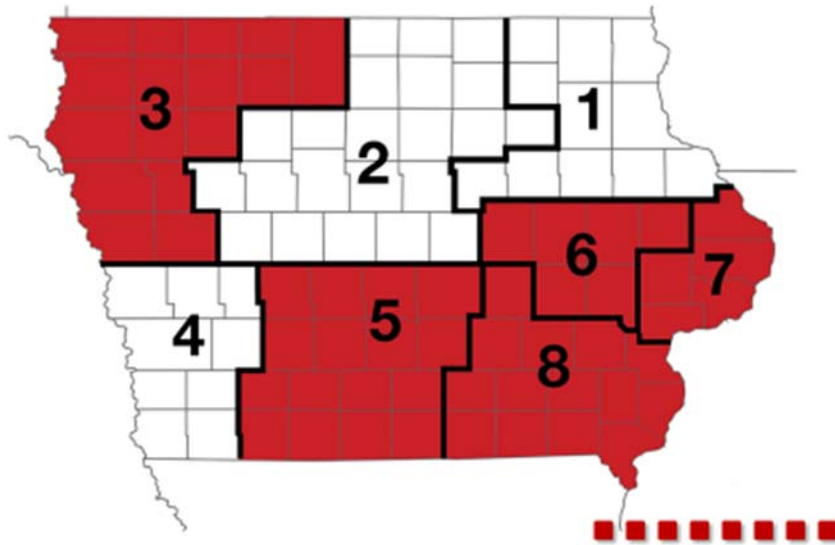


Case Files Reviewed: Number, Time Period and Sites

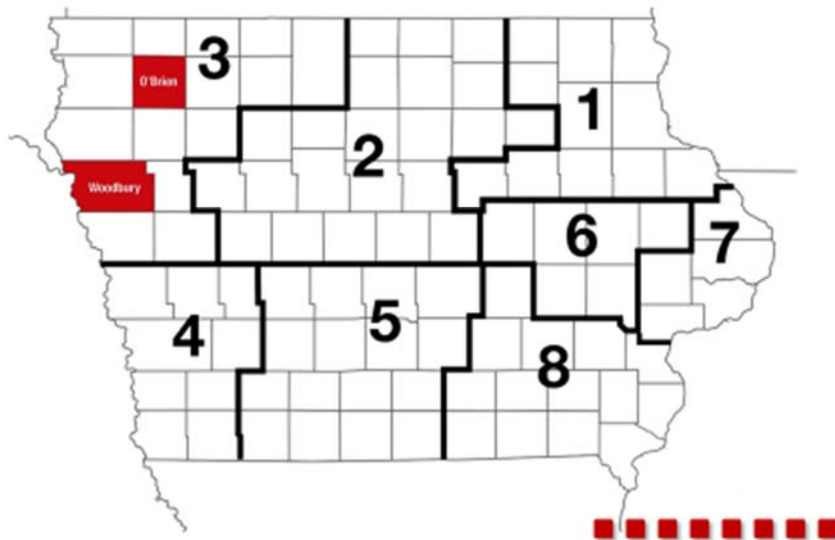
- Over 4,000 cases reviewed.
- Cases reviewed in five Judicial Districts and in ten counties (two counties in each judicial district).
- In eight counties, four judicial districts, all pending (open) cases reviewed through June 30, 2014.
- In two counties in one Judicial District a random sample of cases reviewed.



Iowa's Judicial Districts



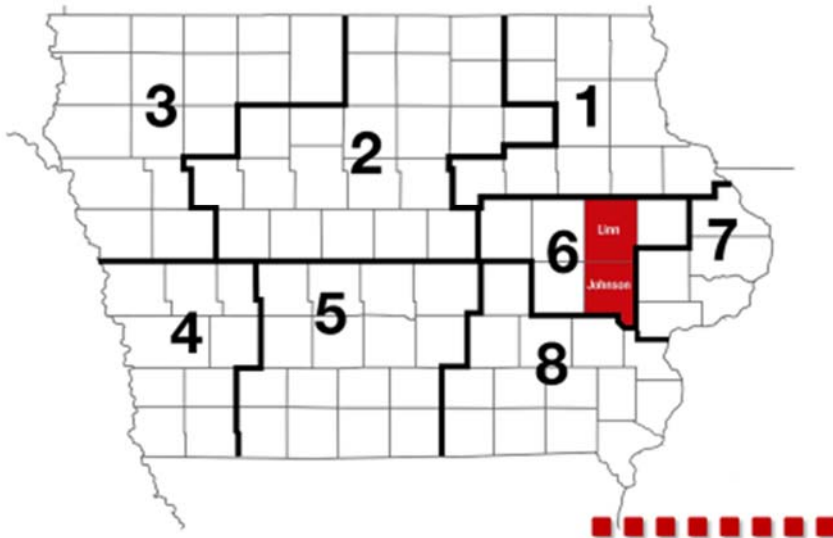
Third Judicial District: Woodbury & O'Brien Counties



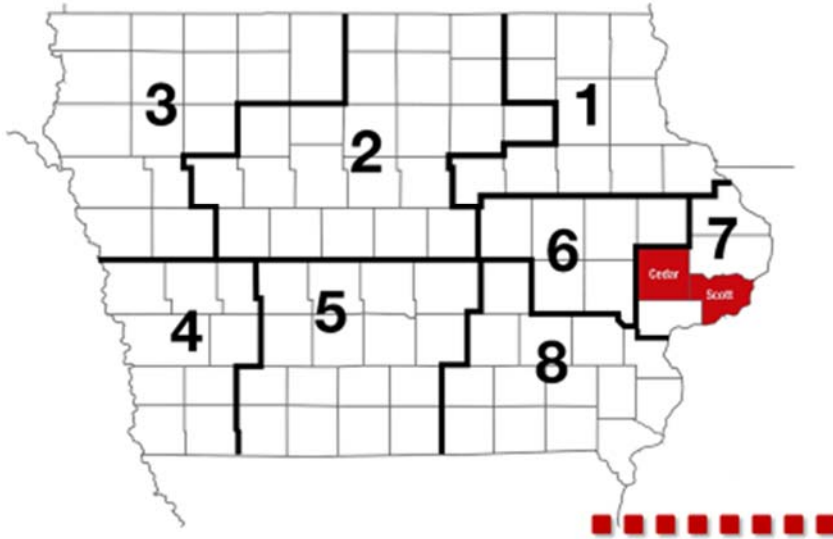
**Fifth Judicial District:
Polk & Warren Counties**



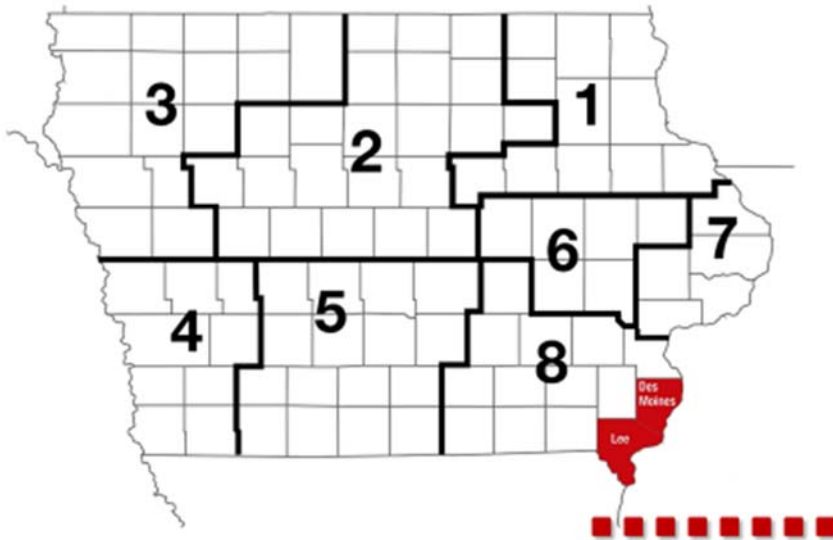
**Sixth Judicial District:
Linn & Johnson Counties**



**Seventh Judicial District:
Cedar & Scott Counties**



**Eighth Judicial District:
Des Moines & Lee (South) Counties**



Counties Surveyed: Population

➤ Polk	430,640
➤ Linn	211,226
➤ Scott	165,224
➤ Johnson	130,882
➤ Woodbury	103,877
➤ Warren	46,225
➤ Des Moines	40,325
➤ Lee	35,862
➤ Cedar	18,499
➤ O'Brien	14,398



GUARDIANSHIP AND CONSERVATORSHIP CASES



CHARACTERISTICS AND DISTRIBUTION

At the end of 2016 statewide there were:
22,754 total pending (open) cases
2,858 new cases filed or reopened
2,499 cases disposed



Source: Communication from State Court Administrator (7/7/2017)



Future Caseloads & Trends: Impact of Aging Population



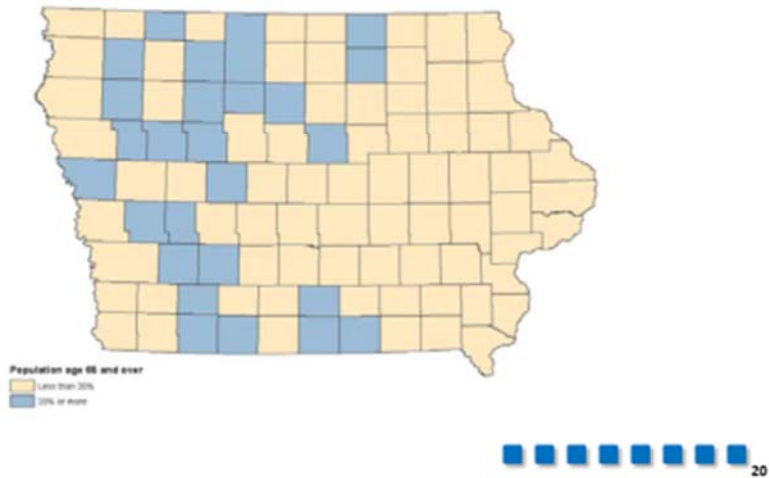
Aging Population: U.S. & Iowa

- The U.S. population, age 65 and older, is large and growing.
- According to the 2010 census, Iowa ranked 5th in the percentage of its population aged 65 and older.
- Iowa and two other states had the highest percentage of persons in the age group 85 years of age and older.



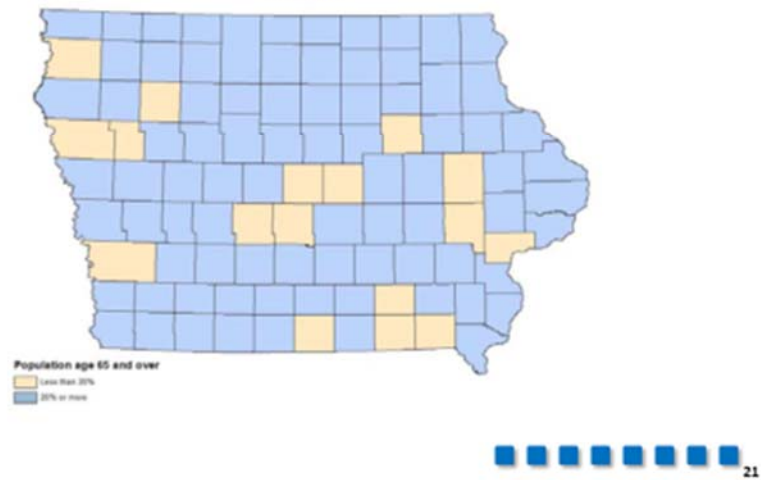
Percentage of Population 65+

2010



Percentage of Population 65+

2040



Summary: Cases By Type*

Guardianship vs Conservatorship and
Adult vs Minor

	Adult	Minor
Guardianship	36%	24%
Conservatorship	6%	9%
Both	23%	3%
All	65%	36%

*Percentages rounded to the nearest whole percent.



Summary: Involuntary vs Voluntary Petitions*

	Adult Cases	Minor Cases
Involuntary	23%	3%
Voluntary	6%	9%
No Information/Unclear	36%	24%

*Percentages rounded to the nearest whole percent.



Authority Granted: Plenary (Full) vs Limited and Guardianship vs Conservatorship

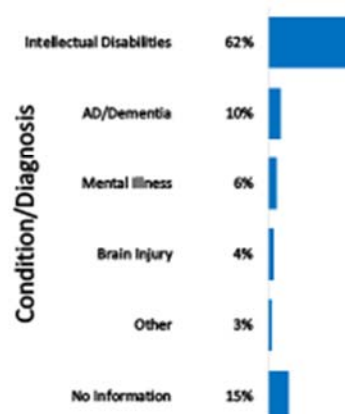
	Plenary (Full) *	Limited
Adult Guardianships	96%	1%
Adult Conservatorships	95%	2%
Minor Guardianships	91%	Under 1%
Minor Conservatorships	92%	5%

*Percentages rounded to the nearest whole percent.



Conditions/Diagnosis of Adults Subject to Guardianship & Conservatorship*

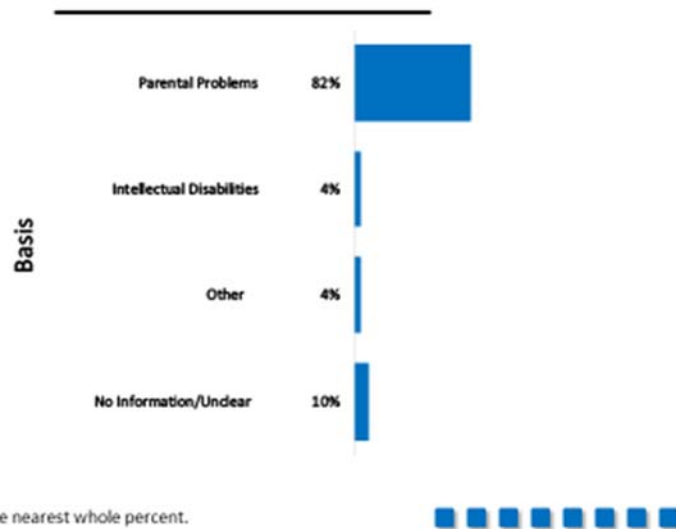
(Need/Basis for Guardianship & Conservatorship)



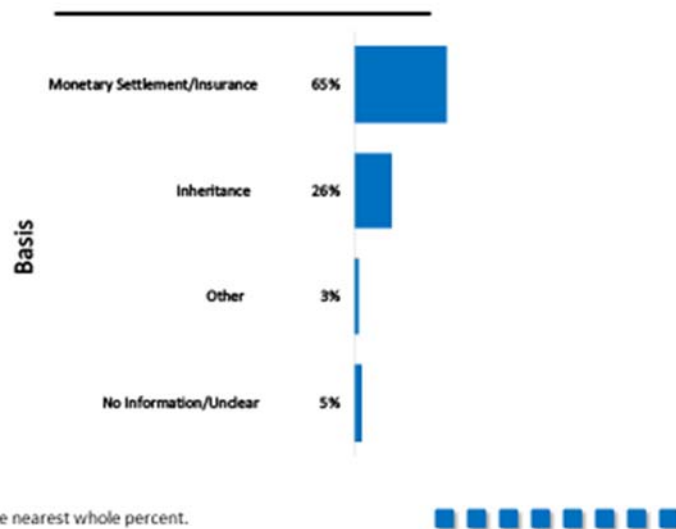
*Percentages rounded to the nearest whole percent.



Basis for Minor Guardianship*



Basis for Minor Conservatorship*



Minor Guardianships & Conservatorships: Parental Problems and Juvenile Court Involvement*

Parental Problems	62%
without Juvenile Court involvement	49%
with Juvenile Court involvement	13%

*Percentages rounded to the nearest whole percent.



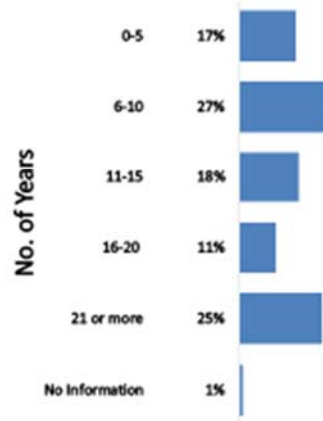
Family Members/Relatives Relation to Adults & Minors Subject to Guardianship & Conservatorship*

	Percentage
Adult Guardianship	81%
Adult Conservatorship	39%
Minor Guardianship	83%
Minor Conservatorship	83%

*Percentages rounded to the nearest whole percent.



Age of All Adult Cases*



*Percentages rounded to the nearest whole percent.



Age of Cases

Oldest Cases by County

County	Year of Oldest Case
Cedar	1962
Polk	1963
Woodbury	1964
Warren	1966
Lee	1966
Johnson	1968
Linn	1975
Des Moines	1977
Scott	1978
O'Brien	1983



APPENDIX B

IOWA SUPREME COURT ORDER (JANUARY 14, 2015)

FILED

JAN 14 2015

In the Supreme Court of Iowa

**In the Matter of Establishment of)
 and Appointments to the)
 Guardianship and)
 Conservatorship Reform)
 Task Force)**

Order**CLERK SUPREME COURT**

Iowa's guardianship and conservatorship system is one of the most important functions of the judicial branch of government. Court appointed guardians and conservators must make personal and financial decisions on behalf of vulnerable adults and children who lack the capacity to make such decisions. The courts have an ongoing responsibility to monitor guardianships and conservatorships to assure that these adults and children receive appropriate care and protection.

In Iowa there are currently 22,000 open guardianship and conservatorship cases. It is projected that this number will rise substantially due to demographic trends. These trends include a large and rapidly growing population of older Iowans with Alzheimer's disease and other dementias requiring guardianship and conservatorship services.

There has been increasing recognition at both national and state levels of the need for guardianship and conservatorship reform. For example, the Third National Guardianship Summit, sponsored by the National Center for State Courts and other national organizations, issued recommendations and standards calling for actions by courts, legislatures, and other entities. State supreme courts are increasingly playing a leadership role in addressing the challenges confronting the courts with respect to guardianships and conservatorships.

To this end, the supreme court establishes the Guardianship and Conservatorship Reform Task Force (Task Force) to review Iowa's guardianship

and conservatorship laws and procedures in order to ensure the system is efficient and responsive to the needs of Iowans. To accomplish this mission, the Task Force will:

- 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.

To organize and oversee this effort, the court appoints the following persons to serve as the Task Force Steering Committee:

Honorable Bruce B. Zager, Justice, Iowa Supreme Court, Waterloo, Chair.

Honorable Jeffrey Larson, Chief Judge, Fourth Judicial District, Council Bluffs.

Honorable Cynthia Danielson, District Judge, Mount Pleasant.

Honorable Craig Block, District Associate Probate Judge, Ankeny.

Gail Agrawal, Dean, University of Iowa College of Law, Iowa City.

Josephine Gittler, Professor, University of Iowa College of Law, Iowa City.

Ben Ullem, Dean, Drake University Law School, Des Moines.

Jerry Foxhoven, Professor, Drake University Law School, Des Moines.

Greg Kenyon, attorney, Des Moines.

Molly Kottmeyer, Counsel to the Chief Justice, West Des Moines, ex-officio member.

Steering Committee members may be reimbursed for necessary and reasonable travel expenses according to Iowa Court Rules 22.16 through 22.2.

Professors Gittler and Foxhoven will serve as coordinators of the Steering Committee. The court thanks the University of Iowa College of Law and the

Drake University Law School for organizational and financial support of the Task Force.

The Task Force Steering Committee will provide the supreme court with recommendations for appointment of additional members of Task Force workgroups by June 1, 2015. The Steering Committee will consider gender, geographic, and racial diversity in making its recommendations. The Task Force Steering Committee will provide the supreme court with recommendations for the convening of an Iowa Guardianship and Conservatorship Summit of the members of the Task Force Steering Committee and work groups.

Dated this 14th day of January, 2015.

The Supreme Court of Iowa

By Mark S. Cady
Mark S. Cady, Chief Justice

Cc:

APPENDIX C

ERICA WOOD, PAST AND CURRENT PATHS TO IMPROVING GUARDIANSHIP

Past & Current Paths to Improving Guardianship

Erica Wood
Commission on Law and Aging
American Bar Association
Iowa Guardianship & Conservatorship Summit
October 2015

Court-Community Partners

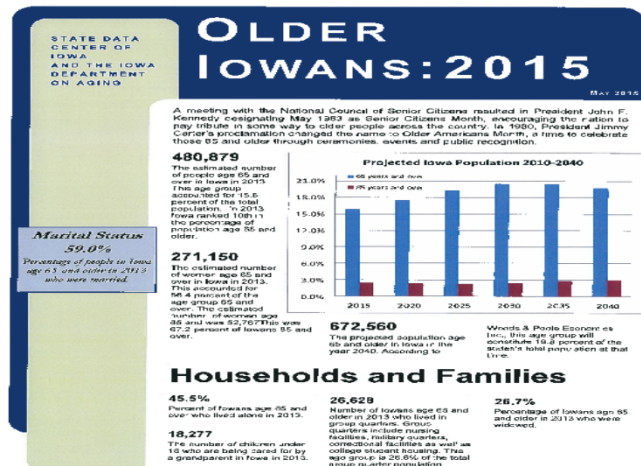
Courts should “engage in
a vigorous campaign to
organize and mobilize
partners . . .
-NCSC High Performance Court
Framework

Court-Community Partners

Guardianship improvement requires "an interdisciplinary entity focused on guardianship implementation, evaluation, data collection, pilot projects, and funding."

-- 2004 National Guardianship Network Action Steps

Iowa Demographic Imperative

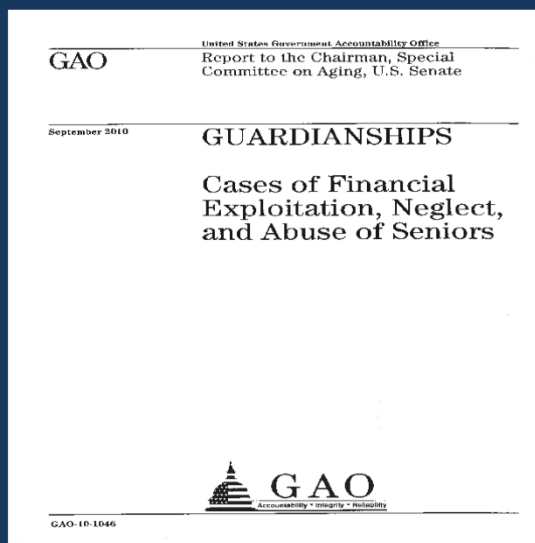


Parens Patriae

- ❑ Concept from Fourteenth Century England
- ❑ Court to care for those unable to care for selves
- ❑ People who have no voice; may be isolated

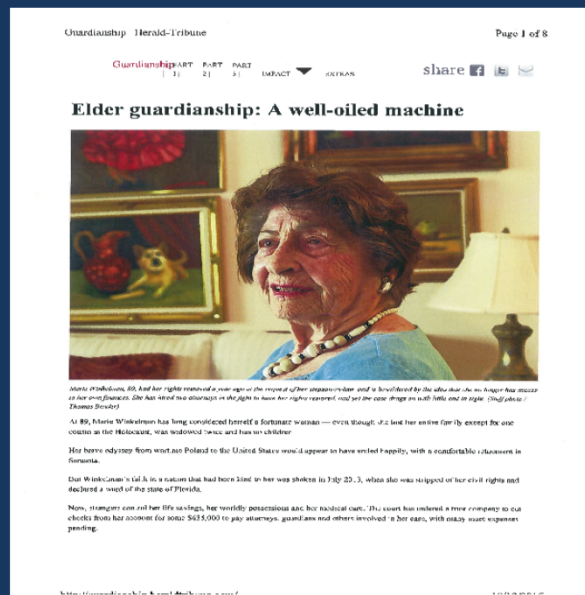


Public Confidence in Courts



Public Confidence in Courts

- ▣ ELDERLY, MENTALLY ILL AND CHILDREN TRAPPED IN BROKEN COURT SYSTEM --Columbus Dispatch 2014
- ▣ GUARDIANSHIP PROBLEMS ARE WIDELY REPORTED BUT SELDOM FIXED – Las Vegas Review-Journal 2015
- ▣ RAILING AT GUARDIANSHIP – ONE CASE AT A TIME -- Herald Tribune 2014, Florida





Iowa – Press Scrutiny

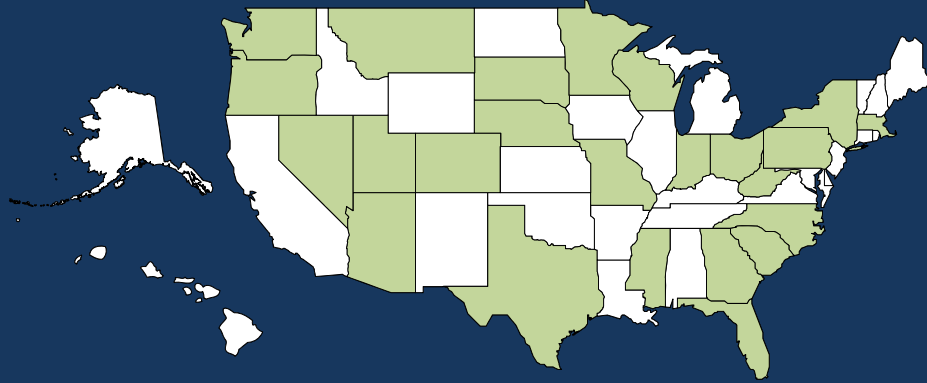
January 2006 CPA case profiled by 2010 GAO Report – “guardian wrote himself 21 checks from victim’s estate, while failing to pay for her rent . . .”

- June 2013 Associated Press story on lawyer conservators who billed a mentally ill Vietnam War vet at attorney rate for everyday services such as shopping.

Efficient Management for High Performance

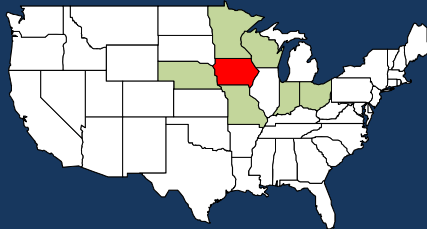


Birdseye: States with Significant Guardianship Reform



AZ, CO, DC, FL, GA, IN, MA, MN, MO, MS, MT, NC, NE, NV, NY, OH, OR, PA, SC, SD, TX, UT, WA, WI, WV

Neighboring States



Wisconsin

May 2015 Working Interdisciplinary Group

Ohio

Supreme Court Committee, New Court Rule Guardians

Nebraska

Commission on Guardianships & Conservatorships; Public Guardianship Enactment; Revised Rules, Forms, Website

Minnesota

September 2015 Summit; Working Groups

Indiana

Statewide Task Force; Appropriations

Missouri

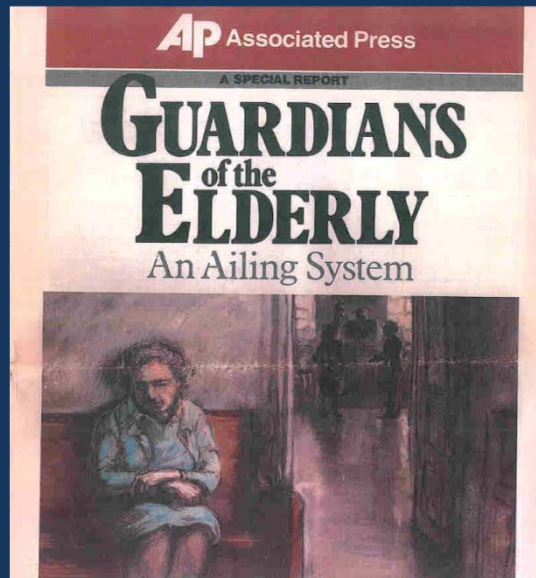
Active Code Revision Task Force

What Adult Guardianship Reforms Do We Need?

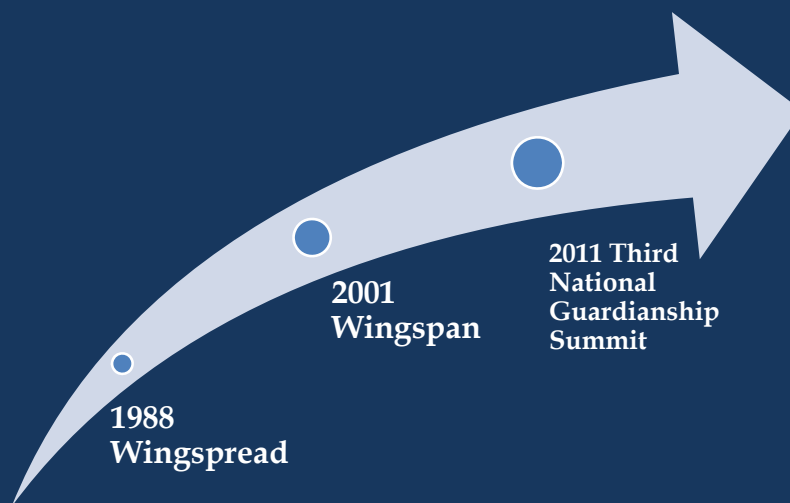


Challenges to Lasting Adult Guardianship Reform





National Guardianship Consensus Conferences

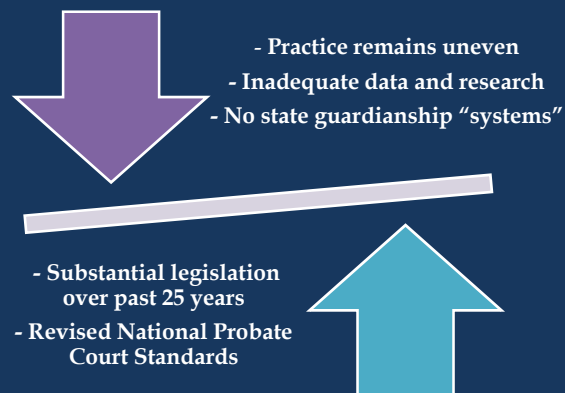


Rush to State Statutory & Practice Reform

- ▣ Since 1988, revisions in codes of all states
- ▣ Majority of states have enacted new or substantially revised code
- ▣ State task forces, handbooks, curricula



Where Do We Stand?



Key Aspects of Guardianship Reform

Less Restrictive
Decision-
Making Options

Procedural
Safeguards;
Capacity
Determinations

Guardian
Screening &
Qualifications

Guardian
Standards

Court
Monitoring

Promote Use of Less Restrictive Decision-Making Options



PRACTICAL & LEGAL OPTIONS

- Family support; supportive environments & accommodations
- Care management
- Money management
- Advance health care directives
- Financial powers of attorney
- Representative payees
- Joint accounts
- Trusts



Guardianship

Procedural Safeguards;

Due Process Protections

Notice; Presence;
Standard of
Proof - 1995
Hedin case

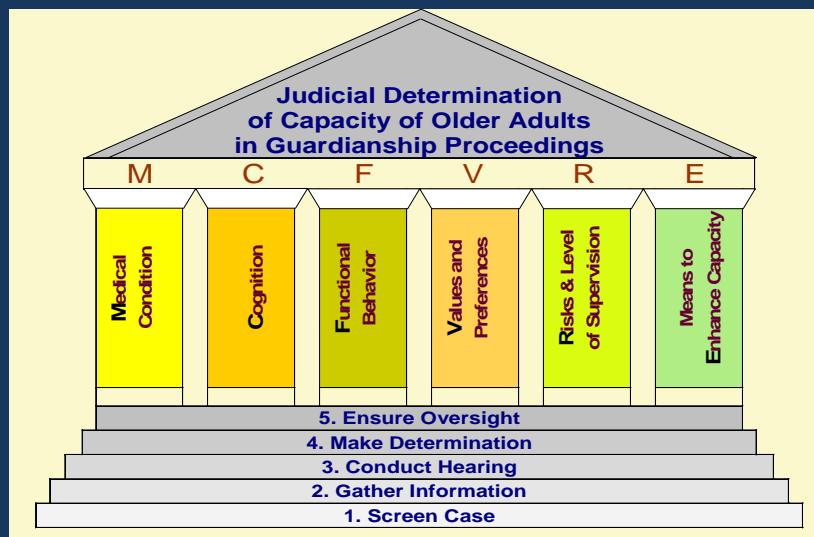
Right to & Role
of Counsel

Scope of court order

Limited orders -
1995 Hedin case

Consideration of
supports &
services

Six Pillars of Capacity Assessment



Guardian Screening & Qualifications

Background Checks

- State requirements
- Who to check; what crimes
- Absolute bar; court discretion

Guardian Certification

- Center for Guardianship Certification
- Approx 12 state certification programs

Guardian Standards



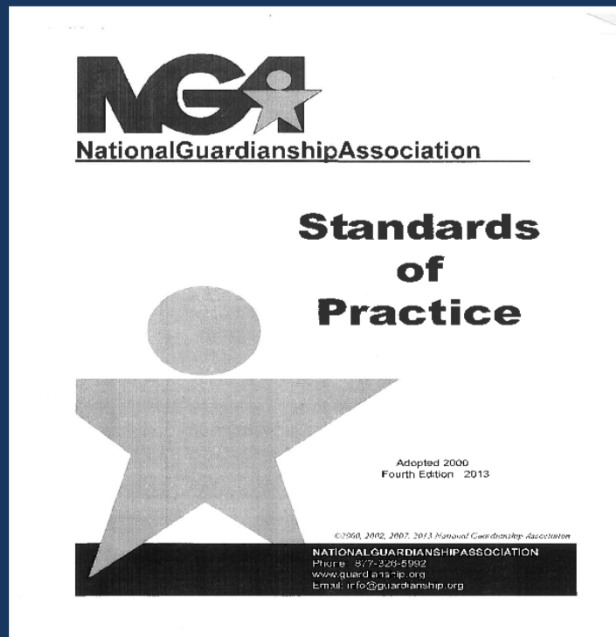
Guardian Standards

Broad statutory requirements –

- ▣ *“provide for the care, comfort and maintenance of the ward”*

Standards flesh out code provisions –

- ▣ How guardians related to court, person, family, professionals
- ▣ Informed consent, decision-making process
- ▣ Residential decisions
- ▣ Medical decisions
- ▣ Visitation
- ▣ Development of guardianship plan
- ▣ Maintaining files
- ▣ Avoiding conflict of interest
- ▣ Conducting inventory; making financial plan, preparing accounting
- ▣ Managing property
- ▣ Fees



Court Monitoring Objectives

Help guardians; identify community resources

Assess need for modification

Safeguard against abuse

Court Monitoring Elements

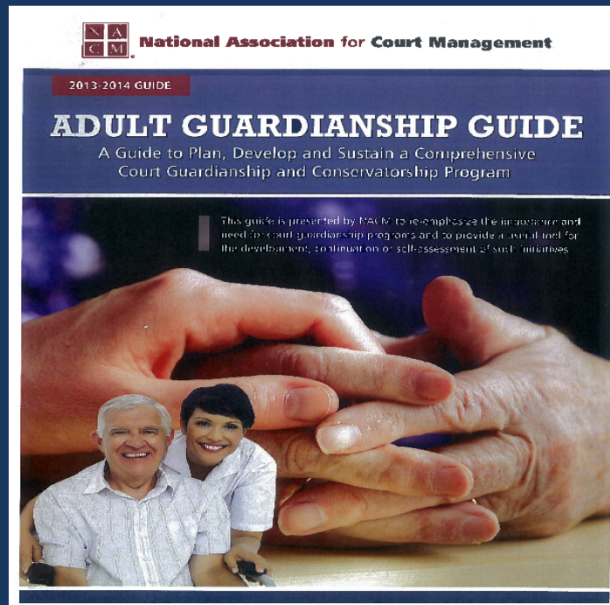
Ensure reports, accountings filed



Review reports, accountings -
look for "red flags"



Investigate; safeguard assets;
sanction



NGN 2011 Third National Guardianship Summit

- ▣ Recommended that states create WINGS – Working Interdisciplinary Networks of Guardianship Stakeholders



What is WINGS?

Court-
Community
Partnerships

Evaluation
of “on the
ground”
practices

Ongoing
forum



**“Large scale social change
comes from better cross-
sector coordination rather
than from the isolated
intervention of individual
organizations.”**

—2011 article on Collective Impact

Collective Impact



Examples of WINGS Stakeholders

Judges; court staff

Bar association; legal services

State unit on aging; AARP;
Alzheimer's Association

Protection and advocacy agency;
developmental disabilities council

Mental health agencies

Adult protective services

State hospital representatives ; long t
care providers

State guardianship associations &
agencies

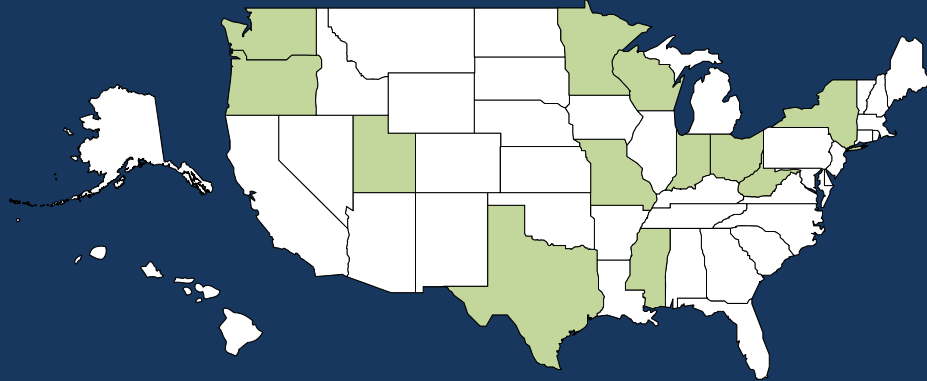
Professional guardians; family/lay
guardians

Social Security & VA regional offices

People with disabilities who are self-
advocates



Current WINGS States



DC, IN, MN, MS, MO, NY, OH, OR, TX, UT, WA, WV, WI

Early WINGS Accomplishments

Website/Facebook page for family guardians

Court link to aging/disability resources

SS rep payee training curricula

Booklet/website on less restrictive options

Template on person-centered planning

Momentum for passage of key legislation

Strengthening court oversight

WINGS Collective Impact Power



- ▣ *"Connections were established between agencies that sometimes serve the same population but do not communicate with each other or provide referrals." Utah*
- ▣ *"Without WINGS. . . [the senator] may not have made the public guardian bill one of his two bills this session . . . the momentum was here to make it a priority bill. " Oregon*

WINGS Evaluation- National Center for State Courts

- ▣ *WINGS "proving to be a feasible and effective means for addressing the current shortcomings of the guardianship system and process."*
- ▣ *Now time to "take steps to prepare for the long-term effort needed."*



Resources for WINGS

- ▣ Replication Guide
- ▣ NCSC Assessment Report
- ▣ WINGS Video – Judge Eric Washington



www.nationalguardianshipnetwork.org

APPENDIX D

IOWA SUPREME COURT ORDER (AUGUST 28, 2015)

FILED

AUG 28 2015

In the Supreme Court of Iowa

**In the Matter of the
Appointments of Members
To Serve on the Iowa
Guardianship and
Conservatorship Reform
Task Force**

)
)
)
)
)
)

Supervisory Order

CLERK SUPREME COURT

In January of this year, the court announced the creation of the Iowa Guardianship and Conservatorship Reform Task Force (Task Force) to review Iowa's guardianship and conservatorship laws and procedures and to propose recommendations for new court processes and improvements to current process for statewide adoption. At the same time, the court appointed a nine member Task Force Steering Committee (Steering Committee) to oversee this effort.

The Steering Committee has compiled a list of fifty-three nominees to serve on the task force. The Steering Committee recommends the appointment of these nominees. After thorough consideration, the court hereby appoints all of the nominees recommended by the Steering Committee as shown by the appendix attached to this order.

Dated this 28th day of August, 2015.

The Supreme Court of Iowa

By *Mark S. Cady*
Mark S. Cady, Chief Justice

Cc:

- ✓ Iowa Supreme Court
- ✓ Iowa Court of Appeals
- ✓ Chief Judges
- ✓ Senior Judges

- ✓ District Court Judges
- ✓ District Associate Judges
- ✓ State Court Administrator
- ✓ Director of Finance and Personnel
- ✓ Supreme Court Clerk
- ✓ The Iowa State Bar Association
- ✓ Iowa Legal Aid
- ✓ Task Force Members

APPENDIX

Honorable Steve Andreasen, Sioux City
Rhonda Bentley, Burlington
Teresa Bomhoff, Des Moines
Dr. Kathleen Buckwalter, Iowa City
Anthony Carroll, Des Moines
Honorable Susan Christensen, Harlan
Tyler Eason, Des Moines
Carroll Edmondson, Cedar Rapids
Chris Even, Dubuque
Kathy Gaylord, Davenport
Kathy Good, Cedar Rapids
Honorable Myron Gookin, Fairfield
Honorable Pat Grady, Cedar Rapids
Honorable Marlita Greve, Bettendorf
Sara Haas, Burlington
Jim Hennessey, Des Moines
Mary Hodapp, Woodward
Jim Holter, Des Moines
Jane Hudson, Des Moines
Kelli Johnson, Burlington
Honorable Kathleen Kilnoski, Council Bluffs
Geoffrey Lauer, Iowa City
Thomas Lawler, Parkersburg
Honorable Kellyann Lekar, Waterloo
Honorable John Linn, Burlington
Lee Ann Logan, Coralville
Janet Martinson, Waterloo
D.J. Mason, Waterloo
Josh Miller, Des Moines
Honorable Jeff Neary, Merrill
Michel Nelson, Carroll
Evelyn Ocheltree, Mason City
Honorable David Odekirk, Black Hawk
Barbara Orzechowski, Sioux City
Honorable Thomas Reidel, Muscatine
Roxanne Repstien, Amana
Honorable James Richardson, Audubon
Wendy Rickman, Des Moines
Philip Seidl, Cedar Rapids
Chantelle Smith, Des Moines
D. Thomas Smith, Des Moines
Honorable Kurt Stoebe, Humboldt
Honorable Joel Swanson, Carroll
Frank Tenuta, Sioux City

Honorable Patrick Tott, Sioux City
Margaret Van Houten, Des Moines
Tony Vola, Des Moines
Suzanne Watson, Council Bluffs
Jennifer Webster, Ankeny
Honorable Stuart Werling, Tipton
Honorable Colin Witt, Des Moines
Breanna Young, Earlham
Rebecca Zoll, Gilbertville

APPENDIX E

TASK FORCE WORK GROUPS, ASSIGNMENTS AND MEMBERSHIP

Iowa Guardianship and Conservatorship Reform Task Force

Work Groups: Assignments & Membership

Iowa Guardianship and Conservatorship Reform Task Force

WORK GROUP ONE

ESTABLISHMENT OF ADULT GUARDIANSHIPS AND CONSERVATORSHIPS

Chair

Honorable Stuart Werling, Tipton, District Court Judge, District 7

Steering Committee Co - Coordinators and Co - Reporters

Professor Josephine Gittler*, Iowa City, *Coordinator and Reporter*

Professor Jerry Foxhoven*, Des Moines, *Co-Coordinator and Co-Reporter*

Membership

Kathleen Buckwalter, Iowa City, Co-Director, National Health Law and Policy Resource Center;

Professor Emerita, University of Iowa College of Nursing

Anthony Carroll, Des Moines, Associate State Director for Advocacy, AARP IOWA

Tyler Eason, Des Moines, Director, Office of Substitute Decision Maker Department of Aging

Jane Hudson, Des Moines, Executive Director, Disability Rights IOWA

Gregory Kenyon*, Des Moines, Shareholder, Bradshaw, Fowler, Proctor & Fairgrave

Thomas Lawler, Parkersburg, Partner, Lawler & Swanson

Honorable John Linn, Burlington, District Court Judge, District 8B

Dave Mason, Waterloo, Assistant County Attorney, Black Hawk County Attorney's Office

Wendy Rickman, Des Moines, Administrator, Division of Adult, Children and Family Services,
Iowa Department of Human Services

Chantelle Smith, Des Moines, Assistant Attorney General

Frank Tenuta, Sioux City, Managing Attorney, Iowa Legal Aid

Honorable Patrick Tott, Sioux City, District Court Judge, District 3B

** Steering Committee Member*

Iowa Guardianship and Conservatorship Reform Task Force

WORK GROUP TWO

GUARDIANS AND CONSERVATORS—QUALIFICATIONS, DUTIES AND RESPONSIBILITIES, FEES

Chair

Honorable Myron Gookin, Fairfield, District Court Judge, District 8A

Steering Committee Co - Coordinators and Co - Reporters

Professor Josephine Gittler*, Iowa City, *Coordinator and Reporter*

Professor Jerry Foxhoven*, Des Moines, *Co-Coordinator and Co-Reporter*

Membership

Chris Even, Dubuque, Senior Vice President & Trust Officer, American Trust & Savings Bank

Jim Holter, Des Moines, Vice-President Commercial Surety Merchants Bonding Company

Lee Ann Logan, Coralville, NAMI (National Alliance on Mental Illness) IOWA trainer

Janet Martinson, Waterloo, Blackhawk County Conservator, Office of Blackhawk County Conservator

Michel Nelson, Carroll, Senior Vice-President and Senior Trust Officer, Iowa Savings Bank

Honorable David Odekirk, Waterloo, District Court Judge, District 1B

Barbara Orzechowski, Sioux City, Partner, Klass Law Firm

Honorable Thomas Reidel, Muscatine, District Court Judge, District 7

Philip Seidl, Cedar Rapids, Partner, Seidl & Seidl

D. Thomas Smith, Des Moines, Guardian/Conservator

Tony Vola, Des Moines, Former President, AARP IOWA

Suzanne Watson, Council Bluffs, CEO, Southwest Iowa MHDS Region, Director; Pottawattamie County Community Services

** Steering Committee Member*

Iowa Guardianship and Conservatorship Reform Task Force

WORK GROUP THREE

COURT MONITORING OF ADULT GUARDIANSHIPS AND CONSERVATORSHIPS

Chair

Honorable Kellyann Lekar, Waterloo, Chief District Court Judge, Judicial District 1B

Steering Committee Co - Coordinators and Co - Reporters

Professor Josephine Gittler*, Iowa City, Coordinator and Reporter

Professor Jerry Foxhoven*, Des Moines, Co-Coordinator, and Co-Reporter

Membership

Rhonda Bentley, Burlington, Judicial Specialist, District 8

Teresa Bomhoff, Des Moines, President, NAMI (National Alliance on Mental Illness) Greater Des Moines

Honorable Craig Block*, Ankeny, District Associate Probate Judge, District 5C

Kathy Good, Cedar Rapids, Director, Family Caregivers Center of Mercy, Mercy Medical Center, Former Board Member, Alzheimer's Association East Central Iowa Chapter

Carroll Edmondson, Cedar Rapids, District Court Administrator, District 6

Honorable Marlita Greve, Bettendorf, Chief District Court Judge, District 7

Geoffrey Lauer, Iowa City, Executive Director, Brian Injury Alliance; Member, Iowa Mental Health and Disability Services Commission

Honorable, Jeffrey Neary, Merrill, District Court Judge, Judicial District 3B

Roxann Repstien, Cedar Rapids, Clerk of Court for Linn and Jones County, Linn County Clerk of Court Office

Honorable Richard Davidson, Clarinda, District Court Judge, District 4

Honorable Joel Swanson, Carroll, Senior District Court Judge, District 2B

Margaret Van Houten, Des Moines, Senior Shareholder, Davis Brown Law Firm

** Steering Committee Member*

Iowa Guardianship and Conservatorship Reform Task Force

WORK GROUP FOUR

ADMINISTRATION OF THE GUARDIANSHIP AND CONSERVATORSHIP SYSTEM

Chair

Honorable Jeffrey Larson*, Harlan, Chief District Court Judge, District 4

Steering Committee Co - Coordinators and Co - Reporters

Professor Josephine Gittler*, Iowa City, Coordinator and Reporter

Professor Jerry Foxhoven*, Des Moines, Co-Coordinator, and Co-Reporter

Membership

Honorable Steven Andreasen, Sioux City, District Court Judge, District 3B

Honorable Cynthia Danielson*, Mt. Pleasant, Senior District Court Judge, District 8B

Kathy Gaylord, Davenport, District Court Administrator, District 7

Honorable Patrick Grady, Cedar Rapids, Chief District Court Judge, District 6

Joshua Miller, Des Moines, Compliance/Training Coordinator, Polk County Clerk of Court's Office, District 5

Judge Kurt Stoebe, Humboldt, District Court Judge, District 2B

Rebecca Zoll, Gilbertville, Judicial Clerk, District 1

Jennifer Webster, Ankeny, Judicial Specialist, District 5

** Steering Committee Member*

Iowa Guardianship and Conservatorship Reform Task Force

WORK GROUP FIVE

MINOR GUARDIANSHIPS AND CONSERVATORSHIPS

Chair

Honorable Kathleen Kilnoski, Council Bluffs, District Court Judge, District 4

Steering Committee Co - Coordinators and Co - Reporters

Professor Josephine Gittler*, Iowa City, *Coordinator and Reporter*

Professor Jerry Foxhoven*, Des Moines, *Co-Coordinator and Co-Reporter*

Membership

Honorable Susan Christensen, Harlan, District Court Judge, District 4

Sara Haas, Burlington, Partner, Aspelmeier Fisch Power Engberg & Helling

Jim Hennessey, Des Moines, Iowa Child Advocacy Board Administrator

Mary Hodapp, Woodward, Director of Social Services, Woodward Resource Center

Kelli Johnson, Burlington, Trust Officer, Farmers & Merchants Bank & Trust

Evelyn Ocheltree, Mason City, Senior Staff Attorney Partner, Iowa Legal Aid

Wendy Rickman, Des Moines, Administrator, Division of Adult, Children and Family Services, Iowa Department of Human Services

Honorable Colin Witt, Des Moines, District Associate Judge, District 5C

Breanna Young, Earlham, Partner, Nelson Young & Braland

** Steering Committee Member*

APPENDIX F

TASK FORCE COMMITTEE ON CLINICAL EVALUATION, MEMBERSHIP

Iowa Guardianship and Conservatorship Reform Task Force

RESOURCE COMMITTEE ON EVALUATIONS IN GUARDIANSHIP AND CONSERVATORSHIP PROCEEDINGS

Chair and Coordinator

Josephine Gittler*, Iowa City, Wiley B. Rutledge Professor of Law, University of Iowa College of Law

Membership

Robert Bacon, MA, Iowa City, Program Director, University of Iowa; Center for Excellence on Developmental Disabilities, Center for Disabilities and Development Professor Kathleen Buckwalter, PhD, RN, FAAN, Iowa City, Professor Emerita, University of Iowa College of Nursing; Former Director, John A. Hartford Center of Geriatric Nursing Excellence

Robert L. Bender, MD, Des Moines, Geriatric Medicine and Memory Center, Broadlawns Medical Center

Kenda Jochimsen, MA, Des Moines, Bureau Chief, Rehabilitation Services, Iowa Vocational Rehabilitation Services

Jan Jordan, LISW, West Des Moines, Senior Director of Medicaid Programs (former), Telligen June Klein-Bacon, BSW, Waterloo, Chairperson, Iowa Olmstead Consumer Task Force; Project Manager, Brain Injury Alliance of Iowa

Paul Mulhausen, MD, MHS, FACP, West Des Moines, Chief Medical Officer, Telligen

Mary-Beth Roskens, MFCS, Council Bluffs, Southwest Iowa MHDS Region, Pottawattamie County Community Services; Community Services Supervisor, Pottawattamie County Community Services

Catherine Stack, MA, Des Moines, Program Manager, Dependent Adult Protection, IHHRC, Record Check Evaluation, and Family Life Homes, Division of Adult, Children & Family Services, Iowa Department of Human Services

Mary Stevens, PHD, Cedar Falls, Director of Special Education, Area Education Agency 267

* Steering Committee Member

APPENDIX G

TASK FORCE REQUEST FOR INPUT

GUARDIANSHIP AND CONSERVATORSHIP REFORM TASK FORCE REQUEST FOR INPUT

To: *Interested organizations, agencies or persons*
From: *Gail Agrawal, Dean, University of Iowa College of Law, and
Member Steering Committee, Guardianship and Conservatorship Reform Task Force
Ben Ullem, Dean Drake University Law School, and
Member Steering Committee, Guardianship and Conservatorship Reform Task Force*

The Iowa Supreme Court has established a Guardianship and Conservatorship Reform Task Force. The attached copy of the Supreme Court's order sets forth the background and mission of the Task Force.

We are contacting you on behalf of the Task Force Steering Committee, to inform you of an opportunity to provide input to the Task Force regarding issues and problems with the existing guardianship and conservatorship system and suggestions for improving guardianship and conservatorship services.

SUBMISSION OF WRITTEN STATEMENT

Any interested organization, agency, or person may submit a written statement. This testimony will be summarized and made available to the Task Force Steering Committee and Work Groups.

1. **The deadline for submission of written testimony is 5:00 pm on September 14, 2015.**
2. Written testimony may be sent as an attachment to an e-mail in Microsoft Word format to josephine-gittler@uiowa.edu. The e-mail subject line must state **"Guardianship Task Force."**
3. Alternatively written testimony may be sent to **Guardianship and Conservatorship Reform Task Force, Attention Josephine Gittler, 412 Boyd Law Building, University of Iowa, Iowa City, Iowa 52242.**

REQUEST TO PRESENT ORAL TESTIMONY

1. In addition to submitting written testimony, any interested party may also request the opportunity to present oral testimony at a Task Force session. **The deadline for a request to present oral testimony is 5:00 pm on September 14, 2015.**
2. A session of the Task Force for this purpose, chaired by Dean Ullem, will be held on September 22 from 9:00 am – noon at the Drake University Law School Legal Clinic, 2400 University Avenue, Des Moines.
3. A session of the Task Force for this purpose, chaired by Dean Agrawal will be held on September 24 from 9:00 am – noon at the University of Iowa College of Law Boyd Law Building, 130 Byington Road, Iowa City.
4. Requests to present oral testimony must be e-mailed to josephine-gittler@uiowa.edu. The e-mail subject line must state **"Guardianship Task Force."**

FOR FURTHER INFORMATION CONTACT

Professor Josephine Gittler, Member of Task Force Steering Committee and Co-Coordinator at josephine-gittler@uiowa.edu (e-mail) or 319-335-9046 (phone).

APPENDIX H

IOWA GUARDIANSHIP AND CONSERVATORSHIP SUMMIT PROGRAM

Iowa Guardianship and Conservatorship Summit

Sponsored by:

Iowa Supreme Court
Guardianship and Conservatorship Reform Task Force

Co-Sponsored by:

University of Iowa College of Law and
Drake University Law School

October 29, 2015

9:00 am - 4:10 pm

and

October 30, 2015

8:30 am - 12:30 pm

**Drake University Law School
Legal Clinic Building**

University and 24th Street
Des Moines, IA

Iowa Guardianship and Conservatorship Reform Task Force and Summit

One of the most important functions of Iowa's judicial branch of government is the guardianship and conservatorship system. The courts appoint guardians and conservators to make decisions on behalf of a highly vulnerable population of adults with diminished capacity and children, and the courts have an ongoing responsibility to monitor guardianships and conservatorships to assure these adults and children receive proper care and protection. Today, in Iowa there are over 22,000 adults and children under guardianship and conservatorship.

The Iowa Supreme Court's order establishing the Guardianship and Conservatorship Reform Task Force states that its mandate is "to review Iowa's guardianship and conservatorship laws and procedures to ensure the system is efficient and responsive to the needs of Iowans."

The Supreme Court has appointed members of a Steering Committee to oversee the work of the Task Force and members of Work Groups to identify issues and problems with respect to the existing guardianship and conservatorship system and to develop proposals and recommendations for improving this system.

The purpose of the Iowa Guardianship and Conservatorship Summit is to provide a context and foundation for the work of the members of the Iowa Guardianship and Conservatorship Reform Task Force. The Summit is the first plenary session of the Task Force Steering Committee and Work Groups. It will feature national experts and individuals from other states who have played leadership roles in the reform of state court guardianship and conservatorship systems.

Program Schedule

(All plenary sessions will be held in the Legal Clinic Courtroom.)

October 29, 2015

7:45 am - 9:00 am

Registration

9:00 am - 9:15 am

Greetings

Chief Justice Mark Cady, *Iowa Supreme Court*

Governor Terry Branstad (invited)

Pam Jochum, *President, Iowa Senate*

Chris Hagenow, *Majority Leader, Iowa House*

Gail Agrawal, *Dean, University of Iowa Law School*

Ben Ullem, *Dean, Drake University School of Law*

9:15 am - 9:25 am

Opening Remarks

Justice Bruce Zager, *Iowa Supreme Court;*
Chair, Steering Committee, Iowa Guardianship and
Conservatorship Reform Task Force

A:73

(continued)

9:25 am - 10:15 am

The Iowa Guardianship and Conservatorship System: A Portrait

Josephine Gittler, *Wiley B. Rutledge Professor of Law, University of Iowa College of Law; Member and Coordinator, Steering Committee, Iowa Guardianship and Conservatorship Reform Task Force*

10:15 am - 11:05 am

Past and Current Paths to Guardianship and Conservatorship Reforms

Erica Wood, *Assistant Director, Commission on Law and Aging, American Bar Association*

11:05 am - 11:25 am

BREAK

11:25 am - 12:25 pm

Workshops: Model Laws and Standards

Workshop 1 (Library): National Probate Court Standards

Brenda Uekert, *Principal Court Researcher, National Center on State Courts*

Workshop 2 (Courtroom): Third National Guardianship Summit—Standards and Recommendations

Linda Whitton, *Professor Emerita, Valparaiso University Law School; Delegate, Third National Guardianship Summit*

Workshop 3 (Room 123): Revision of Uniform Guardianship and Protective Proceedings Act

David English, *William Franklin Fratcher Missouri Endowed Professor of Law, University of Missouri School of Law; Chair, Drafting Committee Uniform Guardianship and Protective Proceedings Act*

12:25 pm - 1:10 pm**LUNCH****1:10 pm - 2:00 pm****Planning, Developing and Sustaining a Comprehensive Court Guardianship and Conservatorship Program**

Brenda Uekert, *Principal Court Researcher, National Center on State Courts*

2:00 pm - 2:50 pm**Best Practices and Innovations: Screening of and Qualifications for Guardians and Conservators**

Sally Hurme, *Member, Board of Directors, Center for Guardianship Certification*

David Byers, *Director, Administrative Office of the Courts, Arizona Judicial Branch*

2:50 pm - 3:10 pm**BREAK**

3:10 pm – 4:10 pm

Best Practices and Innovations: Court Monitoring of Conservatorships

Jeffrey Shorba, *State Court Administrator, Minnesota Judicial Branch*

Cate Boyko, *Manager, Conservator Account Auditing Program, Minnesota Judicial Branch*

4:10 pm – 5:00 pm

Demonstration (optional): My Minnesota Conservator

This optional demonstration is recommended for members of Work Groups 3 and 4.

October 30, 2015

8:30 am - 9:30 am

**Guardianship and Conservatorship Reform:
The Nebraska Experience**

Chief Justice Michael Heavican, *Nebraska Supreme Court*

9:30 am - 10:30 am

**Guardianship and Conservatorship Reform:
The Arizona Experience**

Justice Ann Timmer, *Arizona Supreme Court*

Edward Bassett, *Probate Associate Presiding Judge, Arizona Superior Court of Maricopa County*

David Byers, *Director, Administrative Office of the Courts, Arizona Judicial Branch*

10:30 am - 10:50 am

BREAK

10:50 am - 11:50 am

**Guardianship and Conservatorship Reform:
The Texas Experience**

David Slayton, *Administrative Director,
Texas Office of Court Administration*

11:50 am - 12:30 pm

Work Group Assignments and Next Steps

Justice Bruce Zager, *Iowa Supreme Court*

Josephine Gittler, *Wiley B. Rutledge Professor
of Law, University of Iowa College of Law*

Professor Jerry Foxhoven, *Professor of Law and
Director of Clinical Programs, Drake University
Law School; Member and Coordinator, Steering
Committee, Iowa Guardianship and Conservatorship
Reform Task Force*

Work Groups will meet to discuss assignments
and next steps.

Mandatory Continuing Legal Education:

The Iowa Guardianship and Conservatorship Summit is an accredited program under the regulations of the Supreme Court Commission on Continuing Legal Education. The Summit program will provide a maximum of 9.5 hours of regulator credit toward the mandatory continuing legal education requirements under the Iowa Rule. (Activity ID Number 201430).

For further information, please contact:

Professor Josephine Gittler

E-mail: josephine-gittler@uiowa.edu;

Phone 319-335-9046; Fax: 319-335-9019

*Support from the University of Iowa College of Law
made possible the preparation and printing of this
program.*

APPENDIX I

TASK FORCE FINAL PLENARY MEETING, PROGRAM

For further information, please contact:

Professor Josephine Gittler
E-mail: josephine-gittler@uiowa.edu
Phone 319-335-9046; Fax: 319-335-9019

*Support from the University of Iowa College of Law
made possible the preparation and printing of this
program.*

Iowa Supreme Court Guardianship and Conservatorship Task Force Plenary Meeting

Co-Sponsored by:
University of Iowa College of Law and
Drake University Law School

April 6, 2017
9:30 am - 4:30 pm

and

April 7, 2017
8:30 am - 12:30 pm

**Drake University Law School
Legal Clinic Building**
University and 24th Street
Des Moines, IA

Program Schedule

Thursday April 6, 2017

8:00 am – 9:30 am

Registration

9:30 am – 9:45 am

Greetings

- Senator Jack Whitver, *President, Iowa Senate (Invited)*
- Representative Chris Hagenow, *House Majority Leader, Iowa House of Representatives (Invited)*
- Dean Gail Agrawal, *University of Iowa College of Law*
- Dean Jerry Anderson, *Drake University School of Law*

9:45 am – 10:00 am

Opening Remarks

- Justice Bruce Zager, *Iowa Supreme Court; Chair, Iowa Supreme Court Guardianship and Conservatorship Task Force*

Session One

10:00 am – 10:50 am

Overview: Iowa Guardianship and Conservatorship System and Task Force

- Professor Josephine Gittler, *University of Iowa College of Law; Task Force Steering Committee Member, Co-Coordinator, and Work Group Reporter*
- Professor Jerry Foxhoven, *Drake University School of Law; Task Force Steering Committee Member and Co-Coordinator*

10:50 am – 11:10 am

Break

Session Two

11:10 am – 12:25 pm

Establishment of Adult Guardianships and Conservatorships

- Judge Stuart Werling, *7th Judicial District; Chair, Task Force Work Group One*
- Members, *Work Group One*

12:25 pm – 1:35 pm

Lunch

Session Three

1:35 pm – 2:50 pm

Guardian and Conservator Qualifications and Duties, Responsibilities, and Standards of Practice

- Judge Myron Gookin, *8th Judicial District; Chair, Task Force Work Group Two*
- Members, *Work Group Two*

2:50 pm – 3:10 pm

Break

Session Four

3:10 pm – 4:25 pm

Minor Guardianships and Conservatorships

- Judge Kathleen Kilnoski, *4th Judicial District; Chair, Task Force Work Group Five*
- Members, *Work Group Five*

Friday, April 7, 2017

Session Five

8:30 am – 9:45 am

Court Monitoring

- Chief Judge Kellyann Lekar, *1st Judicial District; Chair, Task Force Work Group Three*
- Members, *Work Group Three*

9:45 am – 10:05 a.m.

Break

Session Six

10:05 am – 11:20 am

Administration of Guardianship and Conservatorship System

- Chief Judge Jeffrey Larson, *4th Judicial District; Chair, Task Force Work Group Four*
- Members, *Work Group Four*

Session Seven

11:20 am – 12:20 pm

Professional Capacity Evaluation in Guardianship and Conservatorship Proceedings

- Professor Josephine Gittler
- Members, *Resource Committee on Professional Capacity Evaluations*

12:20 pm – 12:30 pm

Closing Remarks

- Justice Bruce Zager
- Professor Josephine Gittler
- Professor Jerry Foxhoven

APPENDIX J

INITIAL CARE PLAN FOR ADULT, MODEL FORM

APPENDIX J
RECOMMENDATIONS:
COURT MONITORING OF ADULT GUARDIANSHIPS

INITIAL CARE PLAN: MODEL FORM

Name of Adult Subject to Guardianship: _____

Case No. _____

Action Date: _____

NOTICE TO GUARDIAN

1. You must complete, sign, and return to the court on or before *(date)*: _____.
2. The purpose of this report is to give the court as complete a picture as possible of the current situation of the adult under guardianship, his or her needs and your plan to meet those needs.
3. When answering questions in this report, please provide specific details.
4. If you need assistance in completing this form, please contact: (list sources of assistance) _____

1. Guardian – Personal Information

- a. **Name:**
- a. **Present address (street address, including apartment number, city, state, and zip code, of each guardian):**
- b. **Telephone:**
- c. **E-mail:**
- d. **What is your relationship to the adult subject to guardianship?** ☐ Spouse ☐ Adult Child ☐ Parent
☐ Adult Sibling ☐ Other
If “Other,” please describe:

2. Conservatorship

- a. **Has the court appointed a conservator to manage the financial affairs of the adult subject to guardianship?**
☐ No ☐ Yes
If “Yes,” please indicate who is serving as the conservator: ☐ You ☐ Another Person *(please list name and contact information):*
- b. **By whom are the living expenses and other expenses of the adult subject to guardianship being paid? Complete this section only if there is no conservatorship.**
☐ Social Security ☐ Pension
☐ Spouse ☐ Adult Child ☐ Parent(s) ☐ Adult Sibling(s)
☐ By you as the guardian
☐ Other
If “Other,” please explain:

3. Adult Subject to Guardianship - Personal Information

- a. **Age of adult subject to guardianship:**
- b. **Reason for his/her guardianship:**
- c. **Does he/she have special needs due to a disability or for some other reason?** ☐ No ☐ Yes
If “Yes,” please describe your plan for meeting those needs:
- d. **Highest educational level attained:** ☐ High School ☐ College/University ☐ Other
If “Other,” please explain:

4. Adult Subject to Guardianship - Residence

- a Adult subject to guardianship is: ☐ now living in my home ☐ now living in home of another person
☐ now living in another place (*describe*):
- b If he/she is not living in your home, state the name, address and phone number of the person(s) with whom he/she is living:
- c Will his/her current living situation best meet his/her future needs? ☐ No ☐ Yes
If "No," please describe your plan for meeting those needs:

5. Adult Subject to Guardianship - Health

- a Does the adult subject to guardianship have any current medical or dental problems? ☐ No ☐ Yes
If "Yes," please describe those problems and what is being done regarding those problems:
- b Please describe your plan for meeting his/her future needs for medical and dental care:
- c Does he/she have any current mental, cognition,¹ behavioral or emotional problems that cause you concern?
☐ No ☐ Yes
If "Yes," please describe those problems and what is being done regarding those problems:
- d Please describe your plan for meeting his/her future needs for services for possible mental, behavioral or emotional problems:
- e Does he/she have a living will? ☐ No ☐ Yes
If "Yes," do you have a copy of the document?
- f Does he/she have a healthcare Power of Attorney? ☐ No ☐ Yes
If "Yes," who is serving as the agent (attorney-in-fact)?

6. Adult Subject to Guardianship - Vocational Services and Employment

- a Is he/she receiving vocational services? ☐ No ☐ Yes
If "Yes," please describe:
- b Is he/she employed? ☐ No ☐ Yes
If "Yes," please describe:
- c Please describe your plan for meeting his/her possible needs for vocational services and/or employment:

7. Family Members and Significant Other Persons:

- a Will arrangements be made for regular contacts of adult subject to guardianship with family members (e.g., spouse, parent(s), adult children, adult siblings, etc.)? ☐ No ☐ Yes
If "No," please explain:
If "Yes," please describe arrangements:
- b Will arrangements be made for regular contact with other significant persons (e.g., friends, former co-workers, clergy, etc.)? ☐ No ☐ Yes
If "No," please explain:
If "Yes," please describe arrangements:

8. Adult Subject to Guardianship – Social Activities/Services

- a Will arrangements be made for the adult under guardianship to participate in social activities, including recreational, cultural, educational or religious activities? ☐ No ☐ Yes
If "No," please explain:
If "Yes," please describe arrangements:

* Cognition refers to the process of perceiving or understanding information and being able to effectively use it in one's daily life.

9. Guardian's contacts and activities with adult subject to guardianship – Complete this section only if he/she is not living with you.

a. How often do you plan to see (visit) or have other contacts (e.g., by mail, email, telephone, etc.) with him/her?

Frequency of Contacts

☐ Daily ☐ Weekly ☐ Monthly ☐ Other

If "Other," please explain:

b. What type of activities with the adult under guardianship or on behalf of him/her do you plan?

10. Need for Assistance

a. Do you need assistance in providing or arranging for the care of the adult subject to guardianship?

☐ No ☐ Yes

If "Yes," please describe the assistance you need:

11. Additional Information (optional)

If there is any additional information you believe should be provided to the court, please describe:

I hereby state under oath, that the following facts are true concerning the adult who is under my guardianship.

Date

Signature of Guardian

APPENDIX K

ANNUAL REPORT FOR ADULT, MODEL FORM

**RECOMMENDATIONS:
COURT MONITORING OF ADULT GUARDIANSHIPS**

ANNUAL REPORT: MODEL FORM

Name of Adult Subject to Guardianship: _____

Case No. _____

Action date: _____

NOTICE TO GUARDIAN

1. You must complete, sign, and return to the court on or before *(date)*: _____.
2. The purpose of this report is to give the court as complete a picture as possible of the current situation of the adult subject to guardianship.
3. This report requests information since the last report.
4. When answering questions in this report, please provide specific details. Answers such as "same as last report" and "no change since last report" are not acceptable answers.
5. If you need assistance in completing this form, please contact: (List sources of assistance) _____.

1. Guardian – Personal Information

- a. **Name:**
- b. **Present address** (*street address, including apartment number, city, state, and zip code, of each guardian*):
- c. **Telephone:**
- d. **E-mail:**
- e. **What is your relationship to the adult subject to guardianship?** ☐ Spouse ☐ Parent ☐ Adult Child
☐ Adult Sibling ☐ Other
If "Other," please describe:
- f. **Since your appointment or your last report, have you been arrested for, charged with, or convicted of any criminal offense?** ☐ No ☐ Yes
If "Yes," please explain. (You need not report minor traffic offenses that do not involve alcohol or illegal drugs).
- g. **Since your appointment or your last report, have you been the subject of a report of dependent adult abuse or child abuse?** ☐ No ☐ Yes
If "Yes," please explain.

2. Conservatorship

- a. **Has the court appointed a conservator to manage of the financial affairs of the adult subject to guardianship?**
☐ No ☐ Yes
If "Yes," please indicate who is serving as his/her conservator: ☐ You ☐ Another Person (*please list name and contact information*):
- b. **Complete this section only if there is no conservatorship.**
By whom are the living expenses and other expenses of the adult under guardianship being paid?
☐ Social Security ☐ Pension
☐ Spouse ☐ Adult Child ☐ Parent(s) ☐ Adult Sibling
☐ By you as the guardian
☐ Other
If "Other," please explain:

3. Adult Subject to Guardianship - Personal Information

- a. **Age of adult subject to guardianship:**

4. Adult Subject to Guardianship - Residence

- a. Adult subject to guardianship is:
- ☐ now living in my home
 - ☐ now living in home of another person
 - ☐ now living in another place (*describe*) _____
- b. If he/she is not living in your home, state the name, address and phone number of the person(s) with whom he/she is living:
- c. (1) Since your last report, has any adult living in the place where he/she is living been arrested for, charged with, or convicted of any criminal offense? ☐ No ☐ Yes ☐ No Information
If "Yes," please explain.
- (2) Since your last report, has any adult living in the place where he/she is living been reported for dependent adult abuse or child abuse to the Department of Human Services?
☐ No ☐ Yes ☐ No Information
If "Yes," please explain:
- d. Has he/she moved in the past year? ☐ No ☐ Yes
If "Yes," please explain:

5. Adult Subject to Guardianship - Health

- a. Since your last report, has the adult subject to guardianship had any medical or dental problems? ☐ No ☐ Yes
If "Yes," please explain:
- b. Has he/she been seen for any of the medical or dental problems identified above by a health care provider?
☐ No ☐ Yes
If "No," please explain:
If "Yes," please provide the name of and contact information for the provider(s):
- c. Since your last report, has he/she had any of the mental health, cognition,* behavioral or emotional problems that cause you concern?
☐ No ☐ Yes
If "Yes," please explain:
- d. Has he/she been seen for any of the mental health, cognition,* behavioral or emotional problems identified above by a professional provider or providers? ☐ No ☐ Yes
If "No," please explain:
If "Yes," please provide the name and contact information of the provider(s):
- e. Does he/she have public health insurance (e.g., Medicaid, Medicare) or private health insurance? ☐ No ☐ Yes
If "Yes," please describe:

6. Adult Subject to Guardianship - Vocational Services and Employment

- a. Is he/she receiving vocational services? ☐ No ☐ Yes
If "Yes," please describe:
- b. Is he/she employed? ☐ No ☐ Yes
If "Yes," please describe:

7. Contacts with Family Members and Other Significant Persons

- a. Since your last report, did the adult subject to guardianship have regular contact with family members (e.g., spouse, parent(s), adult child or children, adult sibling(s), etc.)? ☐ No ☐ Yes
If "No", please explain:
- If "Yes," please describe:*

* Cognition refers to the process of perceiving or understanding information and being able to effectively use it in one's daily life.

- b. Since your last report, did the adult under guardianship have regular contacts with other significant persons (e.g., friends, former co-workers, clergy, etc.)? ☐ No ☐ Yes

If "No," please explain:

If "Yes," please describe:

8. Adult Under Guardianship – Social Activities/Services

- a. Since your last report, were arrangements made for the adult under guardianship to participate in social activities, including but not limited to, recreational, cultural, educational or religious activities? ☐ No ☐ Yes

If "No," please explain:

If "Yes," please describe frequency and type of contacts:

9. Guardian's Contacts and Activities - Complete this section only if the adult subject to guardianship is not living in your home with you.

- a. Since your last report, how often did you see (visit with) adult subject to guardianship?

☐ Daily ☐ Weekly ☐ Monthly ☐ Other

If "Other," please describe:

- b. Have you had other contacts with him/her? ☐ No ☐ Yes

If "Yes," indicate type and frequency:

Type of Contact

☐ By telephone

☐ By mail or e-mail

☐ Other (describe): _____

If "Other," please describe:

Frequency of Contacts

☐ Daily ☐ Weekly ☐ Monthly ☐ Other

If "Other," please describe:

☐ Daily ☐ Weekly ☐ Monthly ☐ Other

If "Other," please describe:

☐ Daily ☐ Weekly ☐ Monthly ☐ Other

- c. Please summarize your activities with and on behalf of the adult subject to guardianship:

10. Current Situation and Future Plan for Adult Subject to Guardianship

- a. Current living situation and care of adult under guardianship is:

☐ Very Good ☐ Good ☐ Adequate ☐ Poor

If "Adequate or Poor," please explain:

- b. Do you think the current plan for him/her living situation and care is in his/her best interest? ☐ Yes ☐ No

If "No," what changes would you recommend for the next year?

11. Need for Guardianship

The guardianship should be ☐ continued ☐ terminated ☐ changed.

If guardianship should be terminated or changed, please state the reasons:

12. Continuation as Guardian

I ☐ am ☐ am not able to continue my duties and obligations as guardian.

If you are not able to continue as guardian, state reasons. If you cannot continue as guardian, you must petition the court to relieve you of your duties.

13. Need for Assistance

Do you need assistance in providing or arranging for the care of the adult subject to guardianship?

☐ Yes ☐ No

If "Yes," please describe assistance needed:

14. Additional Information (optional)

If there is any additional information you believe should be provided to the court, please describe:

I hereby state under oath, that the following facts are true concerning the adult who is under my guardianship.

Date

Signature of Guardian

APPENDIX L

INITIAL CARE PLAN FOR MINOR, MODEL FORM

APPENDIX L

**RECOMMENDATIONS:
COURT MONITORING OF MINOR GUARDIANSHIPS**

INITIAL CARE PLAN: MODEL FORM

Name of Minor Subject to Guardianship: _____

Case No.: _____

Action Date: _____

NOTICE TO GUARDIAN

1. You must complete, sign, and return to the court on or before (date): _____.
2. The purpose of this report is to give the court as complete a picture as possible of the minor's current situation, his or her needs and your plan to meet those needs.
3. When answering questions in this report, please provide specific details.

1. Guardian – Personal Information

- a. **Name:**
- a. **Present address (street address, including apartment number, city, state, and zip code, of each guardian):**
- b. **Telephone:**
- c. **E-mail:**
- d. **What is your relationship to the minor?** ☐ Grandparent ☐ Adult Sibling ☐ Other
If "Other," please describe:

2. Conservatorship

- a. **Has the court appointed a conservator to manage the minor's financial affairs?** ☐ No ☐ Yes
If "Yes," please indicate who is serving as the minor's conservator:
☐ You ☐ Another Person (please list name and contact information):
- b. **Complete this section only if there is no conservatorship.**
By whom are the living expenses and other expenses of the minor being paid?
☐ By one or both natural parents
☐ By you as the guardian
☐ Other
If "Other," please explain:

3. Minor Under Guardianship - Personal Information

- a. **Age of minor:**
- b. **Reason for guardianship:**
- c. **Does the minor have special needs due to a disability or for some other reason?** ☐ No ☐ Yes
If "Yes," please describe your plan for meeting those needs:

4. Residence of Minor

- a The minor is: ☐ now living in my home ☐ now living in home of another person ☐ now living in another place
(describe):
- b If the minor is not living in your home, state the name, address and phone number of the person(s) with whom the minor is living:
- c Will the minor's current living situation best meet the minor's future needs? ☐ No ☐ Yes
If "No," please describe your plan for meeting those needs:

5. Minor's Health

- a Does the minor have any current medical or dental problems? ☐ No ☐ Yes
If "Yes," please describe those problems and what is being done regarding those problems:
- b Please describe your plan for meeting the minor's future needs for medical and dental care:
- c Does the minor have any current mental, behavioral or emotional problems or other problems that cause you concern?
☐ No ☐ Yes
If "Yes," please describe those problems and what is being done regarding those problems:
- d Please describe your plan for meeting the minor's future needs for services for possible mental, behavioral or emotional problems or other problems:

6. Minor's Education:

- a If the minor is not school age, is the minor receiving services from a preschool educational program (e.g., Early Access, Head Start, etc.)? ☐ No ☐ Yes
If "Yes," please describe:
- b If the minor is school age, provide:
(1) Name and location of minor's school:
(2) Minor's grade in school:
- c Is the minor receiving special education and related services? ☐ No ☐ Yes
- d Is the minor receiving vocational services? ☐ No ☐ Yes
- e Please describe your plan for meeting the minor's future educational needs:

7. Minor's Natural Parents and Other Relatives:

- a (1) Name of minor's mother, and if known, address, telephone number and email address:
(2) Name of minor's father, and if known, address, telephone number and email address:
- b Will arrangements be made for regular contacts of minor's mother with the minor? ☐ No ☐ Yes
If "No," please explain:
If "Yes," please describe arrangements:
- c Will arrangements be made for regular contacts of minor's father with the child? ☐ No ☐ Yes
If "No," please explain:

If "Yes," please describe arrangements:

- d. Will arrangements be made for regular contacts of minor with other relatives? ☐ No ☐ Yes

If "No," please explain:

If "Yes," please describe arrangements:

8. Guardian's contacts and activities with minor – Complete this section only if the minor is not living with you.
a. How often do you plan to see (visit) or have other contacts (e.g., by mail, email, telephone, etc.) with minor?

Frequency of Contacts

☐ Daily ☐ Weekly ☐ Monthly ☐ Other

If "Other," please explain:

- b. What type of activities with or on behalf of the minor do you plan?

9. Need for Assistance

- a. Do you need assistance in providing or arranging for the care of the minor? ☐ No ☐ Yes

If "Yes," please describe the assistance you need:

10. Additional Information (optional)

If there is any additional information you believe should be provided to the court, please describe:

I hereby state under oath, that the following facts are true concerning the minor who is under my guardianship.

Date

Signature of Guardian

APPENDIX M

ANNUAL REPORT FOR MINOR, MODEL FORM

**RECOMMENDATIONS:
COURT MONITORING OF MINOR GUARDIANSHIPS**

ANNUAL REPORT: MODEL FORM

Name of Minor Subject to Guardianship: _____

Case No.: _____

Action Date: _____

NOTICE TO GUARDIAN

1. You must complete, sign, and return to the court on or before *(date)*: _____.
2. This report requests information since the last report.
3. The purpose of this report is to give the court as complete a picture as possible of the minor's current situation.
4. When answering questions in this report, please provide specific details. Answers such as "same as last report" and "no change since last report" are not acceptable answers.

1. Guardian – Personal Information

- a. **Name:**
- b. **Present address (street address, including apartment number, city, state, and zip code, of each guardian):**
- c. **Telephone:**
- d. **E-mail:**
- e. **What is your relationship to the minor?** ☐ Grandparent ☐ Adult Sibling ☐ Other
If "Other," please describe:
- f. **Since your appointment or your last report, have you been arrested for, charged with, or convicted of any criminal offense?** ☐ No ☐ Yes
If "Yes," please explain. (You need not report minor traffic offenses that do not involve alcohol or illegal drugs).
- g. **Since your appointment or your last report, have you been the subject of a report of child abuse or dependent adult abuse to the Department of Human Services?** ☐ No ☐ Yes
If "Yes," please explain.

2. Conservatorship

- a. **Has the court appointed a conservator to manage the minor's financial affairs?** ☐ No ☐ Yes
If "Yes," please indicate who is serving as the minor's conservator: ☐ You ☐ Another Person *(please list name and contact information):*
- b. **Complete this section only if there is no conservatorship.**
By whom are the living expenses and other expenses of the minor to be paid?
☐ By one or both natural parents
☐ By you as the guardian
☐ Other
If "Other," please explain:

3. Minor Under Guardianship - Personal Information

- a. Age of minor:
- b. Since your appointment or last report, has the minor been the subject of a child abuse report to the Department of Human Services? ☐ No ☐ Yes
If "Yes," please explain.
- c. Since your appointment or last report, has the minor been involved in a juvenile court proceeding (delinquency or child in need of assistance (CINA))? ☐ No ☐ Yes
If "Yes," please explain.

4. Residence of Minor

- a. The minor is:
☐ now living in my home
☐ now living in home of another person
☐ now living in another place (*describe*):
- b. If the minor is not living in your home, state the name, address and phone number of the person(s) with whom the minor is living:
- c. (1) Since your last report to the best of your knowledge, has any adult with whom the minor is living been arrested for, charged with, or convicted of any criminal offense?
☐ No ☐ Yes ☐ No Information
If "Yes," please explain.
- (2) Since your last report, has any adult with whom the minor is living been reported for child abuse or dependent adult abuse to the Department of Human Services?
☐ No ☐ Yes ☐ No Information
If "Yes," please explain:
- d. Has the minor moved in the past year? ☐ No ☐ Yes
If "Yes," please explain:

5. Minor's Education:

- a. If the minor is not school age, is the minor receiving services from a preschool educational program (e.g., Early Access, Head Start, etc.)? ☐ No ☐ Yes
If "Yes," please describe:
- b. If the minor is school age, provide:
(1) Name and address of minor's school:
(2) Minor's grade in school:
(3) Please describe the minor's current progress in school, including grades, attendance, any behavior problems, any tutoring programs, etc.:
- c. Is the minor receiving special education and/or related services? ☐ No ☐ Yes
If "Yes," please describe:
- d. Is the minor receiving vocational services? ☐ No ☐ Yes
If "Yes," please describe:

6.Minor's Health

- a Since your appointment or last report, has the minor received regular/routine health and dental care, including vaccinations? ☐ No ☐ Yes
If "No," please explain:
- b Since your appointment or last report, has the minor had any medical or dental problems? ☐ No ☐ Yes
If "Yes," please explain:
- c Has the minor been seen for any of the medical or dental problems identified above by a health care provider?
☐ No ☐ Yes
If "No," please explain:
If "Yes," please provide the name of and contact information for the provider(s):
- d Since your appointment or last report, has the minor been having any mental, emotional or behavioral problems, other problems that cause you concern?
☐ No ☐ Yes
If "Yes," please explain:
- e Has the minor been seen for any of the mental, behavioral or emotional problems, or other problems identified above by a professional provider or providers? ☐ No ☐ Yes
If "No," please explain:
If "Yes," please provide the name and contact information of the provider(s):
- f Does the minor have public health insurance (e.g., Hawk-I) or private health insurance? ☐ No ☐ Yes
If "Yes," please describe:

7. Minor's Mother:

- a. Name and, if known, current address, and telephone number of minor's mother:
- b. (1) Since your last report, did mother visit (see) the minor?
☐ No visits ☐ Daily ☐ Weekly ☐ Monthly ☐ Other
If "Other," please describe:
- Ø If mother visited minor, were there any problems during the mother's visits? ☐ No ☐ Yes
If "Yes," please describe:
- Ø Did mother have contacts with the minor other than through visits? ☐ No ☐ Yes, as follows:
- | <u>Type of Contact</u> | <u>Frequency of Contacts</u> |
|--|---|
| <input type="checkbox"/> By telephone | <input type="checkbox"/> Daily <input type="checkbox"/> Weekly <input type="checkbox"/> Monthly <input type="checkbox"/> Other
<i>If "Other," please describe:</i> |
| <input type="checkbox"/> By mail or e-mail | <input type="checkbox"/> Daily <input type="checkbox"/> Weekly <input type="checkbox"/> Monthly <input type="checkbox"/> Other
<i>If "Other," please describe:</i> |
| <input type="checkbox"/> Other (describe): _____ | <input type="checkbox"/> Daily <input type="checkbox"/> Weekly <input type="checkbox"/> Monthly <input type="checkbox"/> Other
<i>If "Other," please describe:</i> |

8.Minor's Father:

- a. Name, and, if known, current address, and telephone number of minor's father:

- b. (1) Since your last report, did father visit (see) the minor?
☐ No visits ☐ Daily ☐ Weekly ☐ Monthly ☐ Other
If "Other," please describe:
- (2) If father visited the minor, were there any problems during the father's visits? ☐ No ☐ Yes
If "Yes," please describe:
- (3) Did father have contacts with the minor other than through visits? ☐ No ☐ Yes, as follows:
- | | |
|--|---|
| <p><u>Type of Contact</u></p> <p><input type="checkbox"/> By telephone</p> <p><input type="checkbox"/> By mail or e-mail</p> <p><input type="checkbox"/> Other (describe): _____</p> | <p><u>Frequency of Contacts</u></p> <p><input type="checkbox"/> Daily <input type="checkbox"/> Weekly <input type="checkbox"/> Monthly <input type="checkbox"/> Other</p> <p><i>If "Other," please describe:</i></p> <p><input type="checkbox"/> Daily <input type="checkbox"/> Weekly <input type="checkbox"/> Monthly <input type="checkbox"/> Other</p> <p><i>If "Other," please describe:</i></p> |
|--|---|

9. Contacts with Other Family Members

- Since your last report, did the minor have regular contacts with other relatives? ☐ No ☐ Yes
If "Yes," please describe:

10. Guardian's Contacts and Activities - *Complete this section only if the minor is not living in your home with you.*

- a. Since your last report, how often did you visit (see) the minor? ☐ Daily ☐ Weekly ☐ Monthly ☐ Other
If "Other," please describe:
- b. Have you had other contacts with the minor? ☐ No ☐ Yes, as follows:
- | | |
|--|---|
| <p><u>Type of Contact</u></p> <p><input type="checkbox"/> By telephone</p> <p><input type="checkbox"/> By mail or e-mail</p> <p><input type="checkbox"/> Other (describe): _____</p> | <p><u>Frequency of Contacts</u></p> <p><input type="checkbox"/> Daily <input type="checkbox"/> Weekly <input type="checkbox"/> Monthly <input type="checkbox"/> Other</p> <p><i>If "Other," please describe:</i></p> <p><input type="checkbox"/> Daily <input type="checkbox"/> Weekly <input type="checkbox"/> Monthly <input type="checkbox"/> Other</p> <p><i>If "Other," please describe:</i></p> |
|--|---|
- c. Please summarize your activities with and on behalf of the minor:

11. Minor's Current Situation and Future Plan

- a. The minor's current living situation and care is: ☐ Very Good ☐ Good ☐ Adequate ☐ Poor
If "Adequate or Poor," please explain:
- b. Do you think the current plan for the minor's living situation and care is in the minor's best interest?
☐ Yes ☐ No
If "No," what changes would you recommend for the next year?

12. Need for Guardianship

The guardianship should be ☐ continued ☐ terminated ☐ changed.

If guardianship should be terminated or changed, please state the reasons:

13. Continuation as Guardian

I ☐ am ☐ am not able to continue my duties and obligations as the minor's guardian.

If you are not able to continue as guardian, state the reasons. If you cannot continue as guardian, you must petition the court to relieve you of your duties.

14. Need for Assistance

Do you need assistance in providing or arranging for the care of the minor? ☐ Yes ☐ No

If "Yes," please describe assistance needed:

15. Additional Information (optional)

If there is any additional information you believe should be provided to the court, please describe:

I hereby state under oath, that the following facts are true concerning the minor who is under my guardianship.

Date

Signature of Guardian