

# Guardianship and Conservatorship in Iowa

## Issues in Substitute Decision-Making

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### Attorney, Court and Guardianship or Conservatorship Fees

There are costs associated with bringing a guardianship or conservatorship case. There are filing fees and other court costs as well as the fee of the attorney who prepares the case.

Filing fees can be waived if there is no money for them. They may have to be paid later if money is found. These costs, however, are small compared to the other costs that come with the filing of a petition for guardianship or conservatorship. If the protected person has money, fees and costs can be paid out of the protected person's funds. If the protected person has no money, many of the costs of bringing a guardianship or conservatorship may be covered by the person who is trying to become the guardian or conservator. If the protected person does not have enough money for these costs, the protected person is "indigent."

### How Do You Decide If the Protected Person is Indigent?

The court may find a person indigent if the person's income and resources do not exceed 150 percent of the federal poverty level. The court may also find a person indigent if the person cannot pay other essential bills and pay the costs of an attorney. Essential bills would include things like food, shelter, clothing, and health care.

### Court Fees

Court costs are charged against the protected person's assets. Court costs include court filing fees, costs for service of process, witness fees, and any other costs. The court may, if asked, enter an order waiving payment of the court costs where the protected person does not have the money to pay for them. If the protected person gets money and is able to pay, the costs that were waived must be paid.

## **Background checks of Guardians and Conservators**

A guardian or conservator, other than certain financial institutions, will need to obtain criminal record checks and checks of the child abuse, dependent adult abuse, and sexual offender registries in this state. The court will consider the results in deciding the suitability of the proposed guardian or conservator. The person filing the petition is required to pay the fee for the background checks.

## **Guardianship/Conservatorship Fees**

### **Can Conservators or Guardians Get Paid for Their Work?**

Yes. A guardian or conservator may charge a reasonable fee for work done for the protected person.

If the protected person has assets, the court will usually order payment from the protected person. If the protected person is indigent, there is no other source of money to pay the guardian or conservator. The guardian or conservator will not receive any payment.

The court decides what is reasonable compensation for the work done. The court will look at many things. These would include the difficulty of the case, the experience of the guardian or conservator and what amount other persons in the area might be paid for similar work.

Fees for the attorney representing the guardian or conservator may also be charged against the protected person. The court decides what is reasonable compensation for the work done by the attorney. Again, if the protected person is indigent, there is no other source of funds to pay the attorney for the guardian or conservator.

The attorney, guardian or conservator must apply to the court to have the fees approved. The

application must include a list of the work done. An affidavit by the attorney, guardian, or conservator must state that the fees will not be divided with any other person.

### **How Does a Guardian or Conservator Keep Track of Services and Fees?**

A guardian or conservator must keep an accurate record of the work done for the protected person in order to get paid for it. A guardian or conservator should keep a log that shows the date of service(s), service(s) performed, and the amount of time spent.

A sample log is included below. This can be used to help track services and fees.

#### Sample Summary Log of Fees

Guardian(s)/Conservator(s): \_\_\_\_\_

Protected Person: \_\_\_\_\_

Date: \_\_\_\_\_

Hours/Minutes: \_\_\_\_\_

Activity: \_\_\_\_\_

Expenses: \_\_\_\_\_

### **Does the Respondent Get an Attorney? How is that Paid For?**

Respondents in both guardianship and conservatorship proceedings are entitled to be represented by an attorney. Respondents who are adults will have an attorney appointed, unless the adult respondent filed the petition. An attorney for the respondent can be paid directly by the respondent or file a claim or report with the court to recover fees and expenses. If the respondent is indigent or is not able to request counsel, the court shall appoint an attorney to represent the respondent. The cost of court appointed counsel for indigents is paid by the county where the case is filed.

## Selecting an Attorney

Before selecting a lawyer, it is useful to gather information about the attorney. Below are some questions that may help in making the decision.

### Background Information

1. Do you handle guardianship or conservatorship cases? If yes, how many cases do you take a year?
2. When was your most recent case?
3. What were the results of that case?
4. In which counties do you work?
5. What is your educational background?
6. Do you participate in continuing education or training related to guardianship or conservatorship? If yes, what trainings and when?
7. What additional related information can you provide regarding your qualifications and experience?
8. Please provide guardianship/conservatorship references.

## Fees/Costs

1. How do you bill your fees? Hourly, flat fee, percentage of income or assets?
2. Can you provide a general estimate of the cost for your services to obtain a guardianship/conservatorship?
3. Do you provide a written agreement describing your fees, billing and services?

## Resources for Finding an Attorney

- Lawyer referral service of the Iowa State Bar Association: [www.iowafindalawyer.com](http://www.iowafindalawyer.com).
- Legal Hotline for Older Iowans: Provides advice and referral for Iowans 60 years of age and older:
  - 1-800-992-8161
  - Des Moines area: 515-282-8161

These materials are a general summary of the law. They are not meant to completely explain all that you should know about guardianship and conservatorship. You should see a lawyer to get complete, correct and up-to-date legal advice. Iowa's law on guardianship and conservatorship is found in Iowa's Probate Code starting at section 633.551.

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Des Moines, Iowa 50309  
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