

Guardianship and Conservatorship in Iowa

Issues in Substitute Decision Making

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.

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 which come with the filing of a petition for guardianship or conservatorship. If the ward has money, fees and costs can be paid out of the ward's funds. If the ward 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 ward does not have enough money for these costs, the ward is "indigent."

How Do You Decide If the Ward 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 can't 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 ward's estate. 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 ward doesn't have the money to pay for them. If the ward gets money and is able to pay, the costs that were waived must be paid.

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 ward.

If the ward has assets, the court will usually order payment from the ward. If the ward 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 ward. The court decides what is reasonable compensation for the work done by the attorney. Again, if the ward 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 ward in order to get paid for it. A guardian or conservator should keep a log which 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.

Does the Ward Get an Attorney? How is that Paid For?

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

Sample Summary Log of Fees

Guardian(s)/Conservator(s):

Ward:

Date:

Hours/Minutes:

Activity:

Expenses:

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

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

Resources

The yellow pages of phone books under "Attorneys."

Lawyer referral service of the Iowa State Bar Association: 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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