

Institute on Guardianship & Conservatorship

New Law, House File 591

Opening and Administration of Minor Guardianships

CLE Conference – November 15, 2019

Revised (December 9, 2019)



**New Law, House File 591
Opening and Administration
of Minor Guardianships**

Conference - November 15, 2019

**(In person attendance &
live webinar participation)**

**Live Webcast: 6.5 Total Iowa CLE Hours
Approved (390 Minutes)- Activity Number -
339013**

**In-Person Attendance: 6.5 Total Iowa CLE Hours
Approved (390 Minutes) - Activity Number -
339012**

6.5 Juvenile Hours Approved



**The Institute on
Guardianship & Conservatorship**



November 15, 2019

***New Law, House File 591
Opening and Administration of Minor Guardianships***

**Boyd Law Building, Room 285, 130 Byington Road
University of Iowa College of Law**

SCHEDULE

8:15 – 8:45 a.m.	Registration for in-person attendees
8:45 – 9:00 a.m.	Greetings and Acknowledgements
9:00 – 10:10 a.m.	Session One Introduction to HF 591 and Juvenile Court Minor Guardianship Jurisdiction
10:10 – 10:30 a.m.	Break
10:30 – 11:40 a.m.	Session Two Basis for Opening Minor Guardianship
11:40 – 12:10 p.m.	Session Three Minor Guardianship Procedures and Proceedings
12:10 – 12:50 p.m.	Lunch
12:50 – 1:45 p.m.	Session Four Appointment and Role of Counsel and Court Visitor in Minor Guardianship Proceedings
1:45 – 2:00 p.m.	Session Five Selection of Guardian for Minor and Background Check of Proposed Guardian
2:00 – 3:00 p.m.	Session Six Duties, Responsibilities and Powers of Guardians of Minors, and Monitoring of Minor Guardianships
3:00 – 3:30 p.m.	Break
3:30 – 4:30 p.m.	Session Seven Opening and Administration of Minor Conservatorships
4:30 – 5:00 p.m.	Question and Answer Period

(6.5 Iowa CLE credit hours approved and 6.5 Juvenile hours approved)

**The Institute on Guardianship and Conservatorship
University of Iowa College of Law and Drake University Law School**

*New Law, House File 591
Opening and Administration of Minor Guardianships*

Conference – November 15, 2019

Conference Coordinator, University of Iowa College of Law

Prof. Josephine Gittler is the Wiley B. Rutledge Professor of Law at the University of Iowa College of Law and holds secondary appointments in the University of Iowa College of Medicine, College of Nursing, and College of Public Health. She served as the coordinator and reporter for the Iowa Supreme Court Guardianship and Conservatorship Reform Task Force from 2015 to 2017. She drafted, with the assistance of Task Force members, the bills which were the basis for the recently enacted guardianship and conservatorship legislation. She has authored or co-authored over 70 publications including publications on guardianship and conservatorship. She is currently the Co-Director of the Institute on Guardianship and Conservatorship, a collaborative effort of the University of Iowa and Drake University law schools. Her areas of expertise include the legislative process and statutory drafting and interpretation. She was Chief Counsel of a U.S. Senate Judiciary Subcommittee and a special counsel to an Iowa General Assembly study committee; she has served as a consultant to congressional and state legislative committees; and she has been the principal draftsman of federal and state legislation.

Conference Co-Coordinator, Drake University Law School

Prof. Brent Pattison is Clinical Professor of Law and Director of the Joan and Lyle Middleton Center for Children's Rights at Drake University School of Law in Des Moines. He is Co-Director of the Institute on Guardianship and Conservatorship. Prior to joining the Drake University School of Law faculty, he was a practitioner specializing in juvenile law.

Conference Faculty

Chip Baltimore is the principal at BA Consulting Group LLC in Des Moines and is an attorney with the law offices of Kirke C. Quinn in Boone. He was a member of the Iowa House of Representatives from 2011-2018 and served more than five years as chair of the House Judiciary Committee. He practiced law for a number of years prior to serving for thirteen years as vice-president, general counsel and trust officer of the Boone Bank and Trust Company. He has extensive experience with conservatorships as a result of representing parties in conservatorship cases, serving as a conservator, and administering conservatorships.

Hon. Craig Block is a District Associate Probate Judge for Judicial District 5C. for Polk County. In that capacity he has presided in numerous guardianship and conservatorship cases. He was a member of the Steering Committee of the Iowa Supreme Court Guardianship and Conservatorship Reform Task Force. He is a member of the judicial branch's Minor Guardianships Legislation Implementation Committee as well as other judicial branch committees. Prior to his appointment to the bench in 2013, he was COO/General Counsel for the Iowa Economic Development Authority, and he practiced law for thirty-one years.

Hon. Susan Christensen is a Justice of the Iowa Supreme Court. She was a member of the Iowa Guardianship and Conservatorship Reform Task Force. She was appointed a District Associate Judge in 2007, a District Court Judge in 2015 and a Supreme Court Justice in 2018. Prior to her becoming a judge, she practiced law in Harlan for 16 years. She chairs the Council for the Children's Justice Initiative of the Iowa Supreme Court as well as the Family First and Prevention Services Act (FFPSA) Initiative. She previously served on the Supreme Court's Family Law Pro Se Forms Committee, Child Support Guidelines Review Committee, and Parents Representation Standards Committee. She has been recognized for her numerous efforts to promote the welfare of children and families and to strengthen the juvenile justice and child welfare systems.

Prof. Ann Estin is the Aliber Family Chair in Law at the University of Iowa College of Law. She is a nationally and internationally recognized expert on family law and policy. She is the co-author on one of the leading law school casebooks on domestic relations, the author or co-author of over 47 publications, and a member of the Editorial Board of the Family Law Quarterly. She served as a member of the Steering Committee of the Iowa Supreme Court's Family Law Case Processing Reform Task Force. She is an active member of the International Society of Family

Law and has served as an expert observer at the Hague Conference on Private International Law in connection with the Hague Children's Conventions.

Hon. Patrick Grady is the Chief Judge of the Sixth Judicial District. He was a member of the Iowa Supreme Court Guardianship and Conservatorship Reform Task Force. He was appointed to the district court bench in 1995. He recently chaired the State Court Administration's Minor Guardianship Legislation Implementation Committee. He was Co-Chair of the joint IJA/ISBA Task Force on Pro Se Litigation and the Supreme Court Pro Se Family Law Forms Committee.

Jim Hennessey is the Administrator of the Iowa Child Advocacy Board which is responsible for overseeing Iowa's Court Appointed Special Advocate program (CASA) and the Foster Care Review Board program. He was a member of the Iowa Guardianship and Conservatorship Reform Task Force. He has served as Co-Chair of the National CASA Association State Leadership Council and as a member of the National CASA Association Training Standards Work Group. He also is a member of the Iowa Supreme Court's State Children's Justice Council, the Iowa Drug Endangered Children Workgroup, the Iowa Collaboration for Youth Development Council, and the Iowa Child Protection Council.

Rep. Dustin Hite is a member of the Iowa House of Representatives and Vice-Chair of the House Judiciary Committee. He is a partner at the Heslinga, Dixon & Hite Law Firm in Oskaloosa and has represented parties in numerous guardianship and conservatorship cases.

Hon. Kathleen Kilnoski was appointed as District Associate Judge in 1996 and was appointed a District Court Judge in 2009. She was a member of the Iowa Supreme Court Guardianship and Conservatorship Reform Task Force and chaired the Task Force Work Group on Minor Guardianships and Conservatorships. Prior to her appointment to the bench she was an assistant city attorney for Council Bluffs. She is a member and past officer of the Iowa Organization of Women Attorneys.

Hon. Kellyann Lekar is the Chief Judge of the First Judicial District. She served as a member of the Iowa Supreme Court Guardianship and Conservatorship Reform Task Force and the chaired the Task Force Work Group on Court Monitoring. She serves on the Judicial Council and the Judicial Administrative Committee and is a member of the Executive Committee of the Judicial Branch Benchbook Project. She also chairs, co-chairs, or is a member of multiple other judicial branch committees and is active in the Iowa Judges Association.

Patricia J. Meier is a partner at the Cedar Rapids law firm of Nidey Erdahl Pilkington Meier & Araguás, PLC. Her practice includes but is not limited to family law and juvenile law. Prior to becoming a lawyer, she spent many years working as a journalist and editor in Iowa, Colorado, Illinois, and Washington, D.C.

Evelyn Ocheltree is a staff attorney in Iowa Legal Aid's North Central Iowa Regional Office in Mason City. She was a member of the Iowa Supreme Court Guardianship and Conservatorship Reform Task Force. She joined Iowa Legal Aid in 1985 and became a Senior Staff Attorney in 1989. She has served on the Iowa Child Support Advisory Committee and the Iowa Supreme Court Child Support Guidelines Committee. She has represented a number of individuals seeking to terminate the guardianship over their child.

Ellen Ramsey-Kacena is an Assistant Attorney General in the child welfare division. Prior to assuming this position, she was a sole practitioner for seventeen years in Cedar Rapids where she had a general practice, including, juvenile law and family law. She is a NACC certified Child Welfare Law Specialist. She has held leadership positions in the Iowa State Bar Association and is Chair of the Family Law Section's Juvenile Law Committee and is Vice Chair of the Family Law Section's Council. She is a member of the State Council for Iowa Children's Justice.

Hon. Colin Witt is a District Associate Judge assigned to the Polk County Juvenile Court. He was appointed as a Polk County magistrate in 2005 and as a District Associate Judge in 2006. He was a member of the Iowa Supreme Court Guardianship and Conservatorship Reform Task Force. He is a member of the Iowa Supreme Court's Advisory Board for the Children's Justice Initiative. He serves and has served on a number of state and local committees directed at improving the juvenile justice and child welfare systems and promoting the welfare of children and families and is widely recognized for his efforts in that regard.

TABLE OF CONTENTS

INTRODUCTION TO HF 591	1
Josephine Gittler, Presentation Outline.....	3
SESSION ONE: JUVENILE COURT MINOR GUARDIANSHIP JURISDICTION	7
Josephine Gittler, Presentation Outline.....	9
Appendix A, Iowa Supreme Court Guardianship and Conservatorship Reform Task Force Recommendation.....	13
Appendix B, Judicial Branch Recommendations for Implementation of 232D.....	19
232D Implementation Checklist	21
Appendix C, Implementation of 232D in Polk County.....	25
SESSION TWO: BASIS FOR OPENING MINOR GUARDIANSHIP	29
Josephine Gittler, Kathleen Kilnoski, Evelyn Ocheltree, Ellen Ramsey-Kacena, Presentation Outline	31
Appendix A, Minor Guardianships without Parental Consent	35
SESSION THREE: MINOR GUARDIANSHIP PROCEDURES AND PROCEEDINGS ..	41
Brent Pattison, Presentation Outline	43
SESSION FOUR: APPOINTMENT AND ROLE OF COUNSEL AND COURT VISITOR IN MINOR GUARDIANSHIP PROCEEDINGS	49
Josephine Gittler, Presentation Outline.....	51
Appendix A, American Bar Association Model Act	57
Appendix B, Iowa Standards of Practice.....	75
SESSION FIVE: SELECTION OF GUARDIAN FOR MINOR AND BACKGROUND CHECK OF PROPOSED GUARDIAN.....	105
Brent Pattison, Presentation Outline	107
Appendix, Information Release Forms	111
DCI - Criminal History Record Check Request Form.....	113
DHS - Authorization for Release of Child and Dependent Adult Abuse Information.....	115

SESSION SIX: DUTIES, RESPONSIBILITIES AND POWERS OF GUARDIANS OF MINORS, MONITORING OF MINOR GUARDIANSHIPS AND GUARDIAN’S REPORTING REQUIREMENTS	117
Josephine Gittler and Kellyann Lekar, Presentation Outline	119
Appendix A, Administrative Order Re Existing Guardianships and Conservatorships.....	127
Appendix B, Initial Care Plan for Minor.....	131
Supreme Court Rule 8.37—Form 2: Guardian’s Initial Care Plan for Protected Minor	133
Task Force Guardian’s Initial Care Plan for Minor Model Form.....	137
Appendix C, Guardian’s Annual Report for Minor.....	145
Supreme Court Rule 8.37—Form 3: Guardian’s Annual Report for Protected Minor	147
Task Force Guardian’s Annual Report for Minor Model Form.....	153
SESSION SEVEN: OPENING AND ADMINISTRATION OF MINOR CONSERVATORSHIPS.....	165
Josephine Gittler, Presentation Outline.....	167
Chip Baltimore, Presentation Outline.....	177
Appendix A, Institute Model Forms.....	193
Proposed Form One: Court Order Appointing Conservator and Establishing Initial Authority	195
Proposed Form Two: Conservator’s Initial Financial Management Plan ...	199
Proposed Form Three: Court Order Approving Initial Plan and Establishing Authority of Conservator	209
Proposed Form Four: Conservator’s Application for Order Clarifying Authority	211
Proposed Form Five: Court Order Clarifying Authority	213
Proposed Form Six: Conservator’s Annual Report	215
Appendix B, Court Documents.....	225
In the matter of The Conservatorship of _____, Ward, District 8A	227
In the matter of Guardianships and Conservatorships Pending on December 31, 2019, Administrative Order, District 2	231

Appendix C, Supreme Court Forms	233
Supreme Court Rule 7.11—Form 2: Conservator’s Initial or Amended Plan	235
Supreme Court Rule 7.11—Form 3: Notice of Filing of Conservator’s Initial or Amended Plan.....	239
Supreme Court Rule 7.11—Form 4: Inventory of Protected Person.....	241
Supreme Court Rule 7.11—Form 5: Report of Conservator	243
Supreme Court Rule 7.11—Form 6: Conservator’s Request for Approval for Other Action on behalf of Protected Person.....	247
House File 591 [Chapter 232D].....	249

Introduction to HF 591

HF 591: INTRODUCTION*

Presentation Outline

Josephine Gittler**

I. Background

A. Iowa Guardianship and Conservatorship System

1. Iowa, like all states, has a guardianship and conservatorship system administered by the judicial branch of government. The existing statutory frame for this system is contained in the Iowa Probate Code, Chapter 633.
2. 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. This doctrine eventually became the basis for the power of American courts to appoint guardians, as substitute, or surrogate, decision-makers for vulnerable adults and minors regarding their personal affairs and to appoint conservators and for the power of courts to appoint conservators as substitute decision-makers to manage their financial affairs.¹
3. As of the end of 2018, there was a total of 23,785 open, or pending, guardianship and conservatorship cases statewide.²
4. While the number of open guardianships and conservatorships is known, other basic statewide data about guardianships and conservatorships has been limited. To obtain such data, the Institute on Guardianship and Conservatorship at the University of Iowa College of Law conducted the Iowa Guardianship and Conservatorship Study that reviewed more than 4,000 guardianship and conservatorship case files in two counties in each of five judicial districts.³
5. The Study disclosed that the minor guardianships and conservatorships made up 36 percent of all of the guardianship and conservatorship cases reviewed. The largest

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category of minor guardianship and conservatorship cases—65 percent—were stand-alone guardianships; the next largest category of these cases—26 percent—were stand-alone conservatorships; and 9 percent of these cases involved both guardianships and conservatorships.⁴

6. In 82 percent of the minor guardianship cases reviewed, a parent’s inability or unwillingness to carry out their parental responsibilities led to the appointment of a guardian; in 8 percent of the cases, there was some other reason for the guardianship; and in the remainder of the cases, the factual basis for the establishment of a guardianship could not be determined.⁵

B. The Iowa Supreme Court’s Guardianship and Conservatorship Reform Task Force

1. HF 591 incorporates and reflects the recommendations of the Iowa Supreme Court’s Guardianship and Conservatorship Reform Task Force which was created in January of 2015 and submitted its Final Task Force Report to the Iowa Supreme Court in August of 2017.
2. The Task Force had 72 members throughout the state including (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 the aging population, (7) child welfare advocates, (8) staff of state and local agencies and programs, (9) clinicians and service providers, and (10) legal academics.
3. The Final Task Force Report identified serious problems in the guardianship and conservatorship system and issued 272 recommendations to remedy these deficiencies, a number of which pertain to the opening and administration of minor guardianships.

II. Enactment of House File 591

1. During the 2019 session of the Iowa General Assembly, the House of Representatives and the Senate unanimously passed House File 591 (HF 591), governing minor guardianships.
2. House File 591 (HF 610), a companion bill, governing adult guardianship and adult and minor conservatorships, also passed unanimously through both legislative chambers.
3. On May 1, 2019 Governor Reynolds singled out these bills for a public signing.
4. The effective date of HF 610 and HF 591 is January 1, 2020.

III. Goal of HF 610

1. The overarching goal of HF 610 is to strengthen and enhance the

procedural and substantive protections for highly vulnerable Iowans—both adults with diminished decision-making capacity and minors.

IV. Juvenile Court Jurisdiction of Minor Guardianships

A. Transfer of minor guardianship jurisdiction

In accordance with the Task Force recommendation, HF 591 transfers jurisdiction of minor guardianships to the juvenile court from the district/probate court, which is a part of the district court and which is responsible for a variety of other civil and criminal cases.

B. Reasons for transfer of jurisdiction to juvenile court

The major reasons for giving the juvenile court jurisdiction over minor guardianship cases are as follows:

- Juvenile court judges, unlike many district /probate court judges, are specialized judges with expertise in handling the parental problems that minor guardianships involve.
- Juvenile court judges, unlike district/probate court judges, follow the “one judge one family” case management approach resulting in continuity and consistence in judicial decision-making and monitoring of cases.
- There is sometimes an overlap between minor guardianship cases in district/probate court and child in need assistance (CINA) cases, involving abused, neglected and abandoned children, in juvenile court. The existing lack of interface between these courts has led to a variety of problems. In some cases, a minor guardianship may be a less drastic alternative to a CINA adjudication. In other cases, a CINA proceeding may be more appropriate than a minor guardianship proceeding. And in some instances, the same family may be involved in both a minor guardianship case under the jurisdiction of the district/probate court and a CINA case under the jurisdiction of the juvenile court. All too often there is a lack of communication between district/probate court judges and juvenile court judges about actual or potential cases involving the same family.

Endnotes

¹ See Iowa Supreme Court’s Guardianship and Conservatorship Reform Task Force, *Reforming Iowa’s Guardianship and Conservatorship System 1* (August 2017) (hereinafter, “TASK FORCE REPORT,”) available at https://www.iowacourts.gov/static/media/cms/Final_Task_Force_Report_5A992F4D4AF86.pdf.

² Email from John Goerdt, Deputy State Court Admin to Josephine Gittler (January 17, 2018) (on file with Josephine Gittler).

³ TASK FORCE REPORT, *supra* note 1 at App. A, A:5-A:18.

⁴ *Id.* at App. A, A:14.

⁵ *Id.* at App. A, A:16.

SESSION ONE

**Juvenile Court Minor Guardianship
Jurisdiction**

JUVENILE COURT MINOR GUARDIANSHIP JURISDICTION*

Presentation Outline

Josephine Gittler**

I. Transfer of Minor Guardianship Jurisdiction to Juvenile Court

- A. The Iowa Supreme Court Guardianship and Conservatorship Reform Task Force recommended that jurisdiction over minor guardianships be transferred to the Juvenile Court from the district/probate court. (See Final Task Force Report in Appendix A).
- B. In accordance with the Task Force recommendation, HF 591 creates a new chapter of the Juvenile Code, 232D, the Iowa Minor Guardianship Proceedings Act, governing minor guardianships.
- C. HF 591 provides that the juvenile court shall have “exclusive jurisdiction” of minor guardianship cases. [§ 232D.103]

II. Reasons for Transfer of Jurisdiction to Juvenile Court

The major reasons for giving the juvenile court jurisdiction over minor guardianship cases are as follows:

1. Juvenile court judges, unlike many district /probate court judges, are specialized judges with expertise in handling the parental problems that minor guardianships involve.
2. Juvenile court judges, unlike district/probate court judges, follow the “one judge one family” case management approach resulting in continuity and consistency in judicial decision-making and monitoring of cases.
3. There is sometimes an overlap between minor guardianship cases in district/probate court and child in need of assistance (CINA) cases, involving abused, neglected and abandoned children, in juvenile court. The existing lack of interface between these courts has led to a variety of problems. In some cases, a minor guardianship may be a less drastic alternative to a CINA adjudication. In other cases, a CINA proceeding may be more appropriate than a minor guardianship proceeding. And in some

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instances, the same family may be involved in both a minor guardianship case under the jurisdiction of the district/probate court and a CINA case under the jurisdiction of the juvenile court. All too often there is a lack of communication between district/probate court judges and juvenile court judges about actual or potential cases involving the same family.

III. Jurisdiction and Venue

A. Jurisdiction

HF 591 provides that the juvenile courts shall have “exclusive jurisdiction of minor guardianship cases.” [§ 232D.103] HF 591 applies to “guardianships and guardianship proceedings established or pending before, on, or after January 1, 2020.” [HF 591, § 45]

B. Venue

HF 591 provides that venue for Chapter 232D guardianship proceedings shall be in the judicial district where the minor is found or of the minor’s residence. [§ 232D.104(1)]

HF 591 further provides that the court may transfer a proceeding “to the juvenile court of any county having venue at any stage in the proceedings” as follows:

1. When it appears that the best interests of the minor or the convenience of the proceedings shall be served by a transfer, the court may transfer the cases to the court of the county where the minor is found. [§ 232D(2)(b)]
2. With the consent of the receiving court, the court may transfer the case to the court of the county of the minor’s residence. [§ 232D(2)(b)]

IV. Proceedings Not Governed by Chapter 232D.

HF 591 provides:

1. A petition alleging that a minor is in need of a conservatorship is not subject to chapter 232D. They are governed by Probate Code chapter 633 and may be initiated pursuant to Probate Code section 633.627. [§ 232D.105(1)]
2. A petition for appointment of a guardian for a minor and a petition for appointment of a conservator shall not be combined. [§ 232D.105(2)]
3. If a minor guardianship proceeding pertains to an Indian child as defined in section 232B.3 and the proceeding is subject to the Iowa Indian Child Welfare Act under Chapter 232D, the proceeding and other actions taken in connection with the

proceeding shall comply with chapter 232B.” [§ 232D.105(2)]

V. Implementation of Transition of Minor Guardianships from District Court to Juvenile Court

1. HF 591, which was signed into law on May 1, 2019 has a delayed effective date of January 1, 2020 in order to allow for planning of the transition of minor guardianships from district court to juvenile court.
2. The state court administrator established a committee to make recommendations with respect to managing this transition.¹ As of November 1, however, it was unclear whether and to what extent these recommendations will be implemented by the judicial branch.
3. In addition to the identification of judges who will be assigned to minor guardianship cases, there are a variety of other issues that must be addressed in connection with the transfer of minor guardianship to juvenile court from the district probate court. See Appendix B.
4. It appears that plans for transition of minor guardianships may vary from judicial district to judicial district. See, for example a preliminary plan for Polk County implementation in Appendix C. At the November Institute CLE conference on November 15, Chief Judge Grady of the Sixth Judicial District judicial district, Chief Judge Lehar of the First Judicial District and Judge Witt of the Polk County Juvenile Court, Des Moines have been requested to indicate the transition plans for their respect districts.

Endnotes

¹ Minor Guardianships Legislation Implementation Committee: Final Report and Recommendations (October 2019)

SESSION ONE:

APPENDIX A

**Iowa Supreme Court Guardianship and
Conservatorship Reform Task Force
Recommendation**

- Iowa Supreme Court Guardianship and Conservatorship Task Force, Final Report 120-123 (August 2017)
https://www.iowacourts.gov/static/media/cms/Final_Task_Force_Report_5A992F4D4AF86.pdf

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 aguardianship 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 fulfil 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 guardianship 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 the 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⁾

SESSION ONE:
APPENDIX B
**Judicial Branch Recommendations for
Implementation of 232D**

- Judge Colin Witt, 232D Implementation Checklist for 1.1.2020 and the 2020 Calendar Year

Judge Colin Witt

232D IMPLEMENTATION CHECKLIST FOR 1.1.2020 AND THE 2020 CALENDAR YEAR (2019)

(THIS IS A HANDOUT FOR JUVENILE JUDGES AT IOWA CHILDRENS JUSTICE TRAINING ON 11.5.2019 AND IS A GENERAL AND NON-EXHAUSTIVE LIST OF AREAS THAT NEED TO BE LOOKED AT IN EACH JUDICIAL DISTRICT and perhaps in each county, AND IS PROVIDED PRIOR TO ACTION BY SC / SCA ON IMPLEMENTATION GROUP RECS)

___ EACH CLERK OF COURT NEEDS TO FIGURE OUT HOW MANY OPEN AND EXISTING GUARDIANSHIPS INVOLVE MINORS. ONE WAY TO DO IT IS TO REQUEST JBIT REPORT BASED OFF BIRTH DATE FOR GUARDIANSHIPS IN PROBATE (EXISTING GUARDIANSHIPS, IC 633). YOU SHOULD THEN RECEIVE A REPORT THAT GIVES YOU A COUNTY NUMBER, CASE NUMBER (GCPR), DATE THE CASE WAS INITIATED, CHILD'S NAME, CHILD'S DOB, CHILD'S AGE.

___ EACH CLERK OF COURT NEEDS TO NOTE WHETHER EACH MINOR GUARDIANSHIP CASE WITH A GCPR NUMBER IS A JOINT FILING OF BOTH A CONSERVATORSHIP AND GUARDIANSHIP, THOSE FILES SHOULD STAY IN DISTRICT COURT.

___ CHIEF JUDGE / DCA NEEDS TO DECIDE WHAT JUDGES ARE GOING TO HANDLE EXISTING MINOR GUARDIANSHIPS (GCPR CASES) FOR 2020. Hopefully guidance AND strong encouragement will come from SC/ SCA in Nov / Dec 2019 that those remain where they are through 7.1.2021.

___ VERIFY THAT ALL EXISTING GUARDIANSHIPS ARE MAINTAINING A GCPR NUMBER (IT WILL BE THIS WAY UNLESS SUPREME COURT ISSUES GUIDANCE IN NOV OR DEC 2019 OTHERWISE).

___ VERIFY THAT ALL NEW MINOR GUARDIANSHIPS FILED ON OR AFTER 1.1.2020 WILL RECEIVE A JVJG CASE NUMBER (IT WILL BE THIS WAY UNLESS SUPREME COURT ISSUES GUIDANCE IN NOV OR DEC 2019 OTHERWISE.)

___ NEW ANNUAL REPORT FORMS NEED TO BE MADE AVAILABLE THROUGH SCA, CLERK, OR OTHER RESOURCE TO GUARDIANS.

___ INITIAL CARE PLAN FORMS NEED TO BE MADE AVAILABLE THROUGH SCA, CLERK, OR OTHER RESOURCE TO GUARDIANS.

___ CLERK OF COURT WILL THEN SEND COMPLETED / FILED ANNUAL REPORTS AND INITIAL CARE PLANS FOR REVIEW TO THE ASSIGNED JUDGES FOR EXISTING MINOR GUARDIANSHIPS (GCPR CASES) FOR 2020.

___ CLERK OF COURT CAN CONTINUE TO SEND OUT DELINQUENCY NOTICES FOR GUARDIANSHIP CASES WHERE GUARDIAN HAS NOT TIMELY FILED HER OR HIS ANNUAL REPORT (GENERALLY GO OUT 2X PER YEAR) OR DECISION TO HALT THIS PRACTICE FOR 232D CASES NEEDS TO BE MADE BY CLERK IN CONSULTING WITH DCA, CHIEF JUDGE, AND ANY GUIDANCE THAT SC OR SCA MAY PROVIDE.

___ CLERK OF COURT should (may) PROVIDE WIP THROUGH EDMS TO JUDGE ASSIGNED TO MONITOR EXISTING GCPR MINOR GUARDIANSHIP RE REPORTS RECEIVED OR DEADLINES MISSED.

___ JUDGES ASSIGNED TO EXISTING GCPR MINOR GUARDIANSHIPS SHOULD DECIDE WHETHER TO SEND AN ADDITIONAL ORDER TO A GUARDIAN WHEN SHE OR HE IS DELINQUENT IN FILING ANNUAL REPORT, AND GIVE SOME PERIOD OF TIME (e.g. 30 DAYS) FOR IT TO BE ON FILE (ALONG WITH INITIAL CARE PLAN IN 2020).

___ JUDGES ASSIGNED TO EXISTING GCPR MINOR GUARDIANSHIPS SHOULD DECIDE WHETHER TO SEND OUT A SECOND ORDER REGARDING A GUARDIAN WHO HAS NOT FILED REPORT, OR MAKE A DECISION TO PROVIDE NOTICE AND SET A HEARING AT WHICH GUARDIAN AND CHILD ARE REQUIRED TO APPEAR.

___ CLERK OF COURT NEEDS TO BE PREPARED TO REQUIRE THAT AN INITIAL CARE PLAN BE FILED BY EACH GUARDIAN AT THE TIME THEY FILE THEIR ANNUAL REPORT OR SIXTY DAYS (OR SOME ORDERED OR STANDARDIZED TIME) AFTER THEY FILE THEIR ANNUAL REPORT.

___ DCA NEEDS TO IDENTIFY THE EMPLOYEES IN THE DISTRICT WHO ARE GOING TO DO THE BACKGROUND CHECKS FROM GUARDIANS.

___ SCA AND DCA NEED TO OVERSEE AND ENSURE THOSE STAFF ARE TRAINED AND EQUIPPED TO HANDLE THE BACKGROUND CHECK PROCESS IN ACCORDANCE WITH THE LAW.

___ THOSE STAFF DESIGNATED TO DO THE BACKGROUND CHECK WORK, EITHER IN CLERKS OFFICE OR DCA STAFF, WILL NEED TO HAVE A PROCESS TO FILE THOSE BACKGROUND CHECK REPORT FORMS (AT AN APPROPRIATE SECURITY LEVEL) ON EDMS AND SEND A WIP SO THE BACKGROUND CHECK INFORMATION IS AVAILABLE TO THE JUDGE.

___ NOTE: BACKGROUND CHECKS ARE NOT REQUIRED OF EXISTING GUARDIANS PER THE STATUTE, THEORETICALLY A JUDGE COULD REQUIRE IT NOW IN AN EXISTING GUARDIANSHIP

WHERE THE JUDGE IS CONCERNED ABOUT CHILD SAFETY OR THE QUALIFICATION OF THE GUARDIAN. BUT THAT IS PREDICTABLY AN EXCEPTIONAL CIRCUMSTANCE.

___ IF YOUR CLERK’S OFFICE HAS SIGNIFICANT SPECIALIZATION (SUCH AS A PROBATE DIVISION, JUVENILE DIVISION, ETC) DECISION NEEDS TO BE MADE REGARDING RESPONSIBILITY FOR OVERSEEING EXISTING GCPR CASES. SUGGESTION: MIGHT BE EASIEST TO LEAVE THEM WHERE THEY ARE AT AND WHERE THEY HAVE EXISTED FOR PURPOSES OF CONTINUITY.

___ IF YOUR CLERK’S OFFICE HAS SIGNIFICANT SPECIALIZATION (SUCH AS A PROBATE DIVISION, JUVENILE DIVISION, ETC) DECISION NEEDS TO BE MADE REGARDING RESPONSIBILITY FOR OVERSEEING NEW JVJG CASES. SUGGESTION: MIGHT BE A GOOD OPPORTUNITY TO START AND THEN KEEP THESE FILES WITH THE JUVENILE DIVISION.

___ JUVENILE COURT JUDGES NEED TO BE PREPARED TO HANDLE NEW 232D MINOR GUARDIANSHIP FILINGS, WITH JVJG CASE NUMBERS, ON JANUARY 1, 2020. FORMS FROM SUPREME COURT WILL HOPEFULLY GET APPROVAL AND FINALIZATION, OR OTHER FORMS CAN BE CIRCULATED BY IOWA CHILDRENS JUSTICE IN DECEMBER TO BE READY FOR 1.1.2020.

___ IF THE NEW JVJG FILING COMES IN UNDER 232D.203 (WITH PARENTAL CONSENT) THEN THE PETITION FILED BY THE GUARDIAN SHOULD INCLUDE AN AFFIDAVIT OF KNOWING AND VOLUNTARY CONSENT FILED BY THE PARENT OR PARENTS AND IT COULD CONTAIN AN AGREEMENT BETWEEN THE PROPOSED GUARDIAN AND THE PARENTS PER 232D.203(3). THE BACKGROUND CHECK WILL NEED TO BE COMPLETED. IT SEEMS POSSIBLE THAT SOME CASES MIGHT BE ABLE TO BE RESOLVED WITH NO HEARING OR A QUITE SHORT HEARING IN THIS INSTANCE. AN INITIAL CARE PLAN WOULD NEED TO STILL BE FILED IN A TIMELY FASHION.

___ IF THE NEW JVJG FILING UNDER 232D COMES IN AS A REQUEST FOR EMERGENCY APPOINTMENT OF A TEMPORARY GUARDIAN PER 232D.309, THEN JUVENILE JUDGE CAN REVIEW THE FILING AND ENTER AN EX PARTE ORDER SO LONG AS JUDGE HAS ENOUGH RECORD TO CONCLUDE THE TEMPORARY GUARDIANSHIP IS NECESSARY TO AVOID “IMMEDIATE OR IRREPARABLE HARM TO THE MINOR.” IF PARENTS FILE A REQUEST FOR A HEARING, IT NEEDS TO BE SET IN 7 DAYS. THE EX PARTE ORDER TERMINATES WITHIN 30 DAYS AFTER THE ORDER IS ISSUED. STATUTE DOES NOT SAY THAT ONLY ONE EMERGENCY ORDER CAN ENTER.

___ IF THE NEW JVJG FILING UNDER 232D COMES IN AS A REQUEST FOR GUARDIANSHIP WITHOUT PARENTAL CONSENT PER 232D.204, THEN THE GUARDIAN NEEDS TO FILE PETITION AND GO THROUGH BACKGROUND CHECK PROCESS. A HEARING NEEDS TO BE SET “NOT LESS THAN TWENTY DAYS AFTER THE DATE THE NOTICE IS SERVED” UNLESS GOOD CAUSE TO DO IT SOONER. SO IT WOULD SEEM SETTING A HEARING OUT THIRTY TO SIXTY DAYS WOULD BE

PRUDENT. CONSIDERATION OF APPOINTMENT OF COUNSEL FOR MINOR AND COUNSEL FOR PARENT(S) NEEDS TO BE CONSIDERED. IF YOUR DISTRICT OR COUNTY HAS A MEDIATION PROGRAM, A REFERRAL TO A MEDIATION NEEDS TO BE MADE. ALSO, CONSIDERATION THEN OF WHETHER THIS HEARING CAN BE SET IN FRONT OF DISTRICT COURT JUDGES OR SENIOR JUDGES SHOULD BE MADE. ONCE THE CONTESTED ISSUES ARE RESOLVED, MATTER CAN BE REASSIGNED TO JUVENILE COURT JUDGE FOR ONE JUDGE ONE FAMILY ANNUAL REPORT MONITORING.

___ IF CONTESTED ISSUES COME UP IN JVJG GUARDIANSHIPS, CONSIDERATION THEN OF WHETHER THIS MATTER CAN BE REFERRED TO MEDIATION (IF SUCH OPTION IS AVAILABLE) SHOULD BE MADE AND CONSIDERATION SHOULD BE MADE OF WHETHER THIS ISSUE CAN BE SET IN FRONT OF DISTRICT COURT OR SENIOR JUDGE.

___ JUVENILE COURT JUDGES AND CLERKS AND OTHERS NEED TO ALSO BE PREPARED FOR SOME EXCEPTIONAL TYPES OF FILINGS THAT MAY COME IN UNDER 232D.310 FOR APPOINTMENT OF GUARDIAN FOR A MINOR ON A STANDBY BASIS.

___ CONSIDERATION NEEDS TO BE GIVEN TO IOWA CODE SECTION 232D.311, APPOINTMENT OF A GUARDIAN FOR MINOR APPROACHING MAJORITY ON A STANDBY BASIS. DECISIONS WILL NEED TO BE MADE, BUT THESE FILINGS ARE ONLY MADE WHEN A CHILD IS BETWEEN 17.5 AND 18 YRS AND ONLY BECOMES EFFECTIVE UPON THE MINOR TURNING 18 YO. IT IS PREDICTABLE THAT THESE FILINGS WILL BE MADE IN PROBATE. THESE FILINGS SHOULD BE REVIEWED BY DISTRICT COURT JUDGES. THESE FILINGS WILL BE MONITORED AS ADULT GUARDIANSHIPS AS THE GUARDIANSHIP IS ONLY EFFECTIVE UPON THE YOUNG PERSON REACHING HER OR HIS 18TH BIRTHDAY.

SESSION ONE:
APPENDIX C
**Implementation of 232D in Polk
County**

- Memo from Judge Witt to Prof. Gittler, Implementation of New Chapter 232D in Polk County (November 11, 2019)

To Professor Gittler
From Judge Colin Witt
Date: 11/11/2019
Re: Implementation of New Chapter 232D in Polk County

Simplified Draft or Working Plan for implementation of New Chapter 232D in Polk County

- 1. Numbers.** As of 9.30.2019, we had 922 minor guardianships with GCPR case numbers. We know the names of the minors. We know their ages and birthdates. We know dates cases were initiated.
- 2. Judicial Assignment.** One judge, our District Associate Probate Judge, has handled all of these cases as a portion (approx. 25%) of his or her work for many years (approx. last 40 yrs.). We now have six juvenile court judges who can receive these cases and monitor these children. Approximately 150 existing juvenile guardianships (GCPR) cases per juvenile court judge allowing more attention and focus hopefully in accord with the new law. Additionally, Polk County is different. The associate probate judge position does not have jurisdiction of these cases anymore so, different from the other 98 counties, there is no possibility of them just "staying" and having judge exercise juvenile jurisdiction.
- 3. Clerks Office.** Existing juvenile guardianship (GCPR) cases are going to remain with our Probate Clerk division during the transition. The anticipation is that these will transition to Juvenile Clerk division. This will likely happen when there are some office location changes based on construction. But that is likely 9 months or more away. New juvenile guardianships (JVJG) cases will begin with the Juvenile Clerk division starting 1.1.2020.
- 4. Juvenile Court Case Coordinator centralized role.** All cases, both existing GCPR guardianships (from Probate Clerk) and new JVJG guardianships (from Juvenile Clerk) will be assigned on an equalized basis by the Juvenile Court Case Coordinator. This is a position in the District Court Administrator's office. This centralized placement of these cases will bring hopeful uniformity to the process and to the timing of how cases get handled, hearings get set, rulings get entered. This is one measure to try and make certain that the process is not done six different ways by the six different judges.
- 5. Staggered Judicial Assignment.** The plan is for the three most experienced juvenile court judges to be paired up with the three newer juvenile court judges. The first pair of juvenile court judges (Witt and Ayotte) will oversee both the existing GPCR guardianships (reports and initial case plans) and the newly filed JVJG minor guardianships. The plan is this assignment will be for all GPCR annual reports due in the Jan - April time frame, and for all new JVJG cases. The second pairing of judges will then be responsible for May - Aug. The third pairing of judges will then be responsible for Sept - Dec. The hope is that the process and a lot of the kinks get worked out in the first four months.
- 6. Contested Hearing Support.** If on the face of the petition, or by motion, or at the initial hearing it becomes clear that a contested guardianship hearing is going to be required then that will need to be set on a different date. We are planning and hoping to have the support of Senior Judges who have juvenile court and other background, and Senior Judge Price has volunteered. We are looking at having 2 days per month set aside for these types of hearings to get scheduled and heard by our Senior Judge friend. It is anticipated this will commence in Feb 2020, possibly Jan 2020. Additionally, we will be able to refer these cases for mediation that should take place before contested hearings. Once the contested issue is decided, assuming there is or continues to be a guardianship, the matter then goes back to the assigned juvenile court judge for monitoring and oversight.

SESSION TWO
Basis for Opening Minor Guardianship

BASIS FOR OPENING MINOR GUARDIANSHIP*

Presentation Outline

Josephine Gittler, Kathleen Kilnoski,***
Evelyn Ocheltree,**** Ellen Ramsey-Kacena*******

I. Need for Specific Statutory Criteria for Opening Minor Guardianship

The current Probate Code provisions applicable to the appointment of a guardian for a minor state that there must be proof of the “necessity for the appointment of a guardian” and proof that the appointment is in the minor’s “best interests.” These provisions further state that a minor’s parents, “if qualified and suitable,” ought to be given “[p]reference” in a guardianship proceeding. However, these provisions furnish little guidance as to what constitutes sufficient grounds for establishing a minor guardianship which is problematic especially since parents have constitutionally protected rights to custody and control of the upbringing of their children.

II. Basis for Opening Guardianship: Termination of Parental Rights and CINA cases

1. HF 591 authorizes the court to appoint a guardian for a minor if all parental rights have been terminated. [§ 232D.201(1)]
2. HF 591 authorizes the court to appoint a guardian for a minor in a child in need of assistance case pursuant to §§ 232.101A, 232.103A, or 232.104. [§ 232D.201(2)]

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** Josephine Gittler, JD is the Wiley B. Rutledge Professor of Law at the University of Iowa College of Law, and she is the Co-Director of the Institute on Guardianship and Conservatorship at the University of Iowa and the Drake University Law Schools. She served as the Coordinator and Reporter for the Iowa Supreme Court’s Guardianship and Conservatorship Reform Task Force.

*** Judge Kathleen Kilnoski is a District Court Judge. She was a member of the Iowa Supreme Court’s Guardianship and Conservatorship Reform Task Force.

**** Evelyn Ocheltree is a senior staff attorney in Iowa Legal Aid’s North Central Iowa Regional Office in Mason City. She was a member of the Iowa Supreme Court’s Guardianship and Conservatorship Reform Task Force.

***** Ellen Ramsey-Kacena is an Assistant Attorney General in the child welfare division. Prior to assuming this position, she was a sole practitioner seventeen years in Cedar Rapids. She is a NACC certified Child Welfare Law Specialist. She has held leadership positions in the Iowa State Bar Association and is Chair of the Family Law Section’s Juvenile Law Committee and is Vice Chair of the Family Law Section’s Council.

III. Basis for Opening Guardianship: Death of Parent

1. HF 591 provides that the court may appoint a guardian for a minor if both parents are deceased. [§ 232D.201]
2. HF 591 further provides that in appointing a guardian the court shall give preference to a person nominated as a guardian by a will executed by the parent or parents having legal custody of the minor at the time of the death of the parent or parent's that was admitted to probate under Chapter 633 provided the person nominated is qualified and suitable. [§ 232D.202]

IV. Basis for Opening Guardianship: Guardianship with Parental Consent

1. HF 591 expressly authorizes the appointment of a guardian for a minor with the consent of the parent(s) having legal custody of the minor. [§ 232D.203]
2. Underlying HF 591's provisions regarding establishment of a guardianship with parental consent is a concern that a parent's consent to a guardianship is sometimes not knowing and voluntary.
3. To address the above concerns HF 591 sets forth the following requirements:
 - The court is required to find (1) that the parent(s) understand the nature of the guardianship and (2) that the parental consent is knowing and voluntary. [§ 232D.203(1)(a)]
 - The petition must include an affidavit signed by the parent(s) verifying that the parental consent was knowing and voluntary. [§ 232D.203(2)]
 - The affidavit must be on a form prescribed by the judicial branch. [§ 232D.203(2)]

See Appendix to this section of materials for Supreme Court proposed affidavit.

Note: The Judicial Counsel unanimously delayed the effective date of guardianship and conservatorship forms including the affidavit form until May of 2020.

4. HF 591 further provides that the court may establish a guardianship with parental consent if it finds that the minor is in need of guardianship for any one of the following reasons:
 - the parent with legal custody has a physical or mental illness that prevents him/her from providing care and supervision of the child; [§ 232D.103(1)(b)(1)]
 - the parent with legal custody is incarcerated or imprisoned; [§ 232D.103(1)(b)(2)]
 - the parent with legal custody is on active military duty; [§ 232D.103(1)(b)(3)]
 - a "catch all" provision that the minor is in need of a guardianship for some other good cause shown. [§ 2322D(1)(b)(4)]

5. In addition to the foregoing the court must find that appointment is in the best interest of the minor. [§ 232D.204(1)(c)]
6. HF 591 provisions regarding establishment of minor guardianships with parental consent also reflect a concern that guardians and parents often have differing expectations and assumptions as to their respective responsibilities, parent-child contact during the guardianship, and the duration of the guardianship. These differing expectations and assumptions can produce conflicts between guardians and parents and can generate litigation in which parents seek to terminate the guardianship.
7. To address the above concerns, HF 591 sets forth several requirements intended to ensure that parents and proposed guardians understand what the effect of the guardianship will be. These requirements include the following
 - the filing of a guardianship agreement by the parent or parents and the proposed guardian stating their respective responsibilities, any arrangements for parent-child contact, and the duration of the agreement if known; [§ 232D.203(3)] and
 - the court's approval of the agreement and its incorporation by reference into its order granting the petition. [§ 232D.203(4)]

V. Basis for Opening Guardianship: Guardianship Without Parental Consent

1. The majority of minor guardianships now in effect originally were treated as guardianship to which parents had consented.¹
2. HF 591 expressly authorizes the establishment of a minor guardianship without parental consent provided certain requirements are met. [§ 232D.204]
3. The essential rationale for permitting nonconsensual minor guardianships is that they may constitute an appropriate and less drastic alternative to a CINA adjudication or the termination of parental rights, and they may be appropriate when grounds for a CINA adjudication or termination of parental rights are lacking, but the requirements for a guardianship are met.
4. HF 591's authorization of minor guardianships without parental consent raises complex federal and state constitutional issues. The United States Supreme Court has recognized that parents have a constitutionally protected right to the custody of their children and to the control of their upbringing, but, at the same time, the Court has recognized that the state has the power to intervene over the objection of parents in the parent-child relationship to protect the welfare of children. It is unclear what kind of showing must be made for it to be constitutionally permissible under federal and state law for a court to deprive a parent of the custody of their children and the control of their children's upbringing through the establishment of a guardianship without their consent. See Appendix A for a summary of the federal and state constitutional issue related to establishment of minor guardianships without parent consent.

5. Underlying HF 591’s authorization of a minor guardianship without parental consent is the view that such guardianships are constitutionally permissible if it is shown by clear and convincing evidence that there has been a serious failure by the parent to provide the child with needed care and protection and that a guardianship is in the child’s best interest.
6. HF 591 specifically authorizes the court to establish a minor guardianship without parental consent if it is shown by clear and convincing evidence that the proposed guardian has been “serving as a de facto guardian” and “[t]here has been a demonstrated lack of consistent parental participation” in the child’s life and a guardianship is in the child’s best interests. [§§ 232D.204(a) & (b)]
7. HF 591 provides that in determining whether there has been a demonstrated lack of consistent parental participation, the court may consider the following:
 - *The intent of the parent in placing the custody, care, and supervision of the minor with the person petitioning as de facto guardians and the facts and circumstances regarding such placement.* [§ 232D.204(1)(b)(1)]
 - *The amount of communication and visitation of the parent with the minor during the alleged de facto guardianship.* [§ 232D.204(1)(b)(2)]
 - *Any refusal of the parent to comply with conditions for retaining custody set forth in any previous court orders.* [§ 232D.204(1)(b)(3)]²

The law also specifically authorizes the court to establish a nonconsensual guardianship if it is shown by clear and convincing evidence that “*no parent is willing or able to exercise the power the court would grant to the guardian*” and that guardianship is in the best interests of the minor. [§ 232D.204]³

Endnotes

¹ Josephine Gittler et al., *Reforming Iowa’s Guardianship and Conservatorship System* L A Guide to the New Minor Guardianship Law, HF 591, Drake Law Rev. Discourse ``2 (forthcoming)

² This provision is derived from a Maine guardianship statute as interpreted and upheld by the Maine Supreme Court. *See In re Guardianship of Chamberlain*, 118 A.3d 229 (Me 2015)

³ This provision is derived from the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act. Uniform Guardianship, Conservatorship and Other Protective Arrangements Act. § 204 (2017)

SESSION TWO:
APPENDIX A
**Minor Guardianships without Parental
Consent**

- Ann Estin, Minor Guardianships without Parental Consent: Constitutional Questions

Minor Guardianships without Parental Consent: Constitutional Questions

Ann Laquer Estin
Aliber Family Chair in Law, University of Iowa

I. Iowa's New Minor Guardianship Statute

Under the new Iowa Code provisions for minor guardianships, a court may appoint a guardian without the consent of a parent having legal custody, but the court must first make a series of findings by clear and convincing evidence. Section 232D.204.1 requires clear and convincing evidence that:

- a. There is a person serving as a de facto guardian of the minor
- AND
- b. That there has been a demonstrated lack of consistent parental participation in the minor's life.

The determination in part b is guided by the statute's definition (in § 232D.102.4) of "demonstrated lack of consistent parental participation," and by a series of factors included in the statute.

In addition to these two findings, § 232D.204.2 requires that the court make clear and convincing evidence of two more findings by clear and convincing evidence:

- a. No parent having legal custody is willing or able to exercise the power the court will grant to the guardian,
- AND
- b. appointment of a guardian is in the best interest of the minor.

Taken together, the statutory language requires four findings by clear and convincing evidence:

- The minor has de facto guardian
- Demonstrated lack of consistent parental participation
- No parent with legal custody is willing or able to exercise guardian's power
- Appointment of guardian is in best interest of child.

II. Constitutional Parental Rights

As a constitutional matter, we evaluate this legislation against the background of federal and state Supreme Court decisions that have protected parents' rights, both as a matter of substantive due process and procedural due process. Lots of old and venerable precedents make the basic point that parents have a fundamental right to direct the care and upbringing of their children, including *Meyer v. Nebraska*, 262 U.S. 390 (1923); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); and *Wisconsin v. Yoder*, 406 US 205 (1972).

Even as the US Supreme Court has recognized this fundamental right, the Court has also balanced it against the state's right and duty, acting as *parens patriae*, to protect children. Here's how the Court made this point in *Prince v. Massachusetts* (321 U.S. 158, 167(1953)): "[T]he state has a wide range of power for limiting parental freedom and authority in things affecting

the child's welfare." See also *Stanley v. Illinois*, 405 U.S. 645 (1972); *Lassiter*; and *Santosky v. Kramer*, 455 U.S. 745, 766 (1982).

The tension between these two important objectives – respect for parental rights and the duty to protect children - was at the core of the Supreme Court's decision in *Santosky v. Kramer*. *Santosky* was a procedural due process case, following on other cases (like *Stanley v. Illinois*,) that mandated protections for parents before parental rights could be terminated. [For example, *Stanley* required notice and opportunity for a hearing, even for nonmarital fathers.] In *Santosky*, the Supreme Court ruled that state procedures for the complete termination of parental rights must be "fundamentally fair," and that fairness requires a careful balancing of three factors: the parent's interest, the state's interest (in protecting the child), and the "risk of error" inherent in the procedure. In *Santosky*, the Court held that ***proof by clear and convincing evidence*** was necessary to reduce the "risk of error" when the state acted to sever the parent-child relationship.

The most recent analysis of these questions by the US Supreme Court came in *Troxel v. Granville*, 530 U.S. 57 (2000). *Troxel* considered a Washington statute that allowed "any person" to petition the court for visitation rights with a child "at any time." The Washington statute had no threshold requirement, and gave no weight or deference to the views of the child's parents, requiring only that the court find that visitation would be in a child's best interests. In *Troxel*, the Court ruled that the Washington statute was unconstitutional *as applied to the facts of that case*, but it did not set out a general rule or standard for testing these types of statutes.

Even in *Troxel*, the Court acknowledged implicitly that parental power has limits, with this language:

"Accordingly, so long as a parent adequately cares for his or her children (i.e., is fit), there will normally be no reason for the state to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children."

III. Iowa Case Law

Without further guidance from the U.S. Supreme Court, courts in Iowa and elsewhere have come to different conclusions about the constitutional limits on various third-party or grandparent visitation laws. Those statutes address a problem that is clearly different from the one presented by the new minor guardianship statute. Still, the Iowa cases that followed in the wake of *Troxel* provide our best indication of how the Iowa courts might evaluate the new statute.

Several Iowa Supreme Court decisions considered the former Iowa grandparent visitation statute, which allowed courts to order visitation over the objection of a child's parents. In the first case, *Santi v. Santi*, 633 N.W.2d 312 (Iowa 2001), the court held that parental rights were protected under Article 1 of the Iowa Constitution (as well as the U.S. Constitution). In an opinion written by Justice Linda Neuman, the court applied a strict scrutiny standard: the infringement on parental liberty interests implicated by the statute must be "narrowly tailored to serve a compelling state interest." Justice Neuman's opinion found that there was no rationale

in the Iowa grandparent visitation statute for intrusion on parental decision-making by “married parents in an intact nuclear family.”

In subsequent rulings, the Iowa Supreme Court extended this conclusion to other types of families, including families with divorced parents (see *Marriage of Howard*, 661 N.W.2d 183 (Iowa 2003), or a widowed parent (see *Lamberts v. Lillig*, 670 N.W.2d 119 (Iowa 2003). See also *Wurpts v. Iowa District Court*, 687 N.W.2 286 (Iowa Ct. App.2004) (unmarried parent).

IV. Iowa’s Minor Guardianship Statute

Taken together, these precedents map out the constitutional issues we need to consider. As a matter of substantive due process, under *Santi* and other authorities, a statute that infringe parental decision-making must be based on a compelling state interest. In this setting courts agree that protection of children who do not have adequate parental care a compelling state interest. See, e.g., *Croft v. Westmoreland County Children & Youth Services*, 103 F.3d 1123, 1125 (3d Cir. 1997).

Second, the statute must be “narrowly tailored” to achieve that purpose. On this prong of the test, once the state has established a compelling reason to intervene, the substantive and procedural due process questions converge. That is, under *Santi* as a matter of *substantive* due process the state’s intervention must be “narrowly tailored,” and under *Santosky* as a matter of *procedural* due process the state’s procedures must balance (1) the parent’s interest, (2) the state’s interest in protecting the child, and (3) the risk that the process will result in an erroneous decision. When the U.S. Supreme Court addressed this “risk of error” in *Santosky v. Kramer*, where a complete termination of parental rights was at stake, it concluded that proof by clear and convincing evidence was required to protect parental rights.

The new minor guardianship statute conforms to these precedents, but requiring clear and convincing evidence of each of the four elements necessary for appointment of a guardian without the parent’s consent.

We do not have case law in Iowa directly on point, but Maine’s Supreme Judicial Court has taken up this question, in a case called *Guardianship of Chamberlain* 118 A.3d 229 (Me. 2015). In that case, court followed the reasoning of *Santosky*, and held that appointment of a guardian over a parent’s objection under the Maine statute would violate the due process clause unless the court required proof by clear and convincing evidence.

Appointment of a guardian without the consent of a parent under the new Iowa statute is a far less serious and permanent infringement of parental rights than was involved in *Santosky*. But we will not need to ask whether the Iowa courts would also require clear and convincing evidence for this purpose, as the Maine court has done. The Iowa Legislature has clearly signaled the importance of due process and respecting parental rights by enacting this statute. This respect is reflected in three ways: a high threshold of proof, sufficient to meet the test under *Santosky* (and *Chamberlain*); the creation of a new procedure that is less intrusive than CINA proceedings would be; and clear ground rules that put parents on notice as to when and how a guardianship may be ordered.

SESSION THREE

**Minor Guardianship Procedures and
Proceedings**

MINOR GUARDIANSHIP PROCEDURES AND PROCEEDINGS*

Presentation Outline

Brent Pattison**

I. Minor Guardianship Proceedings: Petition and Notice

A. Filing of petition

1. HF 591 provides that a guardianship petition for a minor may be filed “by any person with an interest in the welfare of the minor.” [§ 232D.301(1)]

B. Contents of petition and notice

1. HF 591 provides the new requirement that the petition must contain a concise statement of the “*factual basis*” for the petition. [§ 232D.301(3)]
2. HF 591 specifies that the petition must list, to the extent known, the name and address of the following:
 - the minor and the minor’s age, [§ 232D.301(2)(a)]
 - the petitioner and the petitioner’s relationship to the minor, [§ 232D.301(2)(b)]
 - if the petitioner is nor the proposed guardian, the proposed guardian and the reason the proposed guardian should be selected, [§ 232D.301(2)(c)]
 - The name and address, to the extent known and reasonably ascertainable of the following: [§ 232D.301(2)(c)]
 - any living parents of minor,
 - any living custodian of the minor
 - any adult who has had the primary care of the minor or with whom the minor has lived at least six months prior to the filing of the petition. [§ 232D.301(d)]
3. HF 591 specifies that “*any additional information, to the extent known and reasonably ascertainable required by section 598B.209 shall be included in an affidavit attached to the petition.*” [§ 232D.301(5)] Iowa Code Chapter 598B, the Iowa Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA) applies to minor guardianships and has more detailed and extensive requirements regarding the information to be furnished the court in the first affidavit or in an attached affidavit. In accordance with the Task

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Force recommendations, HF 591 incorporates by reference the applicable UCCJEA requirements.

II. Minor Guardianship Proceedings: Notice

HF 591 contains the following provisions regarding notice:

- *The filing of a petition shall be served upon the minor who is the subject of the petition in the manner of an original notice in accordance with the rules of civil procedure governing such notice. Notice to the attorney representing the minor, if any, is notice to the minor.* [§ 232D.302(1)]
- *Notice shall be served upon the minor's known parents listed in the petition in accordance with the rules of civil procedure.* [§ 232D.302(2)]
- *Notice shall be served upon other known persons listed in the petition in the manner prescribed by the court, which may be notice by mail. Failure of such persons to receive actual notice does not constitute a jurisdictional defect precluding the appointment of a guardian by the court.* [§ 232D.302(3)]
- *Notice of the filing of a petition given to a person under subsection 2 or 3 shall include a statement that the person may register to receive notice of the hearing on the petition and other proceedings and the manner of such registration.* [§ 232D.302(4)]

III. Limited Minor Guardianship

1. HF 591 provides that the petition “shall state whether a limited guardianship is appropriate.” [§ 232D.301(4)]
2. HF 591 defines a limited guardianship as “*a guardianship that grants the guardians less than all the powers available under this chapter [§ 232D] or otherwise restricts the power of the guardian.*” [§ 232D.102(8)]

IV. Appointment of Temporary Guardian on Emergency Basis

1. HF 591 authorizes the court to appoint a temporary guardian on an emergency basis without the due process otherwise required for appointment of a guardian, but spells out the requirements for such a temporary emergency guardianship. [§ 232D.309]
2. HF 591 provides that the court may issue an ex parte order appointing a temporary guardian only to prevent immediate or irreparable harm to the respondent, only when there is not sufficient time to file a petition and hold a hearing that otherwise would be required, and if there is reason to believe that the basis for appointment of guardian exists in accordance with section 232D.301 pertaining to the filing of a petition for a minor guardianship. [§ 232D.309 (3)]

3. While the court may establish a temporary emergency guardianship without due process that would otherwise be required, HF 591 requires that notice of the appointment of a guardian must be given to the person required to be listed in a petition pursuant to section 232D.301. [§ 232D.309(4)]
4. The parents of the minor and other persons legally responsible for the custody or care of the minor may file a written request for a hearing which must be held on an expedited basis no later than seven days after the filing of the written request. [§ 232D.309(5)]
5. Under HF 591 the powers granted to the temporary guardian in the court's ex parte order must be limited to those necessary to address the emergency situation that necessitate the guardian's appointment, and the court's order expires within thirty days after the order is issued. [§§ 232D.309(6) & (7)].

V. Appointment for guardians of a minor on a standby basis

1. HF 591 authorizes the court to appoint a guardian for a minor on a standby basis. This authorization is designed for situations where a parent or some other person with physical or legal custody of a child anticipates that they be unable to care for a child because of the occurrence of problems such as health problems or other specified events.
2. Any person having physical and legal custody of a minor may file a petition for appointment of a minor on a standby basis. [§ 232DD.310(1)] The petition must contain not only all the that information required in a petition under section 232D.301 but also a statement that the petitioner understands the result of guardian being appointed for a minor. [§ 232D.310(1)]
3. HF 591 provides that the court shall appoint the person(s) nominated by the petition unless the person(s) "*are not qualified or for some other good cause.*" [§ 232D.310(2)]
4. HF 591 provides that a standby petition may be revoked by the petitioner at any time before the appointment of a guardian by the court if the petitioner is of "sound mind" at the time of revocation. [§ 232D.310(4)]
5. HF 591 provides that a standby petition may be deposited with the clerk of the court in which the minor resides or with any person nominated by the petitioner to serve as guardian. [§ 232D.310(3)]
6. HF 591 contains specific procedures for the filing of the petition with the court upon the occurrence of the event or condition provided for in the petition materializes. [§ 232D.310(5)]

7. The appointment of a guardian for a minor is only effective until the minor reaches the age of majority. [§ 232D.310(1)]

VI. Standby Appointment of Guardian of Minor Approaching Majority

1. HF 591 provides that any adult with an interest in the welfare of a minor who is at least seventeen years and six months of age may file a verified petition for appointment of a guardian pursuant to § 633.553 (which states the basis for appointment of a conservator for an adult). It should be noted that petition must be filed in the **probate court** and that the court must find that the basis for opening a **guardianship for an adult** is satisfied in order to appoint a guardian on a standby basis. The petition, if granted, then takes effect on the minor's eighteenth birthday.

VII. Hearing Requirements

A. Current law and practice

1. The Iowa Guardianship and Conservatorship Study, involving the review of multiple case files, discovered many files in which there was neither a record of a hearing nor a record of a waiver of the hearing by the respondent.¹ The judicial branch has acknowledged that in 2018 “[d]istrict courts currently hold a hearing on the initial guardianship petition in 25.0% of adult guardianship cases,”² and there is no reason to believe that the percentage of hearings in minor conservatorship cases is higher. Moreover, the Task Force Report indicated that there were concerns about problematic hearing practices.³
2. While the Probate Code § 633.569 currently provides that the civil rules of procedure apply to hearings on petitions for conservatorships, the Probate Code does not set forth specific statutory requirements with respect to the conduct of such hearings.

B. HF 591 hearing requirements

1. In contrast to the existing Probate Code, HF 591 delineates specific requirements for hearings on minor guardianship petitions.
2. HF 591 provides that the court shall set a hearing on the petition not less than 20 days after the notice is served unless the court finds there is good cause shown to shorten the time frame. [§ 232D.306(1)].
3. HF 591 addresses the minor's attendance and participation in the hearing. Under HF 591, a minor is entitled to attend the hearing on the petition if the minor is of “*an age appropriate*” to do so and states as a presumption that a minor fourteen years of age or older is of such an appropriate age. [§ 232D.306(2)]. HF 591 further provides that the court shall not exclude a

minor entitled to attend the hearing “*unless there is good cause shown for excluding the minor from attendance.*” [§ 232D.306(3)].

Endnotes

¹ See Iowa Supreme Court’s Guardianship and Conservatorship Reform Task Force, *Reforming Iowa’s Guardianship and Conservatorship System* (August 2017) available at https://www.iowacourts.gov/static/media/cms/Final_Task_Force_Report_5A992F4D4AF86.pdf, at 26-27.

² Legislative Services Agency, Fiscal Services Division, Fiscal Note, HF 610. Guardianship and Conservatorship, Adult (LSB 1065 HV) (Mar. 11, 2019).

³ TASK FORCE REPORT, *supra* note 1, at 27.

SESSION FOUR

**Appointment and Role of Counsel and
Court Visitor in Minor Guardianship
Proceedings**

COUNSEL FOR MINOR RESPONDENT, COUNSEL FOR PARENTS AND COURT VISITOR (Guardian ad Litem)*

Presentation Outline

Josephine Gittler, Jim Hennessey,** Evelyn Ocheltree,** Ellen
Ramsey-Kacena,**** and Colin Witt*******

HF 591 contains new provisions relating to the appointment and role of counsel for the minor respondent in guardianship, and counsel for the respondent's parents in guardianship proceedings. HF 591 also contains new provisions relating to the appointment and role of guardian ad litem including substituting the term "court visitor" for the term "guardian ad litem."

I. Existing Law and Practice

1. The current Probate Code which governs minor guardianships as well as adult guardianship and adult and minor conservatorship proceedings. It provides that if the proposed ward is a minor "the court shall determine whether, under the circumstances of the case, the proposed ward is entitled to representation," and, "[i]f the court determines that the proposed ward is entitled to representation, the court shall appoint an attorney to represent the proposed ward." [§ 633.561(1)(b)].

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***** Judge Colin Witt is an Associate District Court Judge in Polk County. He has been recognized for his work as a juvenile court judge and his efforts to improve the juvenile justice system. He was a member of the Iowa Supreme Court's Guardianship and Conservatorship Reform Task Force.

2. Under the current Probate Code, it is common for an attorney to be appointed as a guardian ad litem in a proceeding for appointment of a guardian or conservator. However, the role of the attorney acting as counsel for the respondent is separate and distinct from that of an attorney acting as guardian ad litem. As the Iowa Supreme Court has stated, the attorney acting as the counsel for respondent “advances *the wishes of the ward*,” and the attorney acting as a guardian ad litem “advocates for *the best interests of the ward*.”¹ A conflict of interest can be created when a court-appointed attorney plays both the role of counsel and the role of guardian ad litem.
3. The Iowa Guardianship and Conservatorship Study’s review of over 4,000 guardianship and conservatorship case files revealed that it was often unclear whether a court-appointed attorney had acted as the counsel for the respondent, acted as a guardian ad litem or played a combination of these roles.² Significant confusion appears to exist as to when counsel for a respondent should be appointed, when a guardian ad litem should be appointed, and the distinction between their respective roles.³

II. Appointment and Role of Counsel

A. For respondent minor

1. HF 591 provides that upon the filing of a petition for the appointment of a guardian for a minor the court shall appoint an attorney for a minor, “*if the court determines that the interests of the minor are or may be inadequately represented.*” [§ 232D.303(1)]
2. HF 591 expressly clarifies the role of counsel for the minor. It states that the attorney representing a minor shall “*advocate for the wishes of the respondent to the extent those wishes are reasonably ascertainable and advocate for the best interests of the minor if the wishes of the minor are not reasonably ascertainable.*” [§ 232D.303(2)]

B. For minor’s parent

1. HF 591 provides that upon the filing of a petition for the appointment of a guardian for a minor, the court shall appoint an attorney for a parent “*identified in the petition*” *if all of the following are true:*
 1. *The parent objects to the appointment of a guardian for a minor.*
 2. *The parent requests appointment of an attorney and the court determines that the parent is unable to pay for an attorney in accordance with section 232D.505.*” [§ 232D.305]

III. Appointment and Role of Court Visitor (Formerly Known as Guardian Ad Litem)

A. Use of the term court visitor

1. As it was pointed out, HF 591 substitutes the term “court visitor” for the term “guardian ad litem.”⁴ This was done because lay people tend to confuse the terms “guardian ad litem” and “guardian.” This also was done because the term “guardian ad litem” is now used not only in connection with guardianship and conservatorship proceedings but also in other types of proceedings, with the role of the guardian ad litem varying depending on the type of proceeding.⁵

B. Appointment of a court visitor

1. HF 591, unlike the current Probate Code, expressly provides that the court “*may*” appoint a court visitor. [§ 232D.305 (1)] The appointment of a court visitor is not mandatory; rather, the court has discretion as to whether to appoint a court visitor. The purpose of the court visitor provision is to ensure that if needed and appropriate, the court has an independent source of information about whether to appoint a guardian or conservator, whom the court should appoint as guardian or conservator, and what authority and powers the court should grant the guardian or conservator.
2. HF 591 does not designate specific categories of persons who may be appointed as court visitor or require that persons appointed have designated qualifications which gives the court discretion as to whom to appoint as a court visitor. Thus, the court may appoint persons with a variety of qualifications and backgrounds, depending upon the type of investigation needed by the court.

In some cases, this may be an attorney, but in other cases, this may be a person with a background in a discipline other than law, such as social work, psychology, or the health sciences. It has been suggested that a program should be developed for volunteers to serve as court visitors modeled on the Court Appointed Special Advocates for Children (CASA) program involving volunteers serving as advocates for abused and neglected children in the juvenile court.

3. As it has been pointed out, attorneys traditionally have been appointed to serve as guardians ad litem in guardianship and conservator proceedings in probate court. However, HF 591 prohibits the same person serving both as an attorney representing the minor and a court visitor because the court visitor and the attorney representing the minor respondent have different roles that may conflict. [§ 232D.305(2)]

C. Duties of court visitor

1. HF 591 spells out in detail the duties of the court visitor. It provides the following:
 3. *Unless otherwise enlarged or circumscribed by the court, the duties of a court visitor with respect to the minor shall include all of the following:*
 - a. *Conducting, if the minor's age is appropriate, an initial in-person interview with the minor.*
 - b. *Explaining to the minor the substance of the petition, the purpose and effect of the guardianship proceeding, the rights of the minor at the hearing, and the general powers and duties of a guardian.*
 - c. *Determining, if the minor's age is appropriate, the views of the minor regarding the proposed guardian, the proposed guardian's powers and duties, and the scope and duration of the proposed guardianship.*
 - d. *Interviewing the parent or parents and any other person with legal responsibility for the custody, care, or both, of the minor.*
 - e. *Interviewing the petitioner, and if the petitioner is not the proposed guardian, interviewing the proposed guardian.*
 - f. *Visiting, to the extent feasible, the residence where it is reasonably believed that the minor will live if the guardian is appointed.*
 - g. *Making any other investigation the court directs including but not limited to interviewing any persons providing medical, mental health, educational, social, and other services to minor.*

[§ 232D.305(3)]
2. HF 591 requires the court to submit a written report to the court containing the following:
 - a. *A recommendation regarding the appropriateness of a guardianship for the minor.*
 - b. *A statement of the qualifications of the guardian together with a statement of whether the minor has expressed agreement with the appointment of the proposed guardian.*
 - c. *Any other matters the court visitor deems relevant to the petition for guardianship or conservatorship and the best interests of the minor.*
 - d. *Any other matters the court directs.* [§ 232D.305 (4)]
3. HF 591 further provides that: the court visitor's report must be made part of the court record "*unless otherwise ordered by the court.*"

IV. Payment of Expenses

HF 591 contains provisions pertaining to payment of the costs of the legal expenses of the minor, parent expenses for court visitors, filing fees and other court costs. It provides: “*If the court finds a minor’s parents to be indigent, or if the minor has no parent, costs shall be assessed against the county in which the proceeding is pending.*” [§ 232D.505(2)]

Endnotes

¹ *Estate of Leonard ex rel. Palmer v. Swift*, 656 N.W.2d 132,142 (Iowa 2003). See *In re Fagen*, 909 N.W.2d 443 (table)(Iowa Ct. App. 2017).

² IOWA GUARDIANSHIP & CONSERVATORSHIP REFORM TASK FORCE, REFORMING IOWA’S GUARDIANSHIP AND CONSERVATORSHIP SYSTEM: FINAL REPORT (2017) (hereinafter, “TASK FORCE REPORT,”) at 27.

³ *Id.*; see, e.g., *In re Fagen*, 909N.W.2d 443 (Iowa Ct. Appeals 2017).

⁴ *Id.*

⁵ *Id.*

SESSION FOUR:
APPENDIX A
American Bar Association Model Act

- American Bar Association Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings

1 **ABA Model Act Governing the Representation of Children in**
2 **Abuse, Neglect, and Dependency Proceedings**¹

3
4 **SECTION 1. DEFINITIONS. In this [act]:**

5 **(a) “Abuse and neglect proceeding” means a court proceeding under [cite state**
6 **statute] for protection of a child from abuse or neglect or a court proceeding under [cite**
7 **state statute] in which termination of parental rights is at issue.**¹ **These proceedings**
8 **include:**

9 **(1) abuse;**

10 **(2) neglect;**

11 **(3) dependency;**

12 **(4) child in voluntary placement in state care;**

13 **(5) termination of parental rights;**

14 **(6) permanency hearings; and**

15 **(7) post termination of parental rights through adoption or other**
16 **permanency proceeding.**

17 **(b) A child is:**

18 **(1) an individual under the age of 18; or**

19 **(2) an individual under the age of 22 who remains under the jurisdiction of**
20 **the juvenile court.**

21 **(c) “Child’s lawyer” (or “lawyer for children”) means a lawyer who provides legal**
22 **services for a child and who owes the same duties, including undivided loyalty,**
23 **confidentiality and competent representation, to the child as is due an adult client, subject**
24 **to Section 7 of this Act.**²

25 **(d) “Best interest advocate” means an individual, not functioning or intended to**
26 **function as the child’s lawyer, appointed by the court to assist the court in determining the**
27 **best interests of the child.**

28 **(e) “Developmental level” is a measure of the ability to communicate and**
29 **understand others, taking into account such factors as age, mental capacity, level of**
30 **education, cultural background, and degree of language acquisition.**³

31
32 *Legislative Note: States should implement a mechanism to bring children into court*
33 *when they have been voluntarily placed into state care, if such procedures do not already exist.*

¹ This Model Act was drafted under the auspices of the ABA Section of Litigation Children’s Rights Litigation Committee with the assistance of the Bar-Youth Empowerment Program of the ABA Center on Children and the Law and First Star. The Act incorporates some language from the provisions of the NCCUSL Representation of Children in Abuse, Neglect and Custody Proceedings Act.

34 *Court action should be triggered after a specific number of days in voluntary care (not fewer*
35 *than 30 days, but not more than 90 days).*

36 *Commentary:*

37

38 Under the Act, a “child’s lawyer” is a client-directed lawyer in a traditional attorney-client
39 relationship with the child. A “best interests advocate” does not function as the child’s lawyer
40 and is not bound by the child’s expressed wishes in determining what to advocate, although the
41 best interests advocate should consider those wishes.

42

43 The best interest advocate may be a lawyer or a lay person, such as a court-appointed special
44 advocate, or CASA. The best interests advocate assists the court in determining the best interests
45 of a child and will therefore perform many of the functions formerly attributable to guardians *ad*
46 *litem*, but best interests advocates are not to function as the child’s lawyer. A lawyer appointed
47 as a best interest advocate shall function as otherwise set forth in state law.

48

49

50 **SECTION 2. APPLICABILITY AND RELATIONSHIP TO OTHER LAW.**

51 **(a) This [act] applies to an abuse and neglect proceeding pending or commenced on**
52 **or after [the effective date of this act].**

53 **(b) The child in these proceedings is a party.**

54

55 **SECTION 3. APPOINTMENT IN ABUSE OR NEGLECT PROCEEDING.**

56 **(a) The court shall appoint a child’s lawyer for each child who is the subject of a**
57 **petition in an abuse and neglect proceeding. The appointment of a child’s lawyer must be**
58 **made as soon as practicable to ensure effective representation of the child and, in any**
59 **event, before the first court hearing.**

60 **(b) In addition to the appointment of a child’s lawyer, the court may appoint a best**
61 **interest advocate to assist the court in determining the child’s best interests.**

62 **(c) The court may appoint one child’s lawyer to represent siblings if there is no**
63 **conflict of interest as defined under the applicable rules of professional conduct.⁴ The**
64 **court may appoint additional counsel to represent individual siblings at a child’s lawyer’s**
65 **request due to a conflict of interest between or among the siblings.**

66 **(d) The applicable rules of professional conduct and any law governing the**
67 **obligations of lawyers to their clients shall apply to such appointed lawyers for children.**

68 **(e) The appointed child’s lawyer shall represent the child at all stages of the**
69 **proceedings, unless otherwise discharged by order of court.⁵**

70 **(f) A child’s right to counsel may not be waived at any court proceeding**

71

72 *Commentary:*

73

74 This act recognizes the right of every child to have quality legal representation and a voice in any
75 abuse, neglect, dependency, or termination of parental rights proceeding, regardless of
76 developmental level. Nothing in this Act precludes a child from retaining a lawyer. States
77 should provide a lawyer to a child who has been placed into state custody through a voluntary
78 placement arrangement. The fact that the child is in the state’s custody through the parent’s
79 voluntary decision should not diminish the child’s entitlement to a lawyer.

80
81 A best interest advocate does not replace the appointment of a lawyer for the child. A best
82 interest advocate serves to provide guidance to the court with respect to the child’s best interest
83 and does not establish a lawyer-client relationship with the child. Nothing in this Act restricts a
84 court’s ability to appoint a best interest advocate in any proceeding. Because this Act deals
85 specifically with lawyers for children, it will not further address the role of the best interest
86 advocate.

87
88 The child is entitled to conflict-free representation and the applicable rules of professional
89 conduct must be applied in the same manner as they would be applied for lawyers for adults. A
90 lawyer representing siblings should maintain the same lawyer-client relationship with respect to
91 each child.

92

93 **SECTION 4. QUALIFICATIONS OF THE CHILD’S LAWYER.**

94 **(a) The court shall appoint as the child’s lawyer an individual who is qualified**
95 **through training and experience, according to standards established by [insert reference to**
96 **source of standards].**

97 **(b) Lawyers for children shall receive initial training and annual continuing legal**
98 **education that is specific to child welfare law. Lawyers for children shall be familiar with**
99 **all relevant federal, state, and local applicable laws.**

100 **(c) Lawyers for children shall not be appointed to new cases when their present**
101 **caseload exceeds more than a reasonable number given the jurisdiction, the percent of the**
102 **lawyer’s practice spent on abuse and neglect cases, the complexity of the case, and other**
103 **relevant factors.**

104

105 *Legislative Note: States that adopt training standards and standards of practice for*
106 *children’s lawyers should include the bracketed portion of this section and insert a reference to*
107 *the state laws, court rules, or administrative guidelines containing those standards.⁶*

108 *Jurisdictions are urged to specify a case limit at the time of passage of this Act.*

109

110 *Commentary:*

111

112 States should establish minimum training requirements for lawyers who represent children. Such
113 training should focus on applicable law, skills needed to develop a meaningful lawyer-client
114 relationship with child-clients, techniques to assess capacity in children, as well as the many
115 interdisciplinary issues that arise in child welfare cases.

116

117 The lawyer needs to spend enough time on each abuse and neglect case to establish a lawyer-
118 client relationship and zealously advocate for the client. A lawyer's caseload must allow realistic
119 performance of functions assigned to the lawyer under the [Act]. The amount of time and the
120 number of children a lawyer can represent effectively will differ based on a number of factors,
121 including type of case, the demands of the jurisdiction, whether the lawyer is affiliated with a
122 children's law office, whether the lawyer is assisted by investigators or other child welfare
123 professionals, and the percent of the lawyer's practice spent on abuse and neglect cases. States
124 are encouraged to conduct caseload analyses to determine guidelines for lawyers representing
125 children in abuse and neglect cases.

126

127 **SECTION 5. ORDER OF APPOINTMENT.**

128 **(a) Subject to subsection (b), an order of appointment of a child's lawyer shall be in**
129 **writing and on the record, identify the lawyer who will act in that capacity, and clearly set**
130 **forth the terms of the appointment, including the reasons for the appointment, rights of**
131 **access as provided under Section 8, and applicable terms of compensation as provided**
132 **under Section 12.**

133 **(b) In an order of appointment issued under subsection (a), the court may identify a**
134 **private organization, law school clinical program or governmental program through which**
135 **a child's lawyer will be provided. The organization or program shall designate the lawyer**
136 **who will act in that capacity and notify the parties and the court of the name of the**
137 **assigned lawyer as soon as practicable.⁷ Additionally, the organization or program shall**
138 **notify the parties and the court of any changes in the individual assignment.**

139

140 **SECTION 6. DURATION OF APPOINTMENT.**

141 **Unless otherwise provided by a court order, an appointment of a child's lawyer in**
142 **an abuse and neglect proceeding continues in effect until the lawyer is discharged by court**
143 **order or the case is dismissed.⁸ The appointment includes all stages thereof, from removal**
144 **from the home or initial appointment through all available appellate proceedings. The**
145 **lawyer may, with the permission of the court, arrange for supplemental or separate counsel**
146 **to handle proceedings at an appellate stage.⁹**

147 *Commentary:*

148 As long as the child remains in state custody, even if the state custody is long-term or permanent,
149 the child should retain the right to counsel so that the child's lawyer can deal with the issues that
150 may arise while the child is in custody but the case is not before the court.

151

152 **SECTION 7. DUTIES OF CHILD'S LAWYER AND SCOPE OF**
153 **REPRESENTATION.**

154 **(a) A child's lawyer shall participate in any proceeding concerning the child with**
155 **the same rights and obligations as any other lawyer for a party to the proceeding.**

- 156 **(b) The duties of a child’s lawyer include, but are not limited to:**
- 157 **(1) taking all steps reasonably necessary to represent the client in the**
158 **proceeding, including but not limited to: interviewing and counseling the client, preparing**
159 **a case theory and strategy, preparing for and participating in negotiations and hearings,**
160 **drafting and submitting motions, memoranda and orders, and such other steps as**
161 **established by the applicable standards of practice for lawyers acting on behalf of children**
162 **in this jurisdiction;**
- 163 **(2) reviewing and accepting or declining, after consultation with the client,**
164 **any proposed stipulation for an order affecting the child and explaining to the court the**
165 **basis for any opposition;**
- 166 **(3) taking action the lawyer considers appropriate to expedite the proceeding**
167 **and the resolution of contested issues;**
- 168 **(4) where appropriate, after consultation with the client, discussing the**
169 **possibility of settlement or the use of alternative forms of dispute resolution and**
170 **participating in such processes to the extent permitted under the law of this state;¹⁰**
- 171 **(5) meeting with the child prior to each hearing and for at least one in-person**
172 **meeting every quarter;**
- 173 **(6) where appropriate and consistent with both confidentiality and the child’s**
174 **legal interests, consulting with the best interests advocate;**
- 175 **(7) prior to every hearing, investigating and taking necessary legal action**
176 **regarding the child’s medical, mental health, social, education, and overall well-being;**
- 177 **(8) visiting the home, residence, or any prospective residence of the child,**
178 **including each time the placement is changed;**
- 179 **(9) seeking court orders or taking any other necessary steps in accordance**
180 **with the child’s direction to ensure that the child’s health, mental health, educational,**
181 **developmental, cultural and placement needs are met; and**
- 182 **(10) representing the child in all proceedings affecting the issues before the**
183 **court, including hearings on appeal or referring the child’s case to the appropriate**
184 **appellate counsel as provided for by/ mandated by [inset local rule/law etc].**

185
186 *Commentary:*
187
188 The national standards mentioned in (b)(1) include the *ABA Standards of Practice for Lawyers*
189 *who Represent Children in Abuse and Neglect Cases.*

190
191 In order to comply with the duties outlined in this section, lawyers must have caseloads that
192 allow realistic performance of these functions.

193
194 The child’s lawyer may request authority from the court to pursue issues on behalf of the child,
195 administratively or judicially, even if those issues do not specifically arise from the court

196 appointment.¹¹ Such ancillary matters include special education, school discipline hearings,
197 mental health treatment, delinquency or criminal issues, status offender matters, guardianship,
198 adoption, paternity, probate, immigration matters, medical care coverage, SSI eligibility, youth
199 transitioning out of care issues, postsecondary education opportunity qualification, and tort
200 actions for injury, as appropriate.¹² The lawyer should make every effort to ensure that the child
201 is represented by legal counsel in all ancillary legal proceedings, either personally, when the
202 lawyer is competent to do so, or through referral or collaboration. Having one lawyer represent
203 the child across multiple proceedings is valuable because the lawyer is better able to understand
204 and fully appreciate the various issues as they arise and how those issues may affect other
205 proceedings.

206
207 **(c) When the child is capable of directing the representation by expressing his or her**
208 **objectives, the child’s lawyer shall maintain a normal client-lawyer relationship with the**
209 **child in accordance with the rules of professional conduct. In a developmentally**
210 **appropriate manner, the lawyer shall elicit the child’s wishes and advise the child as to**
211 **options.**

212
213 *Commentary:*

214
215 The lawyer-client relationship for the child’s lawyer is fundamentally indistinguishable from the
216 lawyer-client relationship in any other situation and includes duties of client direction,¹³
217 confidentiality,¹⁴ diligence,¹⁵ competence,¹⁶ loyalty,¹⁷ communication,¹⁸ and the duty to provide
218 independent advice.¹⁹ Client direction requires the lawyer to abide by the client’s decision about
219 the objectives of the representation. In order for the child to have an independent voice in abuse
220 and neglect proceedings, the lawyer shall advocate for the child’s counseled and expressed
221 wishes.²⁰ Moreover, providing the child with an independent and client-directed lawyer ensures
222 that the child’s legal rights and interests are adequately protected.

223
224 The child’s lawyer needs to explain his or her role to the client and, if applicable, explain in what
225 strictly limited circumstances the lawyer cannot advocate for the client’s expressed wishes and in
226 what circumstances the lawyer may be required to reveal confidential information. This
227 explanation should occur during the first meeting so the client understands the terms of the
228 relationship.

229
230 In addition to explaining the role of the child’s lawyer, the lawyer should explain the legal
231 process to the child in a developmentally appropriate manner as required by Rule 1.4 of the ABA
232 Model Rules of Professional Conduct or its equivalent.²¹ This explanation can and will change
233 based on age, cognitive ability, and emotional maturity of the child. The lawyer needs to take the
234 time to explain thoroughly and in a way that allows and encourages the child to ask questions and
235 that ensures the child’s understanding. The lawyer should also facilitate the child’s participation
236 in the proceeding (See Section 9).

237
238 In order to determine the objectives of the representation of the child, the child’s lawyer should
239 develop a relationship with the client. The lawyer should achieve a thorough knowledge of the

240 child's circumstances and needs. The lawyer should visit the child in the child's home, school,
241 or other appropriate place where the child is comfortable. The lawyer should observe the child's
242 interactions with parents, foster parents, and other caregivers. The lawyer should maintain
243 regular and ongoing contact with the child throughout the case.

244
245 The child's lawyer helps to make the child's wishes and voice heard but is not merely the child's
246 mouth piece. As with any lawyer, a child's lawyer is both an advocate and a counselor for the
247 client. The lawyer should, without unduly influencing the child, advise the child by providing
248 options and information to assist the child in making decisions. The lawyer should explain the
249 practical effects of taking various positions, the likelihood that a court will accept particular
250 arguments, and the impact of such decisions on the child, other family members, and future legal
251 proceedings.²² The lawyer should investigate the relevant facts, interview persons with
252 significant knowledge of the child's history, review relevant records, and work with others in the
253 case.

254

255 **(d) The child's lawyer shall determine whether the child has diminished capacity**
256 **pursuant to the Model Rules of Professional Conduct. {STATES MAY CONSIDER**
257 **INSERTING THE FOLLOWING TWO SENTENCES:} [Under this subsection a child**
258 **shall be presumed to be capable of directing representation at the age of _____. The**
259 **presumption of diminished capacity is rebutted if, in the sole discretion of the lawyer, the**
260 **child is deemed capable of directing representation.] In making the determination, the**
261 **lawyer should consult the child and may consult other individuals or entities that can**
262 **provide the child's lawyer with the information and assistance necessary to determine the**
263 **child's ability to direct the representation.**

264 **When a child client has diminished capacity, the child's lawyer shall make a good**
265 **faith effort to determine the child's needs and wishes. The lawyer shall, as far as**
266 **reasonably possible, maintain a normal client-lawyer relationship with the client and fulfill**
267 **the duties as outlined in Section 7(b) of this Act. During a temporary period or on a**
268 **particular issue where a normal client-lawyer relationship is not reasonably possible to**
269 **maintain, the child's lawyer shall make a substituted judgment determination. A**
270 **substituted judgment determination includes determining what the child would decide if he**
271 **or she were capable of making an adequately considered decision, and representing the**
272 **child in accordance with that determination. The lawyer should take direction from the**
273 **child as the child develops the capacity to direct the lawyer. The lawyer shall advise the**
274 **court of the determination of capacity and any subsequent change in that determination.**
275

276

277

277 *Commentary:*

278

279 A determination of incapacity may be incremental and issue-specific, thus enabling the child's
280 lawyer to continue to function as a client-directed lawyer as to major questions in the proceeding.
281 Determination of diminished capacity requires ongoing re-assessment. A child may be able to
282 direct the lawyer with respect to a particular issue at one time but not another. Similarly, a child

283 may be able to determine some positions in the case, but not others. For guidance in assessing
284 diminished capacity, see the commentary to Section (e). The lawyer shall advise the court of the
285 determination of capacity and any subsequent change in that determination.

286
287 In making a substituted judgment determination, the child’s lawyer may wish to seek guidance
288 from appropriate professionals and others with knowledge of the child, including the advice of an
289 expert. A substituted judgment determination is not the same as determining the child’s best
290 interests; determination of a child’s best interests remains solely the province of the court.
291 Rather, it involves determining what the child would decide if he or she were able to make an
292 adequately considered decision.²³ A lawyer should determine the child’s position based on
293 objective facts and information, not personal beliefs. To assess the needs and interests of *this*
294 child, the lawyer should observe the child in his or her environment, and consult with experts.²⁴

295
296 In formulating a substituted judgment position, the child’s lawyer’s advocacy should be child-
297 centered, research-informed, permanency-driven, and holistic.²⁵ The child’s needs and interests,
298 not the adults’ or professionals’ interests, must be the center of all advocacy. For example,
299 lawyers representing very young children must truly *see* the world through the child’s eyes and
300 formulate their approach from that perspective, gathering information and gaining insight into the
301 child’s experiences to inform advocacy related to placement, services, treatment and
302 permanency.²⁶ The child’s lawyer should be proactive and seek out opportunities to observe and
303 interact with the very young child client. It is also essential that lawyers for very young children
304 have a firm working knowledge of child development and special entitlements for children under
305 age five.²⁷

306
307 When determining a substituted judgment position, the lawyer shall take into consideration the
308 child’s legal interests based on objective criteria as set forth in the laws applicable to the
309 proceeding, the goal of expeditious resolution of the case and the use of the least restrictive or
310 detrimental alternatives available. The child’s lawyer should seek to speed the legal process,
311 while also maintaining the child’s critical relationships.

312
313 The child’s lawyer should not confuse inability to express a preference with unwillingness to
314 express a preference. If an otherwise competent child chooses not to express a preference on a
315 particular matter, the child’s lawyer should determine if the child wishes the lawyer to take no
316 position in the proceeding, or if the child wishes the lawyer or someone else to make the decision
317 for him or her. In either case, the lawyer is bound to follow the client’s direction. A child may be
318 able to direct the lawyer with respect to a particular issue at one time but not at another. A child
319 may be able to determine some positions in the case but not others.

320

321 **(e) When the child’s lawyer reasonably believes that the client has diminished**
322 **capacity, is at risk of substantial physical, financial or other harm unless action is taken,**
323 **and cannot adequately act in the client's own interest, the lawyer may take reasonably**
324 **necessary protective action, including consulting with individuals or entities that have the**
325 **ability to take action to protect the client and, in appropriate cases, seeking the**

326 **appointment of a best interest advocate or investigator to make an independent**
327 **recommendation to the court with respect to the best interests of the child.**

328 **When taking protective action, the lawyer is impliedly authorized under Model Rule**
329 **1.6(a) to reveal information about the child, but only to the extent reasonably necessary to**
330 **protect the child’s interests.²⁸ Information relating to the representation of a child with**
331 **diminished capacity is protected by Rule 1.6 and Rule 1.14 of the ABA Model Rules of**
332 **Professional Conduct. [OR ENTER STATE RULE CITATION]**

333

334 *Commentary:*

335

336 Consistent with Rule 1.14, ABA Model Rules of Professional Conduct (2004), the child’s lawyer
337 should determine whether the child has sufficient maturity to understand and form an attorney-
338 client relationship and whether the child is capable of making reasoned judgments and engaging
339 in meaningful communication. It is the responsibility of the child’s lawyer to determine whether
340 the child suffers from diminished capacity. This decision shall be made after sufficient contact
341 and regular communication with the client. Determination about capacity should be grounded in
342 insights from child development science and should focus on the child’s decision-making process
343 rather than the child’s choices themselves. Lawyers should be careful not to conclude that the
344 child suffers diminished capacity from a client’s insistence upon a course of action that the
345 lawyer considers unwise or at variance with lawyer’s view.²⁹

346

347 When determining the child’s capacity the lawyer should elicit the child’s expressed wishes in a
348 developmentally appropriate manner. The lawyer should not expect the child to convey
349 information in the same way as an adult client. A child’s age is not determinative of diminished
350 capacity. For example, even very young children are regarded as having opinions that are
351 entitled to weight in legal proceedings concerning their custody.³⁰

352

353 Criteria for determining diminished capacity include the child’s developmental stage, cognitive
354 ability, emotional and mental development, ability to communicate, ability to understand
355 consequences, consistency of the child’s decisions, strength of wishes and the opinions of others,
356 including social workers, therapists, teachers, family members or a hired expert.³¹ To assist in
357 the assessment, the lawyer should ask questions in developmentally appropriate language to
358 determine whether the child understands the nature and purpose of the proceeding and the risks
359 and benefits of a desired position.³² A child may have the ability to make certain decisions, but
360 not others. A child with diminished capacity often has the ability to understand, deliberate upon,
361 and reach conclusions about matters affecting the child’s own well-being such as sibling visits,
362 kinship visits and school choice and should continue to direct counsel in those areas in which he
363 or she does have capacity. The lawyer should continue to assess the child’s capacity as it may
364 change over time.

365

366 When the lawyer determines that the child has diminished capacity, the child is at risk of
367 substantial harm, the child cannot adequately act in his or her own interest, and the use of the
368 lawyer’s counseling role is unsuccessful, the lawyer may take protective action. Substantial harm
369 includes physical, sexual and psychological harm. Protective action includes consultation with

370 family members, or professionals who work with the child. Lawyers may also utilize a period of
371 reconsideration to allow for an improvement or clarification of circumstances or to allow for an
372 improvement in the child’s capacity.³³ This rule reminds lawyers, among other things, that they
373 should ultimately be guided by the wishes and values of the child to the extent they can be
374 determined.³⁴

375
376 “Information relating to the representation is protected by Model Rule 1.6. Therefore, unless
377 authorized to do so, the lawyer may not disclose such information. When taking protective
378 action pursuant to this section, the lawyer is impliedly authorized to make necessary disclosures,
379 even when the client directs the lawyer to the contrary.”³⁵ However the lawyer should make
380 every effort to avoid disclosures if at all possible. Where disclosures are unavoidable, the lawyer
381 must limit the disclosures as much as possible. Prior to any consultation, the lawyer should
382 consider the impact on the client’s position, and whether the individual is a party who might use
383 the information to further his or her own interests. “At the very least, the lawyer should
384 determine whether it is likely that the person or entity consulted with will act adversely to the
385 client’s interests before discussing matters related to the client.”³⁶ If any disclosure by the lawyer
386 will have a negative impact on the client’s case or the lawyer-client relationship, the lawyer must
387 consider whether representation can continue and whether the lawyer-client relationship can be
388 re-established. “The lawyer’s position in such cases is an unavoidably difficult one.”³⁷

389
390 A request made for the appointment of a best interest advocate to make an independent
391 recommendation to the court with respect to the best interests of the child should be reserved for
392 extreme cases, i.e. where the child is at risk of substantial physical harm, cannot act in his or her
393 own interest and all protective action remedies have been exhausted. Requesting the judge to
394 appoint a best interest advocate may undermine the relationship the lawyer has established with
395 the child. It also potentially compromises confidential information the child may have revealed to
396 the lawyer. The lawyer cannot ever become the best interest advocate, in part due to confidential
397 information that the lawyer receives in the course of representation. Nothing in this section
398 restricts a court from independently appointing a best interest advocate when it deems the
399 appointment appropriate.

400

401 **SECTION 8. ACCESS TO CHILD AND INFORMATION RELATING TO THE** 402 **CHILD.**

403 **(a) Subject to subsections (b) and (c), when the court appoints the child’s lawyer, it**
404 **shall issue an order, with notice to all parties, authorizing the child’s lawyer to have access**
405 **to:**

406 **(1) the child; and**

407 **(2) confidential information regarding the child, including the child’s**
408 **educational, medical, and mental health records, social services agency files, court records**
409 **including court files involving allegations of abuse or neglect of the child, any delinquency**
410 **records involving the child, and other information relevant to the issues in the proceeding,**
411 **and reports that form the basis of any recommendation made to the court.**

412 (b) A child’s record that is privileged or confidential under law other than this [act]
413 may be released to a child’s lawyer appointed under this [act] only in accordance with that
414 law, including any requirements in that law for notice and opportunity to object to release
415 of records. Nothing in this act shall diminish or otherwise change the attorney-client
416 privilege of the child, nor shall the child have any lesser rights than any other party in
417 regard to this or any other evidentiary privilege. Information that is privileged under the
418 lawyer-client relationship may not be disclosed except as otherwise permitted by law of this
419 state other than this [act].

420 (c) An order issued pursuant to subsection (a) shall require that a child’s lawyer
421 maintain the confidentiality of information released pursuant to Model Rule 1.6. The court
422 may impose any other condition or limitation on an order of access which is required by
423 law, rules of professional conduct, the child’s needs, or the circumstances of the
424 proceeding.

425 (d) The custodian of any record regarding the child shall provide access to the
426 record to an individual authorized access by order issued pursuant to subsection (a).

427 (e) Subject to subsection (b), an order issued pursuant to subsection (a) takes effect
428 upon issuance.³⁸

429

430 SECTION 9. PARTICIPATION IN PROCEEDINGS.

431 (a) Each child who is the subject of an abuse and neglect proceeding has the right
432 to attend and fully participate in all hearings related to his or her case.

433 (b) Each child shall receive notice from the child welfare agency worker and the
434 child’s lawyer of his or her right to attend the court hearings.

435 (c) If the child is not present at the hearing, the court shall determine whether the
436 child was properly notified of his or her right to attend the hearing, whether the child
437 wished to attend the hearing, whether the child had the means (transportation) to attend,
438 and the reasons for the non-appearance.

439 (d) If the child wished to attend and was not transported to court the matter shall
440 be continued.

441 (e) The child’s presence shall only be excused after the lawyer for the child has
442 consulted with the child and, with informed consent, the child has waived his or her right
443 to attend.

444 (f) A child’s lawyer appointed under this [act] is entitled to:

445 (1) receive a copy of each pleading or other record filed with the court in the
446 proceeding;

447 (2) receive notice of and attend each hearing in the proceeding [and
448 participate and receive copies of all records in any appeal that may be filed in the
449 proceeding];

450 (3) receive notice of and participate in any case staffing or case management
451 conference regarding the child in an abuse and neglect proceeding; and

452 (4) receive notice of any intent to change the child’s placement. In the case of
453 an emergency change, the lawyer shall receive notice as soon as possible but no later than
454 48 hours following the change of placement.

455 (g) A child’s lawyer appointed under this [act] may not engage in ex parte contact
456 with the court except as authorized by the applicable rules of professional conduct, court
457 order, or other law.

458 (h) Subject to court approval, a party may call any best interest advocate as a
459 witness for the purpose of cross-examination regarding the advocate’s report, even if the
460 advocate is not listed as a witness by a party.

461 [(i) In a jury trial, disclosure to the jury of the contents of a best interest advocate’s
462 report is subject to this state’s rules of evidence.]³⁹

463
464 *Commentary:*

465
466 Courts need to provide the child with notification of each hearing. The Court should enforce the
467 child’s right to attend and fully participate in all hearings related to his or her abuse and neglect
468 proceeding.⁴⁰ Having the child in court emphasizes for the judge and all parties that this hearing
469 is about the child. Factors to consider regarding the child’s presence at court and participation in
470 the proceedings include: whether the child wants to attend, the child’s age, the child’s
471 developmental ability, the child’s emotional maturity, the purpose of the hearing and whether the
472 child would be severely traumatized by such attendance.

473
474 Lawyers should consider the following options in determining how to provide the most
475 meaningful experience for the child to participate: allowing the child to be present throughout the
476 entire hearing, presenting the child’s testimony in chambers adhering to all applicable rules of
477 evidence, arranging for the child to visit the courtroom in advance, video or teleconferencing the
478 child into the hearing, allowing the child to be present only when the child’s input is required,
479 excluding the child during harmful testimony, and presenting the child’s statements in court
480 adhering to all applicable rules of evidence.

481
482 Courts should reasonably accommodate the child to ensure the hearing is a meaningful
483 experience for the child. The court should consider: scheduling hearing dates and times when the
484 child is available and least likely to disrupt the child’s routine, setting specific hearing times to
485 prevent the child from having to wait, making courtroom waiting areas child friendly, and
486 ensuring the child will be transported to and from each hearing.

487
488 The lawyer for the child plays an important role in the child’s court participation. The lawyer
489 shall ensure that the child is properly prepared for the hearing. The lawyer should meet the child
490 in advance to let the child know what to expect at the hearing, who will be present, what their
491 roles are, what will be discussed, and what decisions will be made. If the child would like to
492 address the court, the lawyer should counsel with the child on what to say and how to say it.

493 After the hearing, the lawyer should explain the judge’s ruling and allow the child to ask
494 questions about the proceeding.

495
496 Because of the wide range of roles assumed by best interest advocates in different jurisdictions,
497 the question of whether a best interest advocate may be called as a witness should be left to the
498 discretion of the court.
499

500 **SECTION 10. LAWYER WORK PRODUCT AND TESTIMONY.**

501 **(a) Except as authorized by [insert reference to this state’s rules of professional**
502 **conduct] or court rule, a child’s lawyer may not:**

503 **(1) be compelled to produce work product developed during the**
504 **appointment;**

505 **(2) be required to disclose the source of information obtained as a result of**
506 **the appointment;**

507 **(3) introduce into evidence any report or analysis prepared by the child’s**
508 **lawyer; or**

509 **(4) provide any testimony that is subject to the attorney-client privilege or**
510 **any other testimony unless ordered by the court.**

511
512 *Commentary:*

513
514 Nothing in this act shall diminish or otherwise change the lawyer-work product or attorney-client
515 privilege protection for the child, nor shall the child have any lesser rights than any other party
516 with respect to these protections.

517 If a state requires lawyers to report abuse or neglect under a mandated reporting statute, the state
518 should list that statute under this section.

519
520 **SECTION 11. CHILD’S RIGHT OF ACTION.**

521 **(a) The child’s lawyer may be liable for malpractice to the same extent as a lawyer**
522 **for any other client.**

523 **(b) Only the child has a right of action for money damages against the child’s**
524 **lawyer for inaction or action taken in the capacity of child’s lawyer.**

525
526 **SECTION 12. FEES AND EXPENSES IN ABUSE OR NEGLECT**
527 **PROCEEDINGS.**

528 **(a) In an abuse or neglect proceeding, a child’s lawyer appointed pursuant to this**
529 **[act] is entitled to reasonable and timely fees and expenses in an amount set by [court or**
530 **state agency to be paid from (authorized public funds)].⁴¹**

531 (b) To receive payment under this section, the payee shall complete and submit a
532 written claim for payment, whether interim or final, justifying the fees and expenses
533 charged.

534 (c) If the court, after a hearing, determines that a party whose conduct gave rise to
535 a finding of abuse or neglect is able to defray all or part of the fees and expenses set
536 pursuant to subsection (a), the court shall enter a judgment in favor of [the state, state
537 agency, or political subdivision] against the party in an amount the court determines is
538 reasonable.⁴²

539

540 SECTION 13. EFFECTIVE DATE. This [act] takes effect on _____.

541

¹ NCCUSL, 2006 *Uniform Representation of Children in Abuse, Neglect, and Custody Proceedings*, Sec. 2(2) [Hereinafter NCCUSL Act]

² *Id.*, Sec. 2(6); American Bar Association, *Standards of Practice for Lawyers who Represent Children in Abuse and Neglect Cases*, Part I, Sec A-1, 29 Fam. L. Q. 375 (1995). The standards were formally adopted by the ABA House of Delegates in 1996. [Hereinafter ABA Standards].

³ ABA Standards, Part I, Sec A-3.

⁴ NCCUSL Act, Sec. 4(c); *see also* ABA Standards, Part I, Sec B-1

⁵ ABA Standards, Sec D-13; F-1-5; *see generally* La. Sup. Ct. R. XXXIII, Standard 1; *see generally* Ariz. R. Proc. Juv. Ct. R. 39(b).

⁶ ABA Standards, Part II, Sec L-1-2.

⁷ NCCUSL Act, Sec. 9

⁸ *Id.*, Sec. 10(a)

⁹ ABA Standards, Part I, Sec D-13; F-1-5; *see generally* La. Sup. Ct. R. XXXIII, Standard 1.; *see generally* Ariz. R. Proc. Juv. Ct. R. 39(b).

¹⁰ NCCUSL Act, Sec. 11 Alternative A..

¹¹ ABA Standards, Part I, Section D-12.

¹² *Id.*

¹³ ABA Model Rules of Professional Responsibility (hereinafter M.R.) 1.2

¹⁴ M.R. 1.6

¹⁵ M.R. 1.3

¹⁶ M.R. 1.1

¹⁷ M.R. 1.7

¹⁸ M.R. 1.4

¹⁹ M.R. 2.1

²⁰ ABA Standards, commentary A-1

²¹ M.R. 1.4

²² M.R. 2.1

²³ Massachusetts Committee For Public Counsel Services, *Performance Standards Governing The Representation Of Children And Parents in Child Welfare Cases*, Chapter Four: Performance Standards and Complaint Procedures 4-1, Section 1.6(c) (2004).

²⁴ Candice L. Maze, JD, *Advocating for Very Young Children in Dependency Proceedings: The Hallmarks of Effective, Ethical Representation*, ABA Center on Children and the Law, October, 2010.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ M.R. 1.14(c)

²⁹ Restatement (Third) of the Law Governing Lawyers Sec. 24 c. c (2000).

³⁰ M.R. 1.14 cmt. 1

³¹ M.R. 1.14, cmt. 1

³² Anne Graffam Walker, Ph.D. *Handbook on Questioning Children: A Linguistic Perspective* 2nd Edition ABA Center on Children and the Law Copyright 1999 by ABA.

³³ M.R. 1.14 cmt. 5

³⁴ M.R. 1.14 cmt. 5

³⁵ M.R. 1.14, cmt. 8

³⁶ M.R. 1.14, cmt. 8

³⁷ M.R. 1.14, cmt 8

³⁸ NCCUSL Act, Sec. 15

³⁹ NCCUSL Act, Sec. 16

⁴⁰ American Bar Association Youth Transitioning from Foster Care August 2007; American Bar Association Foster Care Reform Act August 2005

⁴¹ N.C. Gen. Stat. Ann. § 7B-603.

⁴² NCCUSL Act, Sec. 19.

SESSION FOUR:
APPENDIX B
Iowa Standards of Practice

- Iowa Standards of Practice for Attorneys Representing Parents in Juvenile Court

CHAPTER 61
IOWA STANDARDS OF PRACTICE FOR
ATTORNEYS REPRESENTING PARENTS IN JUVENILE COURT

I. General

Standards 1-3

II. Relationship with the Client

Standards 4-12

III. Investigation and Court Preparation

Standards 13-23

IV. Appeal

Standards 24-27

Commentary

CHAPTER 61

IOWA STANDARDS OF PRACTICE FOR ATTORNEYS REPRESENTING PARENTS IN JUVENILE COURT

These standards do not add obligations to the Iowa Rules of Professional Conduct, but like the comments to those rules, they provide guidance to attorneys representing parents in juvenile proceedings for practicing in compliance with the rules. In the event of any conflict between these standards and a rule of professional conduct, the requirements of the rule take precedence.

The parent's attorney shall:

I. General

1. Adhere to all educational requirements before accepting a court appointment to represent a client in a child welfare case. Acquire sufficient working knowledge of all relevant federal and state laws, regulations, policies, and rules.
2. Avoid continuances and work to reduce delays in court proceedings unless warranted by the interests of the client.
3. Communicate as needed with other professionals in the case to protect or advance the client's interests.

II. Relationship with the Client

4. Establish and maintain a working relationship with the client. Communicate with the client prior to the day of hearing and when apprised of emergencies or significant events.
5. Advocate for the client's goals. Empower the client to direct the representation and make informed decisions.
6. Understand and protect the client's rights to information and decision-making while the child is placed out of the home.
7. Act in accordance with the duty of loyalty owed to the client while adhering to all laws and ethical obligations concerning confidentiality. Avoid potential conflicts of interest that would interfere with the competent representation of the client. Comply with all other Iowa Rules of Professional Conduct.
8. Provide the client with all relevant contact information. Establish a system that promotes regular client-attorney contact.

9. Communicate with the client in a manner that promotes advocacy and adequate preparation to support the client's position.
10. Take reasonable steps to communicate with incarcerated clients and to locate clients who become absent. Develop representation strategies. Establish a plan for the client's participation in case-related events.
11. Communicate with and counsel the client about financial implications of the juvenile matter to promote and protect the client's interest.
12. Investigate and consider the client's background and its impact on the case. Act in a culturally-competent manner and with due regard to disabilities or unique circumstances of the client. Advocate for appropriate supportive services with the child welfare agency and court.

III. Investigation and Court Preparation

13. Conduct an independent investigation at every stage of the proceeding as reasonable and necessary.
14. Use effective discovery methods according to the Iowa Rules of Juvenile Procedure.
15. Consult with the client to develop a case theory and strategy. Explain the statutory timeline for the case.
16. Timely file appropriate pleadings, motions, and briefs.
17. Engage in multidisciplinary case planning and advocate for appropriate services and high quality family interaction.
18. Effectively participate with the client in family team meetings, mediation, and other negotiations.
19. Thoroughly prepare the client in advance for all hearings, meetings, and other case events.
20. Identify, locate, and prepare necessary lay and expert witnesses. Prepare for cross-examination and, when permissible, interview those witnesses.
21. Review court orders to ensure accuracy and clarity. Review orders

with the client. Take reasonable steps to ensure the client complies with court orders.

22. Continually evaluate whether the case should be reviewed by the court prior to the next scheduled hearing date to ensure case progress.

23. Timely file reasonable and necessary post-hearing motions.

IV. Appeal

24. Consider and discuss appeal options and deadlines with the client.

25. Timely file appeal documents if the client decides to appeal. Adhere to the Iowa Rules of Appellate Procedure.

26. Timely review the ruling and discuss its implications with the client.

27. Consider and discuss further review options.

Commentary to the Iowa Standards of Practice for Attorneys Representing Parents in Juvenile Court

The parent's attorney shall:

I. General

- 1. Adhere to all educational requirements before accepting a court appointment to represent a client in a child welfare case. Acquire sufficient working knowledge of all relevant federal and state laws, regulations, policies, and rules.**

Commentary

[1] As in all areas of law, it is essential that attorneys learn the substantive law as well as local practice. A client's fundamental liberty interest in the care and custody of the client's child is at stake, and the attorney must be adequately trained to protect this interest. The attorney must know enough about all relevant laws to vigorously advocate for the client's interests. Additionally, the attorney must be able to use procedural, evidentiary, and confidentiality laws and rules to protect the client's rights throughout court proceedings.

[2] It is essential for the attorney to read and understand all state laws, policies, and procedures regarding child abuse and neglect. In addition, the attorney must be familiar with other applicable laws to recognize when they are relevant to a case and to conduct research if necessary. Examples of potentially relevant laws include but are not limited to:

- Titles IV-B and IV-E of the Social Security Act, including the Adoption and Safe Families Act (AFSA), 42 U.S.C. §§620-679 and the ASFA Regulations, 45 C.F.R. Parts 1355, 1356, 1357
- Child Abuse Prevention Treatment Act (CAPTA), P.L.108-36
- Indian Child Welfare Act (ICWA) 25 U.S.C. §§190-963; ICWA Regulations, 25 C.F.R. Part 23; Guidelines for State Courts: Indian Child Custody Proceedings, 44 Fed. Reg. 67, 584 (Nov. 26, 1979)
- State Indian Child Welfare Act laws
- Multi-Ethnic Placement Act (MEPA), as amended by the Inter-Ethnic Adoption Provisions of 1996 (MEPA-IEP), 42 U.S.C. §622 (b)(9) (1998), 42 U.S.C. § 671(a)(18) (1998), 42 U.S.C. §1996b (1998)
- Interstate Compact on Placement of Children (ICPC)

- Foster Care Independence Act of 1999 (FCIA), P.L. 106-169
- Individuals with Disabilities Education Act (IDEA), P.L. 91-230
- Family Education Rights Privacy Act (FERPA), 20 U.S.C. §1232g
- Health Insurance Portability and Accountability Act of 1996 (HIPAA), P.L. 104-191 §264, 42 U.S.C. §1320d-2 (in relevant part)
- Public Health Act, 42 U.S.C. §290dd-2 and 42 C.F.R. Part 2
- Immigration laws relating to child welfare and child custody
- State laws and rules of juvenile procedure
- State laws and rules of evidence
- State laws and rules of civil procedure
- State laws and rules of criminal procedure
- State laws concerning privilege and confidentiality, public benefits, education, and disabilities
- State laws and rules of professional responsibility or other relevant ethics standards
- State laws regarding domestic violence
- State domestic relations laws

2. Avoid continuances and work to reduce delays in court proceedings unless warranted by the interests of the client.

Commentary

[1] The Iowa Supreme Court has established that juvenile court cases take priority over all other cases with the exception of civil commitments and domestic abuse cases. See Iowa Supreme Court Supervisory Orders, dated December 1, 2009, and February 4, 2010.

[2] The attorney should not request a continuance unless there is an emergency or a continuance otherwise furthers the interests of the client. If a continuance is necessary, the attorney should request the continuance in writing as far as possible in advance of the hearing and for the shortest period possible, consistent with the client's interests. The attorney should object to repeated or prolonged continuance requests by other parties if the resulting continuance would harm the client.

[3] Delaying a case often increases the time a family is separated and can reduce the likelihood of reunification. Appearing in court often motivates parties to comply with orders and cooperate with services.

When a judge actively monitors a case, services are often put in place more quickly, visitation may be increased, and other requests by the client may be granted. If a hearing is continued and the case is delayed, the client may lose momentum in addressing the issues that led to the child's removal, or the client may lose the opportunity to prove compliance with case plan goals. Additionally, the Adoption and Safe Families Act timelines continue to run despite continuances.

3. Communicate as needed with other professionals in the case to protect or advance the client's interests.

Commentary

[1] Communication with others is necessary to ensure the client is involved with key aspects of the child's life. This requires open and ongoing communication with attorneys of record, pro se litigants, and any guardian ad litem (GAL). Similarly, the attorney should communicate with the relatives, caseworker, foster parents, court appointed special advocate (CASA), and service providers to learn about the client's progress and their views of the case, as appropriate. Rules of professional ethics govern contact with represented and unrepresented parties.

[2] The attorney should have open lines of communication with any attorneys representing the client in related matters, such as criminal, protection from abuse, private custody, or administrative proceedings, to ensure that probation orders, protection from abuse orders, private custody orders, and administrative determinations do not conflict with the client's goals in the abuse and neglect case.

II. Relationship with the Client

4. Establish and maintain a working relationship with the client. Communicate with the client prior to the day of hearing and when apprised of emergencies or significant events.

Commentary

[1] Gaining the client's trust and establishing ongoing communication are two essential aspects of representing the client. The client may feel angry and believe that all of the attorneys in the system work with the child welfare agency and against that client. The attorney must take care to distinguish the attorney from others in

the system so the client can see that the attorney serves the client's interests. The attorney should be mindful that parents often feel disempowered in child welfare proceedings and should take steps to make the client feel comfortable expressing goals and wishes without fear of judgment.

[2] The attorney should meet with the client regularly throughout the case. The meetings should occur well before the hearing, not at the courthouse just minutes before the case is called before the judge. The attorney should ask the client questions to obtain information to prepare the case, and should strive to create a comfortable environment so the client can ask the attorney questions. The attorney should use these meetings to prepare for court as well as to counsel the client concerning issues that arise during the course of the case. Information obtained from the client should be used to propel the investigation.

5. Advocate for the client's goals. Empower the client to direct the representation and make informed decisions.

Commentary

[1] Attorneys representing parents must understand the client's goals and pursue them vigorously. The attorney should explain that the attorney's job is to represent the client's interests and regularly inquire as to the client's goals, including ultimate case goals and interim goals. The attorney should explain all legal aspects of the case and provide comprehensive advice on the advantages and disadvantages of different options. At the same time, the attorney should be careful not to usurp the client's authority to decide the case goals.

6. Understand and protect the client's rights to information and decision-making while the child is placed out of the home.

Commentary

[1] Unless and until parental rights are terminated, the client has parental obligations and rights while a child is in foster care. Advocacy may be necessary to ensure the client is allowed to remain involved with key aspects of the child's life. Not only should the client's rights be protected, but continuing to exercise as much parental responsibility as possible is often an effective strategy to speed family reunification. Often a client does not understand that

the client has the right to help make decisions for, or obtain information about, the child. Therefore, it is the attorney's responsibility to counsel the client and help the client understand and carry out the client's rights and responsibilities.

[2] The attorney must explain to the client the decision-making authority that remains with the client and the authority that lies with the child welfare agency while the child is in foster care. The attorney should seek updates and reports from any service provider working with the child or the family and help the client obtain information about the child's safety, health, education, and well-being when the client desires. Where decision-making rights remain, the attorney should assist the client in exercising the client's rights to continue to make decisions regarding the child's medical, mental health, and educational services. If necessary, the attorney should intervene with the child welfare agency, provider agencies, medical providers, and the child's school to ensure the client has decision-making opportunities. This may include seeking court orders when the client has been left out of important decisions about the child's life.

7. Act in accordance with the duty of loyalty owed to the client while adhering to all laws and ethical obligations concerning confidentiality. Avoid potential conflicts of interest that would interfere with the competent representation of the client. Comply with all other Iowa Rules of Professional Conduct.

Commentary

[1] Attorneys must understand and adhere to ethical obligations and all confidentiality laws, including Iowa Code chapter 232. The attorney must fully explain to the client the advantages and disadvantages of choosing to exercise, partially waive, or waive a privilege or right to confidentiality. Consistent with the client's interests and goals, the attorney must seek to protect from disclosure confidential information concerning the client.

[2] Confidential information contained in a client's substance-related disorder treatment records, domestic violence treatment records, mental health records, or medical records is often at issue in abuse and neglect cases. Improper disclosure of confidential information early in the proceeding may have a negative impact on the manner in which the client is perceived by the other parties and the court. For this reason, it is crucial for the attorney to advise the client promptly as to the advantages and disadvantages of

releasing confidential information, and for the attorney to take whatever steps necessary to protect the client's privileges or rights to confidentiality.

[3] The attorney must not represent multiple parties if their interests differ. In most instances, attorneys should avoid representing both parents in an abuse or neglect case. In situations involving allegations of domestic violence, the attorney should never represent both parents. In the rare case in which an attorney, after careful consideration of potential conflicts, may represent both parents, it should only be with their informed consent. Even in cases in which there is no apparent conflict at the beginning of the case, conflicts may arise as the case proceeds. If this occurs, the attorney might be required to withdraw from representing one or both parents. This could be difficult for the clients and delay the case. Other examples of potential conflicts of interest that the attorney should avoid include representing multiple fathers in the same case or representing parties in a separate case who have interests adverse to the client in the current case.

8. Provide the client with all relevant contact information. Establish a system that promotes regular client-attorney contact.

Commentary

[1] The attorney should ensure the client understands how to contact the attorney and that the attorney wants to hear from the client on an ongoing basis. The attorney should explain that even when the attorney is unavailable, the client should leave a message. The attorney must respond to client messages in a reasonable time period. The attorney and client should establish a reliable communication system that meets the client's needs. The attorney should be aware of the client's circumstances, such as whether the client has access to a telephone, and tailor the communication system to the individual client. For example, a communication system may involve telephone contact, email, or communication through a third party when the client agrees to it. Interpreters should be used when the attorney and client are not fluent in the same language.

[2] Upon accepting an appointment, the attorney should communicate to the client the importance of staying in contact with the attorney. While the attorney must communicate as necessary with the client, and be informed of the client's wishes before a hearing, the client also must keep in contact with the attorney. At the beginning of the representation, the attorney should tell the client how to contact

the attorney and discuss the importance of the client keeping the attorney informed of changes in address, phone numbers, and the client's whereabouts.

9. Communicate with the client in a manner that promotes advocacy and adequate preparation to support the client's position.

Commentary

[1] The attorney's job extends beyond the courtroom. The attorney should be a counselor as well as litigator. The attorney should be available to talk with the client to prepare for hearings and to provide advice and information about ongoing concerns. Open lines of communication between attorneys and clients help ensure clients get answers to questions and attorneys get the information and documents they need.

[2] The attorney should be available for in-person meetings or telephone calls to answer the client's questions and address the client's concerns. The attorney and client should work together to identify and review short- and long-term goals, particularly as circumstances change during the case.

10. Take reasonable steps to communicate with incarcerated clients and to locate clients who become absent. Develop representation strategies. Establish a plan for the client's participation in case-related events.

Commentary

[1] *Absent Parents*

The attorney should make reasonable attempts to locate and communicate with absent parents to formulate the positions the attorney should take at hearings and to understand what information the client wishes the attorney to share with the child welfare agency and the court. If the attorney is unable to find and communicate with the client, the attorney should consider filing a motion to withdraw.

[2] *Incarcerated Parents*

An attorney who is appointed to represent an incarcerated parent has an ethical obligation to zealously represent that parent, even if the

client is not an immediate placement option. Upon being appointed to represent an incarcerated parent, the attorney should immediately locate the parent. If the incarcerated client is serving a sentence in Iowa, the attorney can locate that parent using the Iowa Department of Corrections website for offender information. If the incarcerated parent is housed in a federal prison, the Federal Bureau of Prisons website can be used to locate the client.

The attorney must be particularly diligent when representing an incarcerated parent. The attorney must be aware of the reasons for the incarceration. If the parent is incarcerated as a result of an act against the child or another child of the parent, the court can order that reasonable efforts to reunite the family are not required. The attorney must be prepared to argue against the issuance of such an order if the client opposes it. Attorneys should counsel the client as to any effects of incarceration and know statutory and case law concerning incarceration. The attorney should help the client identify potential kinship placements and advocate for placement with parental relatives who can provide care for the child while the parent is incarcerated.

[3] *Services*

The attorney should assist an incarcerated client in obtaining services while incarcerated, such as substance-related disorder treatment, parenting skills, or job training. The attorney must advocate for reasonable efforts for the client and may have to assist the client and the agency caseworker in acquisition of those services. The attorney must learn about available resources and seek the support of the agency and child's attorney.

[4] *Communication*

The attorney should counsel an incarcerated client on the importance of maintaining regular contact with the client's child while incarcerated. The attorney should advocate for a plan that fosters communication and visitation by obtaining necessary court orders and working with the caseworker as well as the correctional facility's social worker.

The attorney must find alternative ways to communicate with the incarcerated client. This may include visiting the client in prison or engaging in more extensive phone or mail contact than with other clients. The attorney should also communicate with the client's criminal defense attorney. There may be issues related to self-incrimination and timing that require coordination between cases.

[5] *Appearance in Court*

An incarcerated client's participation in court frequently raises issues that require the attorney's attention in advance. The attorney should find out from the client if the client wishes to participate in the hearing. If so, the attorney should make arrangements with the incarcerated client's prison counselor to have the parent appear by telephone. The attorney should explain to any client hesitant to appear that the case will proceed without the client's presence and should explain the potential consequences of that choice.

11. Communicate with and counsel the client about financial implications of the juvenile matter to promote and protect the client's interest.

Commentary

[1] It is important to have a thorough discussion with the client of the financial aspects of the juvenile case. The client is entitled to know the costs associated with services and the funding mechanism for each. For example, if the child is placed in foster care, the Foster Care Recovery Unit will be establishing a support obligation to be paid by one or both of the parents. If the child is placed in foster group care, parents are expected to reimburse all or part of the cost. If the attorney is court appointed, the client should be made aware of the requirement to repay the state for the court appointed attorney fees and expenses under Iowa Code section 815.9. The attorney should explain the work that can be billed under the court appointment, the billing rate, and when the court may start requiring reimbursement of the fees and expenses. Copies of all claims submitted to the State Public Defender for payment must be provided to the parent.

12. Investigate and consider the client's background and its impact on the case. Act in a culturally competent manner and with due regard to disabilities or unique circumstances of the client. Advocate for appropriate supportive services with the child welfare agency and court.

Commentary

[1] The attorney should learn about and understand the client's

background, determine how it impacts the client's case, and always show the client respect. The attorney must understand how cultural and socioeconomic differences affect interaction with the client, and must interpret the client's words and actions accordingly.

[2] The child welfare system comprises a diverse group of people, including the clients and professionals involved. Each person comes to this system with the person's own set of values and expectations, but it is essential that each person try to learn about and understand the backgrounds of others. An individual's race, ethnicity, gender, sexual orientation, and socioeconomic position all have an impact on how the person acts and reacts in particular situations. The attorney must be vigilant against imposing the attorney's values onto the client, and should, instead, work with the client within the context of the client's culture and socioeconomic position. While the court and child welfare agency have expectations of parents in their treatment of children, the parent's advocate must strive to explain these expectations to the client in a sensitive way. The attorney should also try to explain how the client's background might affect the client's ability to comply with court orders and agency requests.

[3] The attorney should ensure a formal interpreter is involved when the attorney and client are not fluent in the same language. The attorney should also advocate for the use of an interpreter when other professionals in the case who are not fluent in the same language as the client are interviewing the client.

[4] The attorney and the client should identify barriers to the client engaging in services, such as employment, transportation, and financial issues. The attorney should work with the client, caseworker, and service provider to overcome the barriers.

[5] The attorney should be aware of any special issues the client may have related to participating in the proposed case plan, such as difficulties in reading or language differences, and advocate with the child welfare agency and court for appropriate supportive services.

[6] Attorneys representing parents must be able to determine whether a client's mental status, including mental illness or mental retardation, interferes with the client's ability to make decisions about the case. The attorney should be familiar with any mental health diagnosis and treatment that a client has had in the past or is undergoing, including any medications for such conditions.

III. Investigation and Court Preparation

13. Conduct an independent investigation at every stage of the proceeding as reasonable and necessary.

Commentary

[1] The attorney should seek updates and reports from any service provider working with the child or the family and should help the client obtain information about the child's safety, health, education, and well-being when the client desires.

[2] Often, the client is the best source of information for the attorney, and the attorney should set aside time to obtain that information. Since the interview may involve disclosure of sensitive or painful information, the attorney should explain attorney-client confidentiality to the client. The attorney may need to work hard to gain the client's trust, but if a trusting relationship can be developed, the attorney will have an easier time representing the client. The investigation will be more effective if guided by the client, as the client generally knows firsthand what occurred in the case.

[3] The attorney must take all necessary steps to prepare each case. A thorough investigation is an essential element of preparation. The attorney cannot rely solely on what the agency caseworker reports about the client. Rather, the attorney should contact service providers who work with the client, relatives who can discuss the client's care of the child, the child's teacher, or other people who can clarify information relevant to the case. If necessary, the attorney should petition the court for funds to hire an investigator.

14. Use effective discovery methods according to the Iowa Rules of Juvenile Procedure.

Commentary

[1] The attorney should ask for and review the agency case file as early during the course of representation as possible. The file contains useful documents that the attorney may not yet have and will instruct the attorney on the agency's case theory. If the agency case file is inaccurate, the attorney should seek to correct it. The attorney must read the case file periodically because the agency is continually adding information.

[2] While an independent investigation is essential, it is also important that the attorney understands the information the agency is relying on to further its case. The case file should contain a history about the family that the client may not have shared and important reports and information about both the child and parent that the attorney must understand for hearings as well as settlement conferences. Unless the attorney also has the information the agency has, the attorney will walk into court at a disadvantage.

[3] As part of the discovery phase, the attorney should gather all relevant documentation regarding the case that might shed light on the allegations, the service plan, and the client's strengths as a parent. The attorney should not limit the scope of discovery prematurely because information about past or present criminal, protection from abuse, private custody, or administrative proceedings involving the client can have an impact on the abuse and neglect case. The attorney should also review the following kinds of documents:

- Social service records
- Court records
- Medical records
- School records
- Evaluations of all types

[4] The attorney should obtain reports and records from service providers.

[5] Discovery is not limited to information regarding the client, but may include records of others such as the other parent, stepparents, the child, relatives, and nonrelative caregivers. In preparing the client's case, the attorney must try to learn as much about the client and the family as possible. Various records may contradict or supplement the agency's account of events. Gathering documentation to verify the client's reports about what occurred before the child came into care and to show progress the client is making during the case is necessary to provide concrete evidence for the court. Documentation may also alert the attorney to issues the client is having that the client did not share with the attorney. The attorney may be able to intercede and assist the client with service providers, agency caseworkers, and others.

[6] The attorney should know what information is needed to prepare the case and understand the best methods of obtaining that information. The attorney should become familiar with the pretrial

requests and actions used in the jurisdiction and use whatever tools are available to obtain necessary information. When informal discovery proves inadequate, the attorney should consider the following types of formal discovery: depositions, interrogatories (including expert interrogatories), requests for production of documents, requests for admissions, and motions for mental or physical examination of a party.

[7] The attorney, when appropriate and consistent with the client's interests and goals, should take all necessary steps to preserve and protect the client's rights by opposing discovery requests of other parties.

15. Consult with the client to develop a case theory and strategy. Explain the statutory timeline for the case.

Commentary

[1] The attorney should spend time with the client to prepare the case and address questions and concerns. The attorney should clearly explain the allegations made against the client, what is likely to happen before, during, and after each hearing, and what steps the client can take to increase the likelihood of reuniting with the child. The attorney should explain any settlement options and determine whether the client wants the attorney to pursue such options. The attorney should explain courtroom procedures. The attorney should write to the client to ensure the client understands what happened in court and what is expected of the client.

[2] Once the attorney has completed the initial investigation and discovery, including interviews with the client, the attorney should develop a strategy for representation. The strategy may change throughout the case, depending on the client's progress and other considerations, but the initial theory is important to assist the attorney in staying focused on the client's wishes and on what is achievable. The theory of the case should inform the attorney's preparation for hearings and arguments to the court throughout the case. It should also help the attorney decide which evidence to develop for hearings and the steps to take to move the case toward the client's ultimate goals (for example, requesting increased visitation when a client becomes engaged in services).

[3] At the beginning of a case, the attorney and the client should develop timelines that contain deadlines and important dates and develop a tickler or calendar system to track the deadlines and dates. The timeline should specify the actions the attorney and client will

need to take and the dates for completion. The attorney and the client should know when important dates will occur and should be focused on timely accomplishing the objectives in the case plan. The attorney should provide the client with a timeline or calendar outlining known and prospective court dates, service appointments, deadlines, and critical points of attorney-client contact. The attorney should record federal and state law deadlines in the system (for example, the presumptive date at which termination of parental rights can occur if the child is not in the custody of the parents).

[4] Having a consistent calendaring system can help an attorney manage a busy caseload. Clients should receive a hard copy calendar to keep track of appointments and important dates. This helps clients stay focused on accomplishing the service plan goals and meeting court-imposed deadlines.

16. Timely file appropriate pleadings, motions, and briefs.

Commentary

[1] The attorney should make appropriate motions and evidentiary objections to advance the client's position during the hearing. If necessary, the attorney should file briefs in support of the client's position on motions and evidentiary issues. The attorney should always be aware of preserving legal issues for appeal.

[2] It is essential the attorney understands the applicable rules of evidence and all court rules and procedures. The attorney must be willing and able to make appropriate motions, objections, and arguments (for example, objecting to the qualification of expert witnesses or raising the issue of the child welfare agency's lack of reasonable efforts). When a case presents a complicated or new legal issue, the attorney should conduct the appropriate research before appearing in court. The attorney must have a solid understanding of the relevant law and be able to present it to the judge in a compelling and convincing way. The attorney should be prepared to distinguish case law that appears to be unfavorable.

[3] Arguments in child welfare cases are often fact-based. Nonetheless, the attorney should ground his or her arguments in statutory, regulatory, and common law. These sources of law exist in each jurisdiction, as well as in federal law. Additionally, law from other jurisdictions can be used to sway a court in the client's favor. An attorney who has a firm grasp of the law, and who is willing to do legal research on an individual case, may have more credibility before the court. At times, competent representation requires

advancing legal arguments that are not yet accepted in the jurisdiction. The attorney should be mindful to preserve issues for appellate review by making a record even if the argument is unlikely to prevail at the trial level.

17. Engage in multidisciplinary case planning and advocate for appropriate services and high quality family interaction.

Commentary

[1] The attorney must advocate for the client both in and out of court. Consistent, high quality family interaction is one of the best predictors of successful reunification between a parent and child. Often visits are arranged in settings that are uncomfortable and inhibiting for families. It is important that the attorney seek the best possible family interaction. Effort should be made to have family interaction that is unsupervised or at the lowest possible level of supervision. Families are often more comfortable when relatives, family friends, clergy, or other community members, rather than caseworkers, are recruited to supervise family interaction. The attorney should advocate for family interaction to occur in the most family-friendly locations possible, such as in the family's home, parks, libraries, restaurants, places of worship, or other community venues.

[2] The attorney should know the social, mental health, substance-related disorder, and other treatment services that are available to parents and families in the jurisdiction in which the attorney practices so that the attorney can advocate effectively for the client to receive these services. The attorney should ask the client if the client wishes to engage in services. If so, the attorney must determine whether the client has access to the necessary services to overcome the issues that led to the case.

[3] The services in which the client is involved must be tailored to the client's needs, and not merely hurdles over which the client must jump (for example, if the client is taking parenting classes, the classes must be relevant to the underlying issues in the case).

[4] The attorney should advocate for an effective family interaction plan and counsel the client on the importance of regular contact with the child. Preservation of parent-child bonds through regular family interaction is essential to any reunification effort. Courts and child welfare agencies may need to be urged to develop family interaction plans that best fit the needs of the individual

family. Factors to consider in family interaction plans include:

- Frequency
- Length
- Location
- Supervision
- Types of activities
- Visit coaching—having someone at the visit who can model effective parenting skills

[5] For a client to succeed in a child welfare case, the client must receive and cooperate with social services. It is therefore necessary that the attorney do whatever possible to obtain appropriate services for the client and then counsel the client about participating in such services. Examples of services common to child welfare cases include:

- Evaluations
- Family preservation or reunification services
- Medical and mental health care
- Drug and alcohol treatment
- Domestic violence prevention, intervention, or treatment
- Parenting education
- Education and job training
- Housing
- Child care
- Funds for public transportation so the client can receive services

[6] When necessary, the attorney should seek court orders to require the child welfare agency to provide services or family interaction for the client. The attorney may need to ask the court to enforce previously entered orders if the agency did not comply with them in a reasonable period. The attorney should consider whether the child's representative (lawyer, GAL, or CASA) might be an ally on service and visitation issues. If so, the attorney should solicit the child's representative's assistance and work together in making requests to the agency and the court.

18. Effectively participate with the client in family team meetings, mediation, and other negotiations.

Commentary

[1] A family team meeting is a voluntary process for a family involved

with the Department of Human Services (department). It is designed to engage and support the family in the case planning, case management, and case closure process. A family team meeting is not an adversarial setting, and it may seem to the attorney that social work is occurring. Attorneys for parents may misunderstand the critical nature of family team meetings. The family team meeting forum is one of the most important stages of juvenile court because it is where the department develops or refines the case plan. The case plan is a key document the court will use to assess whether the client has made progress. The case plan also should be the framework for the attorney to develop the theory of the case.

[2] The attorney should attend family team meetings and actively engage in case planning to ensure the client asks the department for and receives the needed services. The attorney should be prepared to object to the department's inclusion of services in the case plan that are beyond the client's needs. If the department continues to require services that are not tailored to the client's specific needs, the attorney must bring the issue before the court on the grounds of a lack of reasonable efforts.

[3] The attorney should be available to accompany the client to other important meetings during a case if the client requests. Whenever possible, the attorney should engage in a dialogue with the social worker and service provider to monitor the department's perspective of the client's progress. The attorney should act as a liaison and advocate for the client with the social worker and service provider.

19. Thoroughly prepare the client in advance for all hearings, meetings, and other case events.

Commentary

[1] The attorney must prepare for and attend all hearings. Part of that preparation is to thoroughly prepare the client in advance of the hearing. This also includes thoroughly preparing an incarcerated client in advance of hearings and other case events.

[2] The attorney and the client must be prepared and present in court. The attorney's failure to participate in the proceedings in which all other parties are represented may disadvantage the client. Therefore, the attorney should be actively involved in this stage. Attorneys must appear for all court appearances on time. If the attorney has a conflict with another courtroom appearance, the attorney should notify the court and other parties and request a

short continuance. In a substantive hearing, the attorney should avoid having another attorney stand in to represent the client, especially if the other attorney is unfamiliar with the client or case.

20. Identify, locate, and prepare necessary lay and expert witnesses. Prepare for cross-examination and, when permissible, interview those witnesses.

Commentary

[1] The attorney must be able to present witnesses effectively to advance the client's position. Witnesses must be prepared in advance, and the attorney should know the evidence that will be presented through the witnesses. The attorney must also be skilled at cross-examining opposing parties' witnesses. The attorney must know how to offer documents, photos, and physical objects into evidence.

[2] At each hearing, the attorney should keep the case theory in mind; advocate for the child to return home and for appropriate services, if that is the client's position; and request that the court state its expectations of all parties.

[3] Becoming a strong courtroom attorney takes practice and attention to detail. The attorney must be sure to learn the rules on presenting witnesses, impeaching testimony, and entering evidence. The attorney should seek out training in trial skills and observe more experienced trial attorneys to learn from them. Even if the attorney is more seasoned, effective direct and cross-examination require careful preparation. The attorney must know the relevant records well enough to be able to impeach adverse witnesses and bring out in both direct and cross-examinations any information that would support the client's position. Attorneys who are not as experienced may wish to consult with other experienced attorneys about complex cases. Presenting and cross-examining witnesses are skills with which the attorney must be comfortable.

[4] The attorney, in consultation with the client, should develop a witness list well before a hearing. The attorney should not assume the agency will call a witness, even if the witness is named on the agency's witness list. The attorney should, when possible, contact the potential witnesses to determine if they can provide helpful testimony.

[5] When appropriate, witnesses should be informed that a subpoena is on its way. The attorney should also ensure the subpoena is served. The attorney should subpoena potential agency witnesses (for example, a previous caseworker) who have

favorable information about the client.

[6] The attorney should set aside time before the hearing to fully prepare all witnesses in person. The attorney should remind the witnesses about the court date.

[7] Preparation is the key to successfully resolving a case, either in negotiation or trial. The attorney should plan as early as possible for the case and make arrangements accordingly. Witnesses may have direct knowledge of the allegations against the client. They may be service providers working with the client or individuals from the community who can testify generally about the family's strengths.

[8] When appropriate, the attorney should consider working with other parties who share the client's position (such as the child's representative) when creating a witness list, issuing subpoenas, and preparing witnesses. Doctors, nurses, teachers, therapists, and other potential witnesses have busy schedules and need advance warning about the date and time of the hearing.

[9] Witnesses are often nervous about testifying in court. The attorney should prepare them thoroughly so they feel comfortable with the process. Preparation may include rehearsing the specific questions that will be asked on direct examination and anticipating the questions that might arise on cross-examination. The attorney should provide written questions for those witnesses who need them.

[10] Often a case requires multiple experts in different roles, such as experts in medicine, mental health treatment, drug and alcohol treatment, or social work. Experts may be needed for ongoing case consultation in addition to providing testimony at trial. The attorney should consider whether the opposing party is calling expert witnesses and determine whether the client needs to call any experts.

[11] When expert testimony is required, the attorney should identify the qualified experts and seek necessary funds to retain them in a timely manner. The attorney should subpoena the witnesses, giving them as much advance notice of the court date as possible. As is true for all witnesses, the attorney should spend as much time as possible preparing the expert witnesses for the hearing. The attorney should be competent in qualifying expert witnesses.

**21. Review court orders to ensure accuracy and clarity.
Review orders with the client. Take reasonable steps to**

ensure the client complies with court orders.

Commentary

[1] The client may be angry about being involved in the child welfare system, and a court order that is not in the client's favor could add stress and frustration. It is essential that the attorney take time, either immediately after the hearing or at a meeting soon after the court date, to discuss the hearing and the outcome with the client.

[2] After the hearing, the attorney should review the written order to ensure it reflects the court's oral order, if any. If the order is incorrect, the attorney should take the necessary steps to correct it. The attorney should provide the client with a copy of the order and should review the order with the client to ensure the client understands it. If the client is unhappy with the order, the attorney should counsel the client about options for appeal or to request rehearing on the order, but the attorney should explain that the order is in effect unless a stay or other relief is secured. The attorney should counsel the client on the potential consequences of failing to comply with a court order.

22. Continually evaluate whether the case should be reviewed by the court prior to the next scheduled hearing date to ensure case progress.

Commentary

[1] The attorney should play an active role in assisting the client in complying with court orders, obtaining family interaction, and securing other necessary services. The attorney should speak with the client regularly about progress and any difficulties the client is encountering while trying to comply with the court order or service plan.

[2] If the client is attempting to comply with the order and case plan but another party, such as the department or a contracted provider, is not meeting the party's responsibilities, the attorney should approach the other party and seek assistance on behalf of the client.

[3] When the department is not offering appropriate services to meet the needs of the client to promote reunification, the attorney should first request the department in writing to provide the needed services to the client. If the department still does not provide reasonable efforts to preserve and unify the family or make it possible

for the child to return home safely, the attorney should consider filing a motion alleging the department is not making reasonable efforts and request the case immediately be brought back to court to litigate this issue. See Iowa Code section 232.102(12)—Reasonable Efforts.

23. Timely file reasonable and necessary post-hearing motions.

IV. Appeal

24. Consider and discuss appeal options and deadlines with the client.

Commentary

[1] The attorney should inform the client of appeal rights and the expedited appellate deadlines in juvenile cases. The attorney should counsel the client on the likelihood of a successful appeal and the potential consequences of an appeal. The attorney should always litigate the case and preserve the record with the assumption there may be a subsequent appeal.

25. Timely file appeal documents if the client decides to appeal. Adhere to the Iowa Rules of Appellate Procedure.

Commentary

[1] The attorney shall carefully review obligations under the Iowa Rules of Appellate Procedure and timely file all paperwork. A summary follows:

Notice of appeal. A notice of appeal must be filed within 15 days of the date of the order and signed by the attorney *and* the client. Iowa Rs. App. P. 6.101(1) and 6.102(1)(a); see Form 4 in rule 6.1401. The notice shall be served upon all counsel of record, all unrepresented parties, the attorney general, and the clerk of the supreme court pursuant to Iowa Rules of Civil Procedure 1.442(2) and 1.442(7). The notice of appeal shall include a certificate of service in the form provided in rule 1.442(7).

Notice of cross appeal. A notice of cross appeal must be filed within the 15-day limit for filing a notice of appeal, or within 10 days after filing of the notice of appeal, whichever is later. Iowa

R. App. P. 6.101(2)(a).

Petition on appeal. The protocol for a juvenile appeal under Iowa Code chapter 232 differs somewhat from other appeals. Unless a petition on appeal is filed, the juvenile appeal will be dismissed. Iowa Rs. App. P. 6.102(1)(b) and 6.201(1) & (2); see Form 5 in rule 6.1401. Ensure all necessary attachments are included, a certificate of service is included, and the petition is served in the same manner as the notice of appeal. Iowa R. App. P. 6.201(1). If the petition is not served within 15 days after filing the notice of appeal, the appeal will be dismissed with no recourse. Iowa R. App. P. 6.201(2). Extensions will most likely not be granted, as the rules explicitly state, “The time for filing a petition on appeal shall not be extended.” Iowa R. App. P. 6.201(1)(b).

Response to petition on appeal. A response to a petition on appeal is optional unless a notice of cross-appeal was filed. Iowa R. App. P. 6.202(1). Similar to the petition on appeal, careful attention should be paid to the rules with regard to notice, service, length, form (including acceptable font and number of pages), the number of copies to be served, and cover. See Form 6 in Iowa R. App. P. 6.1401.

Reply to issues raised in cross appeal. A reply to the cross-appeal issues must be filed within 7 days after service of the Appellee’s response. Iowa R. App. P. 6.203.

Filing fee. Within 7 days after filing the notice of appeal, the appellant shall pay the filing fee as provided in Iowa Rule of Appellate Procedure 6.702(1) or request a waiver or deferral of the fee pursuant to rule 6.702(2).

Ordering transcript. Within 7 days after filing the notice of appeal, the appellant shall use a combined certificate to order a transcript from the court reporter. Iowa Rs. App. P. 6.803(1) and 6.804; see Form 2 in rule 6.1401.

Transmission of record. Within 30 days of the filing of the notice of appeal, the appellant shall request the clerk of the district court to transmit the record to the clerk of the supreme court. Iowa R. App. P. 6.204. In Iowa Code chapter 232 cases, the court reporter then has 30 days to file the transcript. Iowa R. App. P. 6.803(3)(b).

Disposition of appeal. After reviewing the petition on appeal, any response, any reply, and the record, the appellate court

may affirm or reverse, remand, or set the case for full briefing as directed by the court. Iowa Rs. App. P. 6.205(1) and 6.902(1)(d). If the court of appeals affirms or reverses the court's order, or remands the case, further review pursuant to Iowa Rule of Appellate Procedure 6.1103 may be sought. The court of appeals' refusal to grant full briefing shall not constitute grounds for further review by the supreme court. Iowa R. App. P. 6.205(2).

[2] The petition on appeal should clearly, concisely, and comprehensively state the material relevant facts, legal issues, and supporting legal authority as they relate to the issues presented for appeal. The petition should present all relevant case law and present the best legal arguments available in state and federal law for the client's position. The petition should include novel legal arguments if there is a chance of developing favorable law in support of the client's claim.

[3] The attorney shall keep the client informed of the status of the appeal. The client should be informed of the date, time, and place scheduled for oral argument of the appeal.

26. Timely review ruling and discuss its implications with the client.

Commentary

[1] The attorney shall communicate the result of the appeal and its implications immediately upon learning of the decision, so the client does not find out from another source, and the attorney shall provide the client with a copy of the appellate decision.

27. Consider and discuss further review options.

Commentary

[1] If the court of appeals affirms or reverses the court's order, or remands the case, further review pursuant to Iowa Rule of Appellate Procedure 6.1103 may be sought. The court of appeals' refusal to grant full briefing shall not constitute grounds for further review by the supreme court. Iowa R. App. P. 6.205(2).

SESSION FIVE

Selection of Guardian for Minor and Background Check of Proposed Guardian

SELECTION OF GUARDIAN FOR MINOR AND BACKGROUND CHECK OF PROPOSED GUARDIAN*

Presentation Outline

Josephine Gittler, ** and Brent Pattison ***

I. Qualifications of Guardians and Conservators for an Adult

A. Existing Law

1. The Probate Code currently provides:

Except for a minor child for whom the court's jurisdiction over the child's guardianship was established pursuant to transfer of the child's case in accordance with section 232.104, the parents of a minor child, or either of them, if qualified and suitable, shall be preferred over all others for appointment as guardian. Preference shall then be given to any person, if qualified and suitable, nominated as guardian for a minor child by a will executed by the parent having custody of a minor child, and any qualified and suitable person requested by a minor fourteen years of age or older, or by standby petition executed by a person having physical and legal custody of a minor. Subject to these preferences, the court shall appoint as guardian a qualified and suitable person who is willing to serve in that capacity.
[§ 633.559]

B. HF 591

1. HF 591 provides that the court shall appoint any “*qualified and suitable person who is willing to serve*” subject to two preferences. [§ 232D.308(1)] Under this general standard, the court will continue to have broad discretion as to who to appoint as a guardian or conservator.
2. HF 591 sets forth the two preferences for appointment of a guardian for a minor as follows:

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- A person, if qualified and suitable, “nominated as guardian for a minor by a will that was executed by the parent or parents having legal custody at the time of the parent’s or parents’ death and that was admitted to probate under chapter 633.” [§ 232D.308(2)]
 - A preference for a person, if qualified and suitable, “requested by a minor fourteen years of age or older.” [§ 232D.308(3)]
3. HF 591 does not retain the “parental preference” in the current Probate Code.

II. Background Checks of Prospective Guardians for Minors

A. Existing law

1. The Probate Code currently does not require background checks of prospective guardians and conservators.¹
2. In contrast, state law currently requires background checks for persons such as employees of health facilities, child care providers, and school employees including school bus drivers.²
3. Recognizing that guardians and conservators are given great authority and potential exists for misuse of that authority, the Iowa Supreme Court Guardianship and Conservatorship Reform Task Force recommended mandatory background checks of prospective guardians and conservators constitutes a desirable safeguard against the court’s appointment of persons as guardians or conservators who may misuse their authority to abuse, neglect and financially exploit protected persons.³

B. HF 591 background check requirement

1. HF 591 requires for the first time that proposed guardians and conservators, other than financial institutions with Iowa trust powers, undergo an Iowa criminal history check and checks of the Iowa dependent adult abuse, child abuse, and sex offender registries, [§ 232D.307(1)].
2. The background check requirement is directed at ensuring that judges have the information they need to determine the appropriateness of appointing a person as a guardian or conservator. The court has discretion as to whether to treat negative background check information as disqualifying for appointment of guardian or conservator. [§ 232D.307(2)].
3. HF 591 directs the judicial branch in conjunction with the Departments of Public Safety and Human Services and the State Chief Information Officer to establish procedures for electronic access to the single contact repository, known as SING, for combined background checks, [§ 232D.307]. See: https://ocio.iowa.gov/sites/default/files/documents/2018/09/sing_id_request_final_sep_t_2018_1.pdf

4. The cost of a combined SING background check is \$15.00. HF 591 specifies that the petitioner shall be responsible for the payment of the fee for a combined background check from a single contact repository.
5. It should be noted there are statutory limitations placed on the redissemination of child and dependent adult abuse information received as a result of SING background checks, [§§ 235A.15 & 235B.8].
6. Attorneys representing petitioners should obtain release of registry information from the prospective guardian. (See Appendix of this outline.) Although judicial branch guidance as to the procedures for the required SING background check is not as yet available, it is contemplated that these forms, along with a request for a SING background check should be submitted to the clerk of court for processing.⁴

Endnotes

¹ IOWA GUARDIANSHIP & CONSERVATORSHIP REFORM TASK FORCE, REFORMING IOWA’S GUARDIANSHIP AND CONSERVATORSHIP SYSTEM: FINAL REPORT (2017) (hereinafter, “TASK FORCE REPORT,”) at 62.

² *Id.*

³ *Id.*

⁴ Presentation by Judge Myron Gookin. CLE Conference, House File 610, Opening and Administration of Adult Guardianships and Conservatorships (Institute of Guardianship and Conservatorship)(October 11, 2019).

SESSION FIVE:

APPENDIX

Information Release Forms

- Division of Criminal Investigation – Criminal History Record Check Request Form
- Department of Human Services – Authorization for Release of Child and Dependent Adult Abuse Information



STATE OF IOWA

Criminal History Record Check Request Form



DCI Account Number: _____
(if applicable)

Mail or Fax completed forms to:

Iowa Division of Criminal Investigation
Support Operations Bureau, 1st Floor
 215 E. 7th Street
 Des Moines, Iowa 50319
 (515) 725-6066
 (515) 725-6080 Fax

Send results to:

Name _____
 Address _____

 Phone _____
 Fax _____

I am requesting an Iowa Criminal History Record Check on:

Last Name (mandatory)	First Name (mandatory)	Middle Name (recommended)
Date of Birth (mandatory)	Gender (mandatory)	Social Security Number (recommended)
	<input type="checkbox"/> Male <input type="checkbox"/> Female	

Release Authorization: Without a signed release from the subject of the request, a complete criminal history record may not be releasable, per Code of Iowa, Chapter 692.2. For complete criminal history record information, as allowed by law, always obtain a signed release from the subject of the request.

*****This form (DCI-77) is the only approved release authorization form for this purpose.*****

Release Authorization: I hereby give permission for the above requesting official to conduct an Iowa criminal history record check with the Division of Criminal Investigation (DCI). Any criminal history data concerning me that is maintained by the DCI may be released as allowed by law. I understand this can include information concerning completed deferred judgments and arrests without dispositions.

Release Authorization Signature: _____

Iowa Criminal History Record Check Results

(DCI use only)

As of _____, a search of the provided name and date of birth revealed:

- No Iowa Criminal History Record found with DCI
- Iowa Criminal History Record attached, DCI # _____

DCI initials _____

Release Authorization Information:

Iowa law does ***not*** require a release authorization. However, without a signed release authorization from the subject of the request any arrest over 18 months old, ***without*** a final disposition, cannot be released to a non-law enforcement agency.

Deferred judgments where DCI has received notice of successful completion of probation also cannot be released to non-law enforcement agencies without a signed release authorization from the subject of the request.

If the “No Iowa Criminal History Record found with DCI” box is checked, it could mean that the information on file is not releasable per Iowa law without a signed release authorization.

General Information:

The information requested is based on ***name*** and ***exact date of birth only***. Without fingerprints, a ***positive*** identification cannot be assured. If a person disputes the accuracy of information maintained by the Department, they may challenge the information by writing to the address on the front of this form or personally appearing at DCI headquarters during normal business hours.

The records maintained by the Iowa Department of Public Safety are based upon reports from other criminal justice agencies and therefore, the Department cannot guarantee the completeness of the information provided.

The criminal history record check is of the Iowa Central Repository (DCI) ***only***. The DCI files do not include other states’ records, FBI records, or subjects convicted in federal court within Iowa.

In Iowa, a ***deferred judgment is not*** generally considered a conviction once the defendant has been discharged after successfully completing probation. However, it should be noted that a deferred judgment may still be considered as an offense when considering charges for certain specified multiple offense crimes, i.e. second offense OWI. If a disposition reflects that a deferred judgment was given, you may want to inquire of the individual his or her current status.

A ***deferred sentence is*** a conviction. The judge simply withholds implementing a sentence for a certain probationary period. If probation is successful, the sentence is not carried out.

Any questions in reference to Iowa criminal history records can be answered by writing to the address on the front of this form or calling (515) 725-6066 between 8:00 a.m. and 4:00 p.m., Monday - Friday.

REMINDER - (1) Send in a separate Request Form for each last name, (2) a fee is required for each last name submitted, (3) a completed Billing Form must be submitted with all request(s).

Iowa law requires employers to pay the fee for potential employees’ record checks.



Authorization for Release of Child and Dependent Adult Abuse Information

This form must be used to authorize release of child or dependent adult abuse information when the person requesting the information does not have independent access to it under Iowa law. Complete a separate form for each person for whom information is requested and email to dhsabuseregistry@dhs.state.ia.us, or fax to (515) 564-4112, or mail to the Iowa Department of Human Services, Central Abuse Registry, P.O. Box 4826, Des Moines, IA 50305.

Please specify which abuse registry you are requesting by checking the appropriate box below:

- Child Abuse Registry Dependent Adult Abuse Registry Both

Please specify your preferred **method of response** by checking a box and completing the information in Section 1.

- Address Fax Email

Section 1: To be completed by the person or agency requesting the information.

Requester: Last	First	Agency Name		Telephone Number ()
Address			Fax Number ()	
City	State	Zip Code	Email	
List the name and address of the person whose information is being requested:				
Name (last, first, middle)		Birth Date	Social Security Number	
Address	City	County	State	Zip Code
List maiden name, previous married names, and any alias:				
What is the purpose of your request for child or dependent adult abuse information?				
I have read and understand the legal provisions for handling child and dependent adult abuse information which is printed on the second page of this form.				
Signature of Requestor			Date	

Section 2: To be completed by the person authorizing the Department of Human Services to release their child or dependent adult abuse information.

I understand that my signature authorizes the requester to receive information to verify whether I am named on the Child Abuse or Dependent Adult Abuse Registry as having abused a child (Iowa Code section 235A.15) or dependent adult (Iowa Code section 235B.6). To the best of my knowledge, the information contained in Section 1 of this form is correct.

Signature of Person Authorizing	Date
---------------------------------	------

Section 3: To be completed by the Central Abuse Registry or designee.

- The person whose information is being requested is listed on the Child Abuse Registry as having abused a child.
- The person whose information is being requested is not listed on the Child Abuse Registry as having abused a child.
- The person whose information is being requested is listed on the Dependent Adult Abuse Registry as having abused a dependent adult.
- The person whose information is being requested is not listed on the Dependent Adult Abuse Registry as having abused a dependent adult.
- This request for information is denied because the form is incomplete.

Signature of Registry Staff or Designee	Date
Comments	

LEGAL PROVISIONS FOR HANDLING CHILD AND DEPENDENT ADULT ABUSE INFORMATION

Redissemination of Child and Dependent Adult Abuse Information (Iowa Code sections 235A.17 and 235B.8)

A person, agency, or other recipient of child or dependent adult abuse information shall not redisseminate (release) this information, except that redissemination is permitted when **ALL** of the following conditions apply:

- ◆ The redissemination is for official purposes in connection with prescribed duties or, in the case of a health practitioner, pursuant to professional responsibilities.
- ◆ The person to whom such information would be redisseminated would have independent access to the same information under Iowa Code sections 235A.15 or 235B.6.
- ◆ A written record is made of the redissemination, including the name of the recipient and the date and purpose of the redissemination.
- ◆ The written record is forwarded to the Central Abuse Registry within 30 days of the redissemination.

Criminal Penalties (Iowa Code sections 235A.21 and 235B.12)

A person is guilty of a criminal offense when the person:

- ◆ Willfully requests, obtains, or seeks to obtain child or dependent adult abuse information under false pretenses, or
- ◆ Willfully communicates or seeks to communicate child or dependent adult abuse information to any agency or person except in accordance with Iowa Code sections 235A.15, 235A.17, 235B.6, and 235B.8, or
- ◆ Is connected with any research authorized pursuant to Iowa Code sections 235A.15 and 235B.6 and willfully falsifies child or dependent adult abuse information or any records relating to child or dependent adult abuse.

Upon conviction for each offense, the person is guilty of a serious misdemeanor punishable by a fine or imprisonment.

Any person who knowingly, but without criminal purposes, communicates or seeks to communicate child or dependent adult abuse information except in accordance with Iowa Code sections 235A.15, 235A.17, 235B.6, and 235B.8 is guilty of a simple misdemeanor punishable, upon conviction for each offense, by a fine or imprisonment.

Any reasonable grounds for belief that a person has violated any provision of Iowa Code Chapters 235A or 235B shall be grounds for the immediate withdrawal of any authorized access that person might otherwise have to child or dependent adult abuse information.

SESSION SIX

Duties, Responsibilities and Powers of Guardians of Minors, Monitoring of Minor Guardianships and Guardian's Reporting Requirements

DUTIES, RESPONSIBILITIES AND POWERS OF GUARDIANS OF MINORS, MONITORING OF MINOR GUARDIANSHIPS AND GUARDIAN'S REPORTING REQUIREMENTS*

Presentation Outline

Josephine Gittler** and Kellyann Lekar***

I. Background

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

As the Iowa Supreme Court Guardianship and Conservatorship Reform Task Force explained:

[G]uardianship has its roots in the doctrine of parens patriae under which the state has the power to protect those who cannot protect themselves. 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.” 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.” (footnotes omitted)¹

The court monitoring function is of great importance because minors as well as adults subject to guardianship and conservatorship are highly vulnerable and in need of protection. Guardians are appointed for minor most often because they are not

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*** Kellyann Lekar is the Chief District Court Judge, Judicial District One. She serves as a member of the Judicial Council, the Judicial Administrative Committee, and numerous other committees, initiatives, and projects. She was a member of the Iowa Supreme Court’s Guardianship and Conservatorship Reform Task Force and Chair of the Workgroup on Court Monitoring.

receiving needed parental care and protection, and they may be at risk of abuse and neglect.²

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.”³ Other studies and reports likewise have documented serious deficiencies in court monitoring.⁴

II. Problems with Existing Court Monitoring and Goal of HF 591

1. HF 610 incorporates and reflects the recommendations of the Iowa Supreme Court Guardianship and Conservatorship Reform Task Force directed at addressing the major systemic problems that the Task Force identified in the monitoring of guardianships both for minors and adults.
2. The overall goal of HF 591 is to strengthen the authority and ability of the court to effectively and efficiently monitor minor guardianships, to ensure that persons under guardianship and conservatorship receive needed care and protection.

III. Guardian’s Reporting Requirements: Initial Care Plan

A. Requirement of an initial care plan

1. Under the existing Probate Code court monitoring of guardianships is primarily retrospective, i.e., “after the fact” in nature, with the primary vehicle for monitoring being the annual report that a guardian is required to submit to the court for review and approval.
2. HF 591 contains the new requirement that upon appointment, a guardian for a minor must submit a verified initial care plan within 60 days of appointment for court review and approval.
3. The requirement that a guardian of a minor file an initial care plan is designed to encourage a newly appointed guardian to determine the needs of the minor, to identify the resources and services available to meet those needs, and then to develop a prospective plan to meet those needs.
4. The initial plan requirement will enable the court to determine at an early stage whether the guardian has developed an appropriate plan.
5. Most importantly it increases the ability of the court to prevent problems before they occur or before they have negative consequences.

B. Contents of plan

1. HF 591 specifies that the initial care plan “*shall include but not be limited*” to the following [§ 232D.501(1)(a)]:
 - *The minor’s current residence and guardian’s plan for the minor’s living arrangements.* [§ 232D.501(1)(a)(1)]
 - *The guardian’s plan for payment of the minor’s living expenses and other expenses.* [§ 232D.501(1)(a)(2)]
 - *The minor’s health status and the guardian’s plan for meeting the minor’s health needs.* [§ 232D.501(1)(a)(3)]
 - *The minor’s educational training and vocational needs and the guardian’s plan for meeting the minor’s educational training and vocational needs.* [§ 232D.501(1)(a)(4)]
 - *The guardian’s plan for facilitating contacts of the minor with the minor’s parents.* [§ 232D.501(1)(a)(5)]
 - *The guardian’s plan for contact with and activities on behalf of the minor.* [§ 232D.501(1)(a)(6)]

C. Best practices

1. In the initial care plan submitted, to the court the guardian should expressly request court approval for any powers reasonably necessary to carry out the plan.
2. Since the filing of an initial care plan for review and approval by the court is a new requirement under HF 591, existing guardians of already established guardianships have not filed and obtained approval of care plans. Such guardians should include in their next required annual report forms the information that should be included in an initial care plan.

Chief Judge Wilke of the 2nd Judicial District has issued an order that all guardians and conservators appointed prior to January 1, 2020 (the effective date of HF 591) shall file an initial care plan with their 2020 annual report. *See Appendix A to this presentation outline.* It appears that other chief district court judges may issue similar orders.

IV. Guardian’s Reporting Requirements: Annual Reports and Final Report

A. Requirement of annual reports

1. HF 591 retains the current Probate Code requirement that a guardian must submit annual reports. It requires that a guardian must file a verified annual report “*within thirty days of the close of the reporting period.*” [§ 232D.501(1)(b)].

2. HF 591 specifies that the annual report “*shall include but not be limited*” to the following: [§ 232D.501(1)(b)]
 - *The current residence and living arrangements of the minor.* [§ 232D.501(1)(b)(1)].
 - *The sources of payment for the minor’s living expenses and other expenses.* [§ 232D.501(1)(b)(2)]
 - *The minor’s health status and health services provided to the minor.* [§ 232D.501(1)(b)(3)].
 - *The minor’s mental, behavioral, or emotional problems, if any, and professional services provided the minor for such problems.* [§ 232D.501(1)(b)(4)]
 - *The minor’s educational status and educational training and vocational services provided the minor.* [§ 232D.501(1)(b) (5)]
 - *The nature and extent of parental visits and communication with the minor.* [§ 232D.501(1)(b)(6)]
 - *The nature and extent of the guardian’s visits with and activities on behalf of the minor.* [§ 232D.501(1)(b)(7)]
 - *The need for continuation of the guardianship.* [§ 232D.501(1)(b)(8)]
 - *The ability of the guardian to continue as guardian.* [§ 232D.501(1)(b)(9)]
 - *The need of the guardian for assistance in providing or arranging for the provision of care for the minor.* [§ 232D.501(1)(b)(10)]

B. Requirement of final report

1. HF 591 requires the filing of a final report by the guardian within 30 days of the termination of the guardianship. [§ 232D.501(1)(c)]

V. Forms for Initial Care Plan and Annual Report

A. Task Force and Supreme Court forms

1. The Iowa Supreme Court Guardianship and Conservatorship Reform Task Force found that existing deficiencies in court monitoring of guardianships was attributable in part to the forms being used for reporting by guardians. Specifically, the forms were not providing adequate guidance with respect to required reporting to guardians, the majority of whom are family members and other lay persons and who are not represented by counsel. Most importantly these forms were not generating the information needed by judges to effectively and efficiently carry out their monitoring function. In response to this problem, a Task Force committee developed a model form for the guardian’s initial care plan and a model form for the guardian’s annual report, and these model forms were approved by the Task Force as a whole.
2. The Iowa Supreme Court has issued Iowa Court Rule 8.37 with forms for implementation of HF 591 including a form for the guardian’s initial care plan for the minor and the guardian’s annual report for a minor. However, the

Legislative Council exercised its statutory authority to delay the effective date of the Supreme Court guardianship and conservatorship forms to May 1 of 2120. The Supreme Court is now in the process of soliciting input on these forms from legislators and other stakeholders.

B. Comparison of Supreme Court and Task Force initial care plan and annual report forms

1. Appendix B of this outline contains the following:
 - the Supreme Court Initial Care Plan Form, and
 - the Task Force Model Initial Care Plan Form.
2. Appendix C of this outline contains the following:
 - the Supreme Court Annual Report Form, and
 - the Task Force Model Annual Report Form.

VI. Waiver of Report Filing Requirements, Extensions of Time for Filing and Enforcement of Filing Requirements.

A. Waiver of report filing requirements and extensions of time for filing of reports

1. In accordance with a Task Force recommendation, HF 591 prohibits the court from waiving the initial care plan report, the annual reports, and the final report that a guardian is required to submit to the court for review and approval [§ 232D.501(1)]
2. The HF 591 provision prohibiting the court's waiver of the guardian's reporting requirements codifies existing court rule 7.8, which was issued in 2018 and became effective in 2019 [Rules of Probate Procedure, Rule 7.8(1)].
3. Existing court rule 7.8 permits extensions of time for filing of a guardian's required "*only upon a showing of good cause.*" [Rules of Probate Procedure, Rule 7.8(3)]

B. Enforcement of filing requirements

1. Existing court rule 7.8 provides that the court may impose sanctions on a guardian, including the guardian's removal, if the guardian fails to make any required filing after notice and an opportunity to cure the failure [Rules of Probate Procedure, Rule 7.8(4)]

VII. Duties and Powers of Guardian for Minor

A. The guardian as fiduciary

1. It must be emphasized that under HF 591 the guardian of a minor is a fiduciary and as such the guardian for a minor has the obligations and responsibilities of a fiduciary while serving as a guardian for a minor. [§ 232D.402(1)]
2. It also should be noted that HF 591 did not repeal or amend the existing probate provisions titled “*General Provisions Related to Fiduciaries*,” which are therefore applicable to guardians. [§§ 633.63-633.162] HF 591 expressly provides that “[t]he fiduciary duties of a guardian for an adult set forth in Chapter 633 are applicable to a guardian under this chapter.” [§ 232D.402 (1)]

B. Powers the court may grant to guardian

1. HF 591 provides: that “[a]n order by the court appointing a guardian for a minor shall state the powers granted to the guardian.” [§ 232D.401(3)] HF 591 then provides:

“Except as otherwise limited by court order, the court may grant the guardian the following powers, which may be exercised without prior court approval

 - *Taking custody of the minor and establishing the minor’s permanent residence if otherwise consistent with the terms of any order of competent jurisdiction relating to the custody, placement, detention, or commitment of the minor within the state.* [§ 232D.401(3)(a)]
 - *Consenting to medical, dental and other health care treatment and services for the minor.* [§ 232D.401(3)(b)]
 - *Providing or arranging for the provision of education for the minor including but not limited to preschool education, primary education and secondary education, special education and related services, and vocational services.* [§ 232D.401(3)(c)]
 - *Consenting to professional services for the minor to ensure the safety and welfare of the minor.* [§ 232D.401(3)(d)]
 - *Applying for and receiving funds and benefits payable for the support of the minor.* [§ 232D.401(3)(e)]
 - *Any other powers the court may specify.* [§ 232D.401(3)(f)]
2. HF 591 provides that a court may grant the guardian “*the following powers, which shall only be exercised with prior court approval:*” [§ 232D.401(4)]
 - *Consenting to the withholding or withdrawal of life-sustaining procedures, as defined in section 144A.2, from the minor, the performance of an abortion on the minor, or the sterilization of the minor.* [§ 232D.401(4)(a)]

- *Establishing the residence of the minor outside of the state.* [§ 232D.401(4)(b)]
- *Consenting to the marriage of the minor.* [§ 232D.401(4)(c)]
- *Consenting to the emancipation of the minor.* [§ 232D.401(4)(d)]
- *Denial of all visitation, communication, or interaction between the minor and the parents of the minor. The court shall approve such denial of visitation, communication, or interaction upon a showing by the guardian that significant physical or emotional harm to the minor has resulted or is likely to result to the minor from parental contact. The guardian may place reasonable time, place, or manner restrictions on visitation, communication, or interaction between the minor and the minor's parents without prior court approval.* [§ 232D.401(5)]

Endnotes

¹ IOWA GUARDIANSHIP & CONSERVATORSHIP REFORM TASK FORCE, REFORMING IOWA'S GUARDIANSHIP AND CONSERVATORSHIP SYSTEM: FINAL REPORT (2017) (hereinafter, "TASK FORCE REPORT,") at 89 and *see references* therein cited

² *See* Josephine Gittler at al., Reforming Iowa's Guardianship and Conservatorship System: A Guide to the New Minor Guardianship Law, HF 591, Drake Law Rev. Discourse 104, 108-110 (forthcoming).

³ Brenda K. Uekert, National Center for State Courts, *Adult guardianship court data and issues: results from an online survey* 5 (2010).

⁴ *See, e.g.,* Naomi Karp. & Erica Wood, AARP Public Policy Institute & ABA Commission on Law and Aging, *Guardianship monitoring: A national survey of court practices* 31 (2006); National Association for Court Management, *Adult guardianship guide, a guide to plan, develop and sustain a comprehensive court guardianship and conservatorship program* 11 (2014).

SESSION SIX:
APPENDIX A
**Administrative Order Re Existing
Guardianships and Conservatorships**

- In the matter of Guardianships and Conservatorships Pending on December 31, 2019, Administrative Order, Second Judicial District.

IN THE IOWA DISTRICT COURT FOR
THE SECOND JUDICIAL DISTRICT

IN THE MATTER OF)
)
GUARDIANSHIPS AND) ADMINISTRATIVE ORDER
CONSERVATORSHIPS PENDING)
ON DECEMBER 31, 2019)

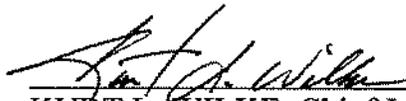
The Iowa legislature has made significant changes to the laws relating to guardianships and conservatorships. The new laws take effect on January 1, 2020. In order to effectuate efficient and effective compliance with the new laws, the following administrative order will be entered:

ORDER

IT IS HEREBY ORDERED that all guardians appointed prior to January 1, 2020, shall file an Initial Care Plan with their 2020 Annual Report.

IT IS FURTHER ORDERED that all conservators appointed prior to January 1, 2020, shall file their Initial Plan with their 2020 Annual Report.

IT IS FURTHER ORDERED that until such time as an Initial Plan is filed and approved by the Court, all conservators appointed prior to January 1, 2020, shall have continuing authority to perform acts concerning the Protected Person's financial affairs and assets that were authorized by statute prior to January 1, 2020.


KURT L. WILKE, Chief Judge 2nd Judicial District

SESSION SIX:
APPENDIX B
Supreme Court Form and
Task Force* Model Form: Initial Care
Plan for Minor

* Iowa Supreme Court Guardianship and Conservatorship Reform Task Force

- Supreme Court Rule 8.37—Form 2: Guardian’s Initial Care Plan for Protected Minor
- Task Force Guardian’s Initial Care Plan for Minor Model Form

Rule 8.37—Form 2: *Guardian's Initial Care Plan for Protected Minor*

THE JUDICIAL COUNSEL UNANIMOUSLY DELAYED THE EFFECTIVE DATE OF GUARDIANSHIP AND CONSERVATORSHIP FORMS INCLUDING THE AFFIDAVIT FORM UNTIL MAY 2020.

In the Iowa District Court for _____ County

In the Matter of the Guardianship of:

Initials of protected minor

Protected Minor.

Juvenile no. _____

**Guardian's Initial Care Plan for
Protected Minor**

Iowa Code § 232D.501(1)(a)

Guardian states as follows:

1. Minor's residence and living arrangements

A. Minor's current residence:

Mailing Address

City

State

ZIP code

B. Guardian's plan for Minor's living arrangements:

Check this box if you have attached a sheet with additional information.

2. Conservatorship

Minor *check one*

A. does not have a conservator.

B. has a court-appointed conservator. *If you check B, you must fill in the following information.*

Name and address of the court-appointed conservator:

Full name: first, middle, last

Mailing address

City

State

ZIP code

Continued on next page

3. Minor's expenses

Guardian's plan for payment of Minor's living expenses and other expenses:

Check this box if you have attached a sheet with additional information.

4. Minor's health

A. Minor's current health status and health care needs:

Check this box if you have attached a sheet with additional information.

B. Guardian's plan for meeting Minor's medical, dental, and other health care needs:

Check this box if you have attached a sheet with additional information.

5. Minor's education

A. Minor's educational, training, and vocational needs:

Check this box if you have attached a sheet with additional information.

B. Guardian's plan for meeting Minor's educational training and vocational needs:

Check this box if you have attached a sheet with additional information.

Continued on next page

6. Minor's contact with parents

Guardian's plan for facilitating contact of Minor with Minor's parents:

Check this box if you have attached a sheet with additional information.

7. Guardian's interaction with Minor

Guardian's plan for contact with, and activities on behalf of, Minor:

Check this box if you have attached a sheet with additional information.

8. Other information

Other information that may be useful to the court in the opinion of Guardian:

Check this box if you have attached a sheet with additional information.

9. Oath and signature

I, _____, have read this initial care plan, and I certify
Print Guardian's name

under penalty of perjury and pursuant to the laws of the State of Iowa that the information I have provided in this initial care plan is true and correct.

_____, 20_____
*Month Day Year Guardian's signature**

Mailing address City State ZIP code

(_____) _____
Phone number Email address Additional email address, if applicable

**Whether filing electronically or in paper, you must handwrite your signature on this form. If you are filing electronically, scan the form after signing it and then file electronically.*

(2) If Yes, please indicate who is serving as the minor's conservator: You
 Other Person If Other Person, provide:

Full name: first, middle, last

Mailing address

City

State

ZIP code

(____) _____
Phone number

Email address

3. Minor Under Guardianship—Information

A. Age of minor: _____

B. Reason for guardianship:

Check this box if you have attached a sheet with additional information.

C. Does the minor have special needs due to disability or for some other reason?

No Yes. If Yes, please describe your plan for meeting those needs:

Check this box if you have attached a sheet with additional information.

4. Residence of Minor

A. The minor is now living in my home now living in the home of another person now living in another place.

B. If the minor is not living in your home, provide:

Name of person(s) with whom the minor is living

Mailing address

City

State

ZIP code

(____) _____
Phone number

Email address

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:

Check this box if you have attached a sheet with additional information.

5. Living Expenses of Minor (NOTE: NOT INCLUDED IN TASK FORCE FORM BUT REQUIRED BY HF 591)

- A. By whom are the living expenses and other expenses of the minor being paid?
 By one or both natural parent(s) By you as the guardian Other. If Other, please explain:

- B. If the minor does not have a conservator, please describe your plan for meeting the minor's living expenses and other expenses:

Check this box if you have attached a sheet with additional information.

- C. Do you plan to apply for and receive funds and/or benefits payable for the support of the minor? No Yes. If Yes, please describe your plan(s):

Check this box if you have attached a sheet with additional information.

6. 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 currently being done regarding those problems:

Check this box if you have attached a sheet with additional information.

B. Please describe your plan for meeting the minor's future needs for medical and dental care:

Check this box if you have attached a sheet with additional information.

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 currently being done regarding those problems:

Check this box if you have attached a sheet with additional information.

D. Please describe your plan for meeting the minor's future need for services for possible mental, behavioral, or emotional problems or other problems:

Check this box if you have attached a sheet with additional information.

7. 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) _____
School name

School Mailing address *City* *State* *ZIP code*

(2) Minor's grade in school _____

C. Is the minor receiving special education and related services? No Yes.

D. Is the minor receiving vocational or training services? No Yes.

E. Please describe your plan for meeting the minor's future educational, training and vocational needs:

Check this box if you have attached a sheet with additional information.

8. Minor's natural parents and other relatives

A. Name of Minor's mother if known:

Full name: first, middle, last

Mailing address

City

State

ZIP code

(____) _____

Phone number

Email address

B. Name of Minor's father if known:

Full name: first, middle, last

Mailing address

City

State

ZIP code

(____) _____

Phone number

Email address

C. Will arrangements be made for regular contacts of the minor's mother with the minor? No Yes. If No, please explain. If Yes, please describe the arrangements:

Check this box if you have attached a sheet with additional information.

D. Will arrangements be made for regular contacts of the minor's father with the minor? No Yes. If No, please explain. If Yes, please describe the arrangements:

Check this box if you have attached a sheet with additional information.

E. Will arrangements be made for regular contacts of the minor with other relatives?
 No Yes. If No, please explain. If Yes, please describe the arrangements:

Check this box if you have attached a sheet with additional information.

9. Guardian’s interaction 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 the minor?

Daily Weekly Monthly Other. If Other, please describe:

B. Please describe the type of activities with or on behalf of the minor you plan:

Check this box if you have attached a sheet with additional information.

10. Need for assistance

Do you need assistance in providing or arranging for the care of the minor?

No Yes. If Yes, please describe the assistance you need:

Check this box if you have attached a sheet with additional information.

11. Additional information

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

Check this box if you have attached a sheet with additional information.

Initial Care Plan and Guardian’s Authority

The guardian hereby requests court approval of the foregoing initial care plan and the authority (powers) to carry out the plan in the next reporting period.

12. Oath and signature

I, _____, have read this initial care plan, and I certify
Print Guardian’s name

under penalty of perjury and pursuant to the laws of the State of Iowa that the information I have provided in this initial care plan is true and correct.

_____, 20_____
*Month Day Year Guardian’s signature**

**Whether filing electronically or in paper, please handwrite your signature on this form. If you are filing electronically, scan the form after signing it and then file electronically.*

SESSION SIX:
APPENDIX C
Supreme Court Form and
Task Force* Model Form: Guardian's
Annual Report for Minor

* Iowa Supreme Court Guardianship and Conservatorship Reform Task Force

- Supreme Court Rule 8.37—Form 3: Guardian's Annual Report for Protected Minor
- Task Force Guardian's Annual Report for Minor Model Form

Rule 8.37—Form 3: *Guardian's Annual Report for Protected Minor*

THE JUDICIAL COUNSEL UNANIMOUSLY DELAYED THE EFFECTIVE DATE OF GUARDIANSHIP AND CONSERVATORSHIP FORMS INCLUDING THE AFFIDAVIT FORM UNTIL MAY 2020.

In the Iowa District Court for _____ County

In the Matter of the Guardianship of:

Initials of protected minor

Protected Minor.

Juvenile no. _____

**Guardian's Annual Report for
Protected Minor**

Iowa Code § 232D.501(1)(b)

Guardian states as follows:

1. This report is for the period from: _____ / _____ / _____ to _____ / _____ / _____.
Month Day Year Month Day Year

2. Minor's residence and living arrangements

A. Minor's current residence:

Mailing Address

City State ZIP code

B. Minor's living arrangements:

Check this box if you have attached a sheet with additional information.

3. Conservatorship

Minor *check one*

A. does not have a conservator.

B. has a court-appointed conservator. *If you check B, you must fill in the following information.*

Name and address of the court-appointed conservator:

Full name: first, middle, last

Mailing address City State ZIP code

Continued on next page

4. Minor's expenses

Sources of payment of Minor's living expenses and other expenses:

Check this box if you have attached a sheet with additional information.

5. Minor's health

A. Minor's current health status:

Check this box if you have attached a sheet with additional information.

B. Health services provided to Minor:

Check this box if you have attached a sheet with additional information.

6. Minor's mental state

Mental, behavioral, or emotional concerns with Minor, if any, and professional services provided to Minor for any such concerns:

Check this box if you have attached a sheet with additional information.

Continued on next page

7. Minor's education

A. Minor's educational status:

Check this box if you have attached a sheet with additional information.

B. Educational training and vocational services provided to Minor:

Check this box if you have attached a sheet with additional information.

8. Minor's contact with parents

Nature and extent of parental visits and communication with Minor:

Check this box if you have attached a sheet with additional information.

9. Guardian's interaction with Minor

Nature and extent of Guardian's visits with, and activities on behalf of, Minor:

Check this box if you have attached a sheet with additional information.

Continued on next page

10. Continuation of guardianship

A. Guardianship is recommended to be: continued terminated.

If termination is recommended, provide an explanation. A court hearing may be required on the matter of termination.

Check this box if you have attached a sheet with additional information.

B. Ability of Guardian to continue as guardian:

Discuss Guardian's ability to continue as guardian for Minor.

Check this box if you have attached a sheet with additional information.

C. Assistance required:

Identify any assistance Guardian needs in providing or arranging for care of Minor.

Check this box if you have attached a sheet with additional information.

11. Other information

Other information that may be useful to the court in the opinion of Guardian:

Check this box if you have attached a sheet with additional information.

Continued on next page

12. Fees for Guardian are *check one*

applied for.

waived.

Attach affidavit relative to compensation. (Iowa Code section 633.202)

13. Fees for Guardian's attorney *check one*

should be set by the court.

are not requested.

are waived or not applicable.

Attach affidavit relative to compensation. (Iowa Code section 633.202)

14. Oath and signature

I, _____, have read this annual report, and I certify under
Print Guardian's name

penalty of perjury and pursuant to the laws of the State of Iowa that the information I have provided in this report is true and correct.

_____, 20____
*Month Day Year Guardian's signature**

Mailing address City State ZIP code

(_____) _____
Phone number Email address Additional email address, if applicable

**Whether filing electronically or in paper, you must handwrite your signature on this form. If you are filing electronically, scan the form after signing it and then file electronically.*

**SUPREME COURT GUARDIANSHIP AND CONSERVATORSHIP REFORM TASK FORCE
GUARDIAN'S ANNUAL REPORT FOR MINOR: MODEL FORM**

THIS PROPOSED FORM WAS DEVELOPED BY THE IOWA SUPREME COURT GUARDIANSHIP AND CONSERVATORSHIP REFORM TASK FORCE. IT HAS UNDERGONE MINOR MODIFICATION TO REFLECT THE PROVISIONS HF 591 WHICH WERE SUBSEQUENTLY ENACTED.

In the Iowa District Court for _____ County	
In the Matter of the Guardianship of: _____ <i>Initials of protected minor</i> Protected Minor.	Juvenile no. _____ <p align="center">Guardian's Annual Report for Protected Minor</p> <p align="right">Iowa Code § 232D.501(1)(b)</p>

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.

Guardian states as follows:

1. Period of Reporting

This Report is for the period from: *Use ending date of last accounting when applicable*

_____/_____/_____ to ____/____/_____
Month Day Year Month Day Year

2. Guardian's personal information

A. Name: _____
Full name: first, middle, last

B. Present address:

Mailing address City State ZIP code

(_____) _____
Phone number Email address

C. What is your relationship to minor? Grandparent Adult Sibling Other. *If Other, describe:*

D. During the reporting period, have you been arrested for, charged with, or convicted of any criminal offense? Yes No. If Yes, explain (*You need not report minor traffic offenses that do not involve alcohol or illegal drugs*):

Check this box if you have attached a sheet with additional information.

E. During the reporting period, have you been the subject of a report of child abuse or dependent adult abuse to the Department of Human Services? Yes No. If Yes, explain:

Check this box if you have attached a sheet with additional information.

3. Conservatorship

A. (1) Has the court appointed a conservator to manage the minor's fiscal affairs? Yes No.

(2) If Yes, please indicate who currently is serving as the minor's conservator: You Other Person. *If Other Person, provide:*

Full name: first, middle, last

Mailing address

City

State

ZIP code

(____) _____
Phone number

Email address

4. Minor under guardianship – personal information

A. Age of minor: _____

B. During the reporting period, has the minor been the subject of a child abuse report to the Department of Human Services? Yes No. *If Yes, explain:*

Check this box if you have attached a sheet with additional information.

D. Has the minor moved in the past year? If Yes, explain:

Check this box if you have attached a sheet with additional information.

6. Living Expenses of Minor (NOTE: NOT INCLUDED IN TASK FORCE FORM BUT REQUIRED BY HF 591)

A. During the reporting period, by whom were the living expenses and other expenses of the minor paid? By one or both natural parent(s) By you as the guardian Other. If Other, please explain:

B. If the minor does not have a conservator, please describe your plan for meeting the minor's living expenses and other expenses in the next reporting period:

Check this box if you have attached a sheet with additional information.

C. Did you apply for and receive funds and/or benefits payable for the support of the minor? Yes No. If Yes, please describe the sources and amount of funds and benefits:

Check this box if you have attached a sheet with additional information.

D. Do you plan to apply for and receive funds and/or benefits payable for the support of the minor in the next reporting period? Yes No. If Yes, please describe your plan(s):

Check this box if you have attached a sheet with additional information.

7. Minor's education

A. If the minor was not school age during the reporting period, did the minor receive services from a preschool educational program (e.g., Early Access, Head Start, etc.)? Yes No. If Yes, describe:

Check this box if you have attached a sheet with additional information.

B. If the minor was school age, provide:

(1) Name and location of the minor's school:

_____ *School name*

_____ *School Mailing address*

_____ *City*

_____ *State*

_____ *ZIP code*

(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.:

Check this box if you have attached a sheet with additional information.

C. During the reporting period, did the minor receive special education and related services? Yes No.

D. During the reporting period, did the minor receive vocational services? Yes No.

E. Please describe your plan for meeting the minor's future educational, training and vocational needs during the next reporting period:

Check this box if you have attached a sheet with additional information.

8. Minor's health

A. During the reporting period, has the minor received regular/routine health and dental care, including vaccinations? Yes No. If No, explain:

Check this box if you have attached a sheet with additional information.

B. During the reporting period, has the minor had any medical or dental problems or other health problems? Yes No. If Yes, explain:

Check this box if you have attached a sheet with additional information.

C. During the reporting period, was the minor seen for any of the medical or dental problems identified above by a health care provider? Yes No. If No, explain. If Yes, provide the name and contact information of the provider(s):

Check this box if you have attached a sheet with additional information.

D. Please describe your plan for meeting the minor's possible needs for medical and dental care and other health services in the next reporting period:

Check this box if you have attached a sheet with additional information.

E. During the reporting period, did the minor have any mental, emotional, or behavioral problems, or other problems that cause you concern? Yes No. If Yes, explain:

Check this box if you have attached a sheet with additional information.

F. During the reporting period, was the minor seen for any of the mental, behavioral, or emotional problems, or other problems identified above by a professional provider or providers? Yes No. If No, explain. If Yes, provide the name and contact information of the provider(s):

Check this box if you have attached a sheet with additional information.

G. Please describe your plan for meeting the minor's possible needs for services for mental, behavioral, or emotional problems or other problems that cause you concern in the next reporting period:

Check this box if you have attached a sheet with additional information.

H. Do you anticipate that the minor will have public health insurance (e.g. Hawk-I) or private health insurance? Yes No. If Yes, describe:

Check this box if you have attached a sheet with additional information.

9. Minor's contact with parents and other family members

A. Minor's contact with mother

(1) Name and, if known, current address and telephone number of the minor's mother:

_____ *Full name: first, middle, last*

_____ *Mailing address* _____ *City* _____ *State* _____ *ZIP code*

(_____) _____ *Phone number* _____ *Email address*

(2) During the reporting period, did mother visit (see) the minor?

No visits Daily Weekly Monthly Other. If Other, describe:

Check this box if you have attached a sheet with additional information.

(3) If mother visited the minor, were there any problems during the mother's visits?

Yes No. If Yes, describe:

(4) Did mother have contacts with the minor other than through visits? Yes No, If Yes, indicate as follows:

By telephone Daily Weekly Monthly Other.

If Other, describe: _____

By mail or e-mail Daily Weekly Monthly Other.

If Other, describe: _____

Other (describe): Daily Weekly Monthly Other.

If Other, describe: _____

Check this box if you have attached a sheet with additional information.

B. Minor's contact with father

(1) Name and, if known, current address and telephone number of the minor's father:

_____ *Full name: first, middle, last*

_____ *Mailing address* _____ *City* _____ *State* _____ *ZIP code*

(_____) _____ *Phone number* _____ *Email address*

(2) During the reporting period, did father visit (see) the minor?

No visits Daily Weekly Monthly Other. If Other, describe:

Check this box if you have attached a sheet with additional information.

(3) If father visited the minor, were there any problems during the father's visits?

Yes No. If Yes, describe:

(4) Did father have contacts with the minor other than through visits? Yes No. If Yes, indicate as follows:

By telephone Daily Weekly Monthly Other.
If Other, describe: _____

By mail or e-mail Daily Weekly Monthly Other.
If Other, describe: _____

Other (describe): Daily Weekly Monthly Other.
If Other, describe: _____

Check this box if you have attached a sheet with additional information.

C. Contact with other family members

(1) During the reporting period, did the minor have regular contacts with other relatives? Yes No. If Yes, describe:

Check this box if you have attached a sheet with additional information.

10. Guardian's interaction with Minor

Complete this section only if the minor is not living with you.

A. During the reporting period, how often did you see (visit) the minor? Daily Weekly Monthly Other. If Other, describe:

B. Have you had other contacts with the minor? Yes No. If Yes, indicate as follows:

By telephone

Daily Weekly Monthly Other.

If Other, describe: _____

By mail or e-mail

Daily Weekly Monthly Other.

If Other, describe: _____

Other (describe):

Daily Weekly Monthly Other.

If Other, describe: _____

Check this box if you have attached a sheet with additional information.

C. Please summarize your activities with and on behalf of the minor:

Check this box if you have attached a sheet with additional information.

11. Minor's living situation and care

A. Minor's current living situation and care is: Very Good Good Adequate Poor. If Adequate or Poor, explain:

Check this box if you have attached a sheet with additional information.

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:

Check this box if you have attached a sheet with additional information.

12. Need for Guardianship

The Guardianship should be: continued terminated changed.

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

Check this box if you have attached a sheet with additional information.

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, petition the court to relieve you of your duties.

Check this box if you have attached a sheet with additional information.

14. Need for Assistance

Do you need assistance in providing or arranging for care of the minor? Yes No If Yes, please describe assistance needed:

Check this box if you have attached a sheet with additional information.

15. Additional Information (optional)

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

Check this box if you have attached a sheet with additional information.

Guardian’s Annual Report and Authority

The guardian requests court approval of the foregoing annual report and the authority (powers) necessary to carry out the guardian’s related duties and responsibilities.

16. Oath and signature

I, _____, have read this annual report, and I certify under
Print Guardian’s name

penalty of perjury and pursuant to the laws of the State of Iowa that the information I have provided in this report is true and correct.

_____, 20_____
*Month Day Year Guardian’s signature**

**Whether filing electronically or in paper, handwrite your signature on this form. If you are filing electronically, scan the form after signing it and then file electronically.*

SESSION SEVEN

**Opening and Administration of Minor
Conservatorships**

OVERVIEW

HF 610, OPENING OF MINOR CONSERVATORSHIPS*

Note: The provisions of HF 610 apply to adult as well as minor conservatorships.

Presentation Outline

Josephine Gittler**

I. Background

A. Enactment of House File 610 and probate court jurisdiction over minor conservatorship

1. During the 2019 session of the Iowa General Assembly, the House of Representatives and the Senate unanimously passed House File 610 (HF 610), governing the opening and administration of both minor and adult conservatorships as well as adult guardianships.
2. House File (HF 591), a companion bill, governing minor guardianships, also was passed unanimously through both legislative chambers.
3. On May 1, 2019 Governor Reynolds singled out these bills for a public signing.
4. The effective date of HF 610 and HF 591 is January 1, 2020.
5. HF 610 constitutes a comprehensive revision of the Iowa Probate Code provisions relating to minor conservatorships and it has important implications for legal practice.
6. The overarching goal of HF 610 is to strengthen and enhance the procedural and substantive protections for highly vulnerable Iowans in need of conservatorships, including minors.
7. HF 610 amends the Probate Code found in Chapter 633 of the Iowa Code.

* © 2019 *Institute on Guardianship and Conservatorship*

** Josephine Gittler, JD is the Wiley B. Rutledge Professor of Law at the University of Iowa College of Law. She served as the coordinator and reporter of the Iowa Supreme Court's Guardianship and Conservatorship Reform Task Force from 2015 to 2017. She drafted, with the assistance of Task Force members, the bill which was the basis for the recently enacted HF 610. She is currently the Co-Director of the Institute on Guardianship and Conservatorship, a collaborative effort of the University of Iowa and Drake University law schools.

8. The probate court currently has jurisdiction over both minor and adult conservatorships, and under HF 610 the probate court retains its existing conservatorship jurisdiction. The probate court functions within the district court. It is not a specialized court with specialized judges, the exception being Polk County which is the only county with a full-time district associate probate judge.

II. Probate Code Terminology Changes

1. The Probate Code currently uses the term “ward” to refer to a person under conservatorship or guardianship.
2. HF 610 substitutes the new term “protected person” for the term “ward.” HF 610 § 633.3(32A) specifies that “*Protected person — means a person subject to guardianship or a person subject to conservatorship, or both.*”
3. HF 610 also uses the new term “respondent” in connection with conservatorship and guardianship proceedings. HF 610 § 633.3(32B) specifies that “*Respondent — means a person who is alleged to be a person in need of a guardianship or conservatorship, or both.*”
4. The foregoing shift in terminology is due to the fact that the term “ward” has come to be seen as stigmatizing and even offensive by individuals with disabilities, their advocates, and providers of services to them.

III. Basis for Opening Minor Conservatorships

1. The existing Probate Code contains no specific criteria for the establishment of a minor conservatorship.
2. HF 610 § 633.554 corrects this omission by providing that the court may appoint a conservator for a minor if the court finds by a preponderance of the evidence that conservatorship is in the minor’s best interests and any of the following are true:
 1. *The minor has funds or other property requiring management or protection that otherwise cannot be provided.*
 2. *The minor has or may have financial affairs that may be put at unreasonable risk or hindered because of the minor’s age.*
 3. *A conservator is needed to obtain or provide funds or other property.*

IV. Consideration of Less Restrictive Alternatives to Conservatorships and Limited Conservatorships

1. HF 610 § 633.551(4) provides that, prior to the appointment of a conservator, the court “*shall consider credible evidence as to whether there are other less restrictive alternatives, including third party assistance, that would meet the needs of the respondent.*” HF 610 § 633.556(3) provides that a

conservatorship petition “*shall contain a precise statement of why there is no less restrictive alternative to the appointment of a ... conservator.*” It should be noted that § 633.551(4) further provides that “*neither party to the action shall have the burden to produce such evidence relating to other less restrictive alternatives, including but not limited to third-party assistance.*”

2. HF 610 also requires that in determining whether a conservatorship is to be established, the court “*shall consider whether a limited ... conservatorship ... is appropriate.*” [§ 633.551(3)] A limited conservatorship is one in which the conservator is granted fewer powers than the court is authorized to grant. In contrast, a full or plenary conservatorship is one in which a conservator is granted all the powers the court is authorized to grant.
3. It appears the requirements of consideration of less restrictive alternatives to a conservatorship or a limited conservatorship are more applicable to adults than minors.

V. Conservatorship Proceedings: Petition and Notice

A. Filing of petition

1. HF 610 § 633.557 provides that a conservatorship petition for a minor may be filed “*by a person with an interest in the welfare of the minor.*”

B. Contents of petition and notice

1. The existing Probate Code § 633.557 sets forth a series of requirements with respect to the contents of a conservatorship petition. HF 610 § 633.557(2) provides the new requirement that the petition must contain a concise statement of the “*factual basis*” for the petition.
2. The Probate Code §§ 633.557(3) specifies that the petition must list the name and contact information of the following:
 - the minor,
 - the petitioner and the petitioner’s relationship to the minor,
 - the proposed conservator and the reason the proposed conservator should be selected,
 - if the petitioner or proposed conservator is not the parent or parents having legal custody of the minor, the parent or parents having legal custody of the minor
 - any adult who has had the primary care of the minor or with whom the minor has lived at least six months prior to the filing of the petition, or any institution or facility where the minor has resided for at least six months prior to the filing of the petition.

3. HF 610 § 633.559 provides a corresponding list of persons who must receive notice of the filing of a minor conservatorship petition.

VI. Standby Petitions and Emergency Petitions

A. Standby petition

1. HF 610 § 633.567 provides that any adult with an interest in the welfare of a minor who is at least seventeen years and six months of age may file a verified petition for appointment of a conservator pursuant to § 633.553 (which states the basis for appointment of a conservator for an adult). The petition, if granted, then takes effect on the minor's eighteenth birthday.

B. Emergency petition for appointment of temporary conservator

1. HF 610 § 633.569 authorizes the court to appoint a temporary conservator on an emergency basis without the due process otherwise required for appointment of a guardian, but spells out the requirements for such a temporary emergency conservatorship.
2. HF § 633.569(3) provides that the court may issue an ex parte order appointing a temporary guardian only to prevent immediate or irreparable harm to the respondent, only when there is not sufficient time to file a petition and hold a hearing that otherwise would be required, and only if there is reason to believe that the basis for appointment of a conservator exists in accordance with other applicable provisions.
3. While the court may establish a temporary emergency guardianship without due process that would otherwise be required, HF 610 §§ 633.569(4) & (5) requires that notice of the appointment of a conservator must be given to designated persons who may file a written request for a hearing that then must be held on an expedited basis.
4. Under HF 610 §§ 633.569(6) & (7), the powers granted to the temporary conservator in the court's ex parte order must be limited to those necessary to address the emergency situation that necessitate the conservator's appointment, and the court's order expires within thirty days.

VII. Counsel and Court Visitor (Guardian ad Litem)

HF 610 contains new provisions relating to the appointment and role of counsel for the respondent in minor conservatorship proceedings. HF 610 also contains new provisions relating to the appointment and role of guardian ad litem including substituting the term "court visitor" for the term "guardian ad litem."

A. Appointment and role of counsel for minor respondent

1. HF 610 § 633.561(1)(a) provides that if the respondent is a minor, “*the court shall determine whether under the circumstances of the case the respondent [minor] is entitled to representation.*”
2. It is not uncommon for an attorney to be appointed as a guardian ad litem in a proceeding for appointment of a conservator. The Iowa Guardianship and Conservatorship Study’s review of numerous case files revealed that it was often unclear whether a court appointed attorney had acted as the counsel for the respondent, acted as a guardian ad litem or played a combination of these roles.¹ However, the role of the attorney acting as counsel for the respondent is separate and distinct from that of an attorney acting as guardian ad litem. As the Iowa Supreme Court has stated, the former “advances the wishes of the ward” and the latter “advocates for the best interests of the ward.”² A conflict of interest can be created when a court appointed attorney plays both the role of counsel and the role of guardian ad litem.
3. HF 610 clarifies the role of counsel. HF 610 § 633.561(4)(b) states that a court-provided attorney representing the respondent in a conservatorship proceeding shall “[a]dvocate for the wishes of the respondent to the extent those wishes are reasonably ascertainable” and that “[i]f the respondent’s wishes are not reasonably ascertainable, the attorney shall advocate for the least restrictive alternative consistent with respondent’s best interests.”

B. Appointment and role of court visitor (formerly known as guardian ad litem).

1. As previously mentioned, HF 610 substitutes the term “court visitor” for the term “guardian ad litem.” One reason for doing so is that lay people tend to confuse the terms “guardian ad litem” and “guardian.”³ Another reason is that the term “guardian ad litem” is now used not only in connection with conservatorship (and guardianship) proceedings but also in other types of proceedings, with the role of the guardian ad litem varying depending on the type of proceeding.⁴
2. HF 610 § 633.562(1), unlike the existing Iowa Code, expressly provides that the court may appoint a court visitor if such appointment would be in the best interests of the respondent. Thus, the appointment of a court visitor is not mandatory, and the court has discretion as to whether to appoint a court visitor. The purpose of this provision is to ensure that if needed and appropriate, the court has an independent source of information about whether to appoint a conservator, whom the court should appoint as conservator, and what authority and powers the court should grant the conservator.

3. HF 610 § 633.562(1) specifies that the court “*may appoint any qualified person as a court visitor.*” The court may appoint persons with a variety of qualifications and backgrounds, depending upon the type of investigation needed by the court. In some cases this may be an attorney, but in other cases this may be a person with a background in a discipline other than law, such as social work, psychology or the health sciences. However, HF 610 § 562(2) specifically prohibits an attorney appointed as a court visitor from also serving as the attorney representing the respondent.

4. HF 610 § 633.562(3) spells out in detail the duties of the court visitor including the following:

3. Unless otherwise enlarged or circumscribed by the court, the duties of a court visitor with respect to the respondent shall include all of the following:

a. Conducting an initial in-person interview with the respondent.

b. Explaining to the respondent the substance of the petition, the purpose and effect of the guardianship or conservatorship proceeding, the rights of the respondent at the hearing, and the general powers and duties of a guardian or conservator.

c. Determining the views of the respondent regarding 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.

4. In addition, if directed by the court, the court visitor shall:

a. Interview the petitioner, and if the petitioner is not the proposed guardian or conservator, interview the proposed guardian or conservator.

b. Visit, to the extent feasible, the residence where it is reasonably believed that the respondent will live if the appointment of a guardian or conservator is made.

c. Make any other investigation the court directs including but not limited to interviewing any persons providing medical, mental health, educational, social, and other services to the respondent.

5. HF 610 § 633.562(5) requires the court to submit a written report to the court containing the following:

a. A recommendation regarding the appropriateness of a limited guardianship for the respondent, including whether less restrictive alternatives are available.

b. A statement of the qualifications of the guardian together with a statement of whether the respondent has expressed agreement with the appointment of the proposed guardian or conservator.

c. Any other matters the court visitor deems relevant to the petition for guardianship or conservatorship and the best interests of the respondent.

d. Any other matters the court directs.

It should be noted that the Iowa Guardianship and Conservatorship Study disclosed that in the significant number of case files reviewed there was no written report from the court appointed guardian ad litem.⁵

VIII. Hearing Requirements

A. Current law and practice

1. A hearing on a conservatorship petition is an essential part of the procedural due process to which the respondent to the petition is entitled. Nevertheless, the Iowa Guardianship and Conservatorship Study, involving the review of multiple case files, discovered many files in which there was neither a record of a hearing nor a record of a waiver of the hearing by the respondent.⁶ The judicial branch has acknowledged that in 2018 “[d]istrict courts currently hold a hearing on the initial guardianship petition in 25.0% of adult guardianship cases,”⁷ and there is no reason to believe that the percentage of hearings in minor and adult conservatorship cases is higher. Moreover, the Task Force Report indicated that there were concerns about problematic hearing practices.⁸
2. While the Probate Code § 633.569 currently provides that the civil rules of procedure apply to hearings on petitions for conservatorships, the Probate Code does not set forth specific statutory requirements with respect to the conduct of such hearings.

B. HF 610 hearing requirements

In contrast to the existing Probate Code, HF 610 § 633.560 delineates a series of specific requirements for hearings on conservatorship petitions. It provides:

1. A respondent has a right to be present at a hearing on the petition and at hearings at all stages of the proceeding, and the court must make reasonable accommodations to enable the attendance of the respondent. The court may waive the respondent’s attendance for good cause shown, but a record of the reason for the respondent’s nonattendance must be made. [§ 633.560(2)]
2. The court shall require the attendance of the proposed conservator and the court visitor, if any, at the hearing on the petition but may excuse their presence for good cause shown. [§§ 633.560(3) & (4)]
3. Any person with an interest in the welfare of the respondent may apply to the court for permission to participate in the hearing on the petition as well as other proceedings, and the court may grant the request if it finds that participation in the respondent’s best interest. [§ 633.560(5)]
4. A complete record is required to be made of the hearing to promote transparency in proceedings and make appeals possible. [§ 633.560(6)]

IX. Selection and Appointment of Conservators

A. Background checks of prospective conservators

1. At present the Iowa Code does not require background checks of prospective conservators even though the Code does require background checks for persons such as employees of health facilities, child care providers, and school employees including school bus drivers.
2. HF 610 § 633.564(1) and (4) requires for the first time that conservators for both minors and adults undergo an Iowa criminal history check and checks of the Iowa dependent adult abuse, child abuse, and sex offender registries. However, the court has the discretion to determine whether to treat negative background check information as disqualifying a person from being appointed a conservator.
3. The background check requirement is directed at ensuring that judges have the information they need to determine the appropriateness of appointing a person as a conservator. Given the authority that conservators have and the potential that exists for misuse of that authority resulting in financial exploitation of persons under conservatorship, the background check constitutes a desirable safeguard against the court's appointment of persons as conservators who may financially exploit the protected person.
4. HF 610 § 633.564(3) directs the judicial branch in conjunction with the Departments of Public Safety and Human Services and the State Chief Information Officer to establish procedures for electronic access to the single contact repository, known as SING, for combined background checks. The fee for a combined SING background check is \$15.00.
https://ocio.iowa.gov/sites/default/files/documents/2015/05/sing_id_request3.pdf.

B. Qualifications of conservators

The Probate Code § 633.571 currently provides that the court may appoint as a conservator any qualified and suitable adult that is willing to serve in that capacity. HF 610 § 633.565 retains this standard, and under this standard the court will continue to have broad discretion as to who to appoint as a conservator.

Endnotes

¹ See Iowa Supreme Court's Guardianship and Conservatorship Reform Task Force, *Reforming Iowa's Guardianship and Conservatorship System* (August 2017) available at https://www.iowacourts.gov/static/media/cms/Final_Task_Force_Report_5A992F4D4AF86.pdf, at 27.

² *Estate of Leonard ex rel. Palmer v. Swift*, 656 N.W.2d 132,142 (Iowa 2003). See *In re Fagen*, 909 N.W.2d 443 (table)(Iowa Ct. App. 2017).

³ TASK FORCE REPORT, *supra* note 1, at 27.

⁴ *Id.*

⁵ *Id.* at 31-32.

⁶ *Id.* at 26-27.

⁷ Legislative Services Agency, Fiscal Services Division, Fiscal Note, HF 610. Guardianship and Conservatorship, Adult (LSB 1065 HV) (Mar. 11, 2019).

⁸ TASK FORCE REPORT, *supra* note 1, at 27.

GUIDANCE FOR NEW AND EXISTING CONSERVATORS FOR ADULTS AND MINORS*: COMPLIANCE WITH THE REQUIREMENTS OF HF 610

Note: The provisions of HF 610 with respect to administration of conservatorships apply to conservators of both adults and minors.

Presentation Outline

Chip Baltimore**

I. Duties of Conservator under HF 610

The Probate Code § 633.641 currently provides: *“It is the duty of the conservator of the estate to protect and preserve it, to invest it prudently, to account for it as herein provided, and to perform all other duties required of the conservatorship by law, and at the termination of the conservatorship, to deliver the assets of the ward to the person entitled thereto.”* Probate Code HF 610 § 633.641(1) similarly provides that the conservator *“is a fiduciary and has duties of prudence and loyalty to the protected person.”*

In addition, HF 610 § 633.641(2) provides that a conservator has a duty to consider any estate plan or other document expressive of protected person’s investment and distributive intent in investing and distributing protected person’s assets. HF 610 § 633.641(4) also retains the requirement in existing Probate Code § 633.641 requiring a conservator to report assets and income to Department of Human Services if a protected person is receiving Medicaid assistance.

II. Problems with Existing Court Monitoring of Conservators and Conservatorships

A. Retrospective reporting to the court by conservators

1. The Probate Code § 633.670 currently provides that once a conservator is appointed by the court, the conservator must file an inventory of the protected person’s assets and thereafter must file annual reports and accountings. The conservator’s annual report looks backward and describes actions the conservator has taken over the past year. Therefore, the court’s review of the conservator’s actions is essentially

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retrospective in nature, that is the court is asked to ratify actions described in the report after the conservator has already taken them. Importantly, the court has no real oversight over the actions of the conservator until the filing of the first annual report.

2. Because of the retrospective nature of reporting to the court by the conservators, the court is usually not in a position to prevent misfeasance or malfeasance by conservators before it happens. By the time misfeasance or malfeasance is discovered, if at all, the assets all too often have disappeared or dissipated with no chance for their recovery.

B. Inadequate information provided court in annual reports

The current form used by conservators for the required annual reports all too often does not result in the reporting of information that gives a very complete picture of the protected person's financial affairs or the conservator's management of the protected person's assets. Consequently, the court frequently lacks the information that it needs for informed decision making as to the appropriateness of the conservator's actions.

C. Lack of proactive court review of annual reports

It has been reported that some judges “rubber stamp” annual reports without the thorough review needed to ensure the financial affairs of the protected person are being appropriately managed.

III. HR 610's Response to Court Monitoring Problems

A. Goal of HF 610 regarding establishing conservatorship

The overarching goal of HF 610 is to strengthen and enhance the protections for highly vulnerable Iowans under conservatorship—both adults with diminished decision-making capacity and minors—through more effective and efficient court monitoring and oversight of established conservatorships. The Iowa Supreme Court on Guardianship and Conservatorship Reform Task Force found that such monitoring and oversight are needed to ensure the accountability of conservators and to prevent as well as identify and remedy misfeasance and malfeasance with respect to the assets of protected persons by conservators.¹

B. Requirement of an initial financial management plan

1. In response to the foregoing problems with existing court monitoring and oversight, HF 610 § 633.670 requires prospective and proactive court review of financial affairs of the protected person, as well as the informed granting of the authority and the powers to be exercised by a conservator.
2. The vehicle for such court review is contained in HF 610 § 633.670. It sets forth the new requirement that within 90 days of appointment, a conservator must file an initial

financial plan for protection, management, investment, and expenditure of the protected person's assets together with an inventory of the protected person's assets. Once the plan and the authority and powers needed to carry out the plan are approved by the court, the conservator can exercise the authority and powers described in the plan without further court order subject to modification in subsequent annual reports.

3. HF 610 § 633.670 specifically provides:

1. A conservator shall file an initial plan for protecting, managing, investing, expending, and distributing the assets of the conservatorship estate within ninety days after appointment. The plan must be based on the needs of the protected person and take into account the best interest of the protected person as well as the protected person's preference, values, and prior directions to the extent known to, or reasonably ascertainable by, the conservator.

a. The initial plan shall include all of the following:

(1) A budget containing projected expenses and resources, including an estimate of the total amount of fees the conservator anticipates charging per year and a statement or list of the amount the conservator proposes to charge for each service the conservator anticipates providing to the protected person.

(2) A statement as to how the conservator will involve the protected person in decisions about management of the conservatorship estate.

(3) If ordered by the court, any step the conservator plans to take to develop or restore the ability of the protected person to manage the conservatorship estate.

(4) An estimate of the duration of the conservatorship.

b. Within two days after filing the initial plan, the conservator shall give notice of the filing of the initial plan with a copy of the plan to the protected person, the protected person's attorney and court advisor, if any, and others as directed by the court. The notice must state that any person entitled to a copy of the plan must file any objections to the plan not later than fifteen days after it is filed.

c. At least twenty days after the plan has been filed, the court shall review and determine whether the plan should be approved or revised, after considering objections filed and whether the plan is consistent with the conservator's powers and duties.

d. After approval by the court, the conservator shall provide a copy of the approved plan and order approving the plan to the protected person, the protected person's attorney and court advisor, if any, and others as directed by the court.

e. The conservator shall file an amended plan when there has been a significant change in circumstances or the conservator seeks to deviate significantly from the plan. Before the amended plan is implemented, the provisions for court approval of the plan shall be followed as provided in paragraphs "b", "c", and "d".

2. A conservator shall file an inventory of the protected person's assets within ninety days after appointment which includes an oath or affirmation that the inventory is believed to be complete and accurate as far as information permits. Copies of the inventory shall be provided to the protected person, the protected person's attorney and court advisor, if any, and others as directed by the court. When the conservator receives additional property of the protected person, or becomes aware of its existence, a description of the property shall be included in the conservator's next annual report.

3. A conservator shall file a written and verified report for the period since the end of the preceding report period. The court shall not waive these reports.

a. These reports shall include all of the following:

(1) Balance of funds on hand at the beginning and end of the period.

(2) Disbursements made.

(3) Changes in the conservator's plan.

(4) List of assets as of the end of the period.

(5) Bond amount and surety's name.

(6) Residence and physical location of the protected person.

(7) *General physical and mental condition of the protected person.*

(8) *Other information reflecting the condition of the conservatorship estate.*

b. These reports shall be filed:

(1) *On an annual basis within sixty days of the end of the reporting period unless the court orders an extension for good cause shown in accordance with the rules of probate procedure.*

(2) *Within thirty days following removal of the conservator.*

(3) *Upon the conservator's filing of a resignation and before the resignation is accepted by the court.*

(4) *Within sixty days following the termination of the conservatorship.*

(5) *At other times as ordered by the court.*

c. Reports required by this section shall be served on the protected person's attorney and court advisor, if any, and the veterans administration if the protected person is receiving veterans benefits.

4. The requirement that a conservator file an initial plan and an inventory is designed to encourage the conservator to identify the assets, liabilities, income sources, and expenses of the protected person, and proactively to develop a plan for meeting the protected person's financial needs and the financial management of the protected person's assets for the period prior to the required filing of the next annual report.
5. The initial plan requirement will enable the court to determine whether the conservator has developed an appropriate plan and will furnish the court with a benchmark to evaluate conservator's future performance.
6. Most importantly the plan increases the ability of the court to prevent misappropriation and misuse of the protected person's assets by identifying proposed actions on the part of the conservator that pose a serious risk of such misappropriation and misuse.

C. Procedural issues regarding initial plan and inventory

1. HF 610 § 633.670(1) specifies that the plan and inventory must be filed with the court by the conservator within 90 days after appointment.
2. Within 2 days after filing the plan, the conservator must give notice of filing and a copy of the initial plan to:
 - the protected person;
 - the protected person's attorney;
 - the court visitor, if any; and
 - any other person as directed by the court.
3. Any person entitled to a plan has 15 days after filing of the plan to file any objections.
4. The court must review the plan at least 20 days after filing to either approve or revise.
5. The conservator must file an amended plan whenever:

- There has been a significant change in circumstances, or
 - The conservator plans to deviate significantly from the plan.
6. The same deadlines are specified for an amended plan as for an initial plan.
 7. In addition, HF 610 § 633.670(3) requires a conservator to provide copies of the report to the veterans administration if the protected person is receiving veterans benefits.

D. Contents of initial plan

1. HF 610 § 633.670(1) specifies that the initial plan “*shall include:*”
 - A budget including
 - projected expenses,
 - projected resources,
 - estimated conservator fees per year, and
 - statement, or list, of the amount the conservator proposes to charge for each service;
 - A statement by the conservator as to how the conservator plans to involve the protected person in decisions about the management of the protected person’s assets;
 - If ordered by the court, steps the conservator plans to take to restore the protected person’s ability to manage his/her own financial affairs; and
 - An estimate of the duration of the conservatorship.

E. Institute proposed forms relating to initial plan requirement

1. The following proposed forms related to the initial plan requirement have been prepared by the Institute on Guardianship and Conservatorship (with assistance and input from judges, practitioners and conservators) for use by judges, practitioners and conservators:
 - Proposed Form One: Court Order Appointing Conservator and Establishing Initial Authority,
 - Proposed Form Two: Conservator’s Initial Financial Management Plan, and
 - Proposed Form Three: Court Order Approving Initial Plan and Establishing Authority of Conservator.

These forms are included in Appendix A of this paper.

F. Best practices regarding initial plan requirement

1. New conservatorships

- In the order appointing a new conservator, the court should expressly authorize the conservator to exercise any powers reasonably necessary to allow the conservator to prepare and submit the required initial plan for subsequent court review and approval. If any additional appropriate powers are identified during hearing on petition for appointment of conservator, the court can provide authority for such powers in the order appointing the conservator.
- Institute Proposed Form One: Court Order Appointing Conservator and Establishing Initial Authority mentioned above and contained in Appendix A of this paper is intended to be used for this purpose.

2. Existing Conservatorships

- Since the filing of an initial financial management plan for review and approval by the court is a new requirement of HF 610, existing conservators of already established conservatorships obviously have not filed and obtained court approval of plans. However, there are simple solutions to the temporary problem of bringing existing conservatorships into compliance HF 610 prior to its effective date of January 1, 2020.
- If an existing conservator's next annual report is due before January 1, 2020, the conservator should include in the annual report the information that would be included in an initial financial management plan.
- If an existing conservator's annual report is due after January 1, 2020, the conservator can apply to the court for an order extending the conservator's authority to continue managing the conservatorship in the current manner after January 1, 2020, pending the court's approval of the newly required financial management plan in the conservator's next annual report.
- Institute Proposed Form Four: Conservator's Application for Order Clarifying Authority and Proposed Form Five: Court Order Clarifying Authority have been prepared by the Institute on Guardianship and Conservatorship (with assistance from judges, practitioners and conservators) for use by judges, practitioners and conservators for this purpose. These forms are included in Appendix A of this paper.
- Alternatively, the conservator can file an application with the court for explicit authority to exercise specific powers after January 1, 2020, pending the court's approval of the newly required financial management plan in the conservator's next annual report.
- It should be noted that Chief Judge Wilke of the 2nd Judicial District has issued an order that all conservators appointed prior to January 1, 2020 (the effective date of HF 591) shall file an initial care plan with their 2020 annual report. The order further states that "all conservators appointed prior to January 1, 2020 shall have continuing authority to perform acts concerning the Protected Person's financial

affairs and assets that were authorized by statute prior to January 1, 2020.” *See Appendix B to this presentation outline.* It appears that other chief district court judges may issue similar orders.

IV. Annual Reports and Other Required Conservator Reports

1. HF 610 § 633.670(3) retains the requirement under current Probate Code 633.670(1) that conservators must file annual reports.
2. HF 610 § 633.670 (3), unlike the current Code, expressly states that this reporting requirement cannot be waived by the court. In accordance with a recommendation of the Guardianship and Conservatorship Reform Task Force, the Supreme Court adopted Rule of Probate Procedure 7.8 prohibiting waivers of reporting requirements. Waivers are prohibited because they negatively impact the court’s ability to fulfill its monitoring function which is integral to the responsibilities of the court to protect vulnerable adults and minors under conservatorship. Underlying the waiver prohibition also is the view that annual reporting is not unduly burdensome for fiduciaries such as conservators and serves as a reminder to them of the seriousness of the responsibility they took on when they agreed to serve as conservators.
3. HF 610 § 633.670(3) specifies that the conservator must file the annual report within 60 days at the end of the reporting period and specifies that it must set forth the following:
 - balance of funds on hand at beginning and end of annual period,
 - list of disbursements made,
 - changes in the conservator’s initial plan,
 - assets as of end of annual period,
 - bond amount and surety’s name,
 - residence and physical location of protected person,
 - description of physical and mental condition of protected person, and
 - any other information reflecting the condition of the protected person’s financial condition.
4. Best practice – For complex conservatorships, it may be a best practice to file an amended financial management plan with each annual report to ensure that the conservator’s plan for ongoing management of the protected person’s financial affairs is appropriate and that the conservator has the authority and powers needed to implement the plan.
5. The following proposed form relating to the annual report requirement has been prepared by the Institute on Guardianship and Conservatorship (with assistance and input from judges, practitioners and conservators) for use by judges, practitioners and conservators:
 - Proposed Form Six: Conservator’s Annual Report

This form is included in Appendix A of this paper.

6. The conservator also must file the following other written reports:
 - within 30 days after removal of conservator;
 - upon resignation of conservator, but before the court approves resignation;
 - within 60 days after termination of conservatorship; and
 - any other time as required by the court.

V. Conservators' Authority and Exercise of Powers Without Prior Court Approval

A. General provisions of Probate Code applicable to all fiduciaries §§ 633.63–633.162

1. HF 610 did **NOT** repeal Probate Code §§ 633.63–633.162 captioned “General Provisions Relating to Fiduciaries.” These sections authorize “*fiduciaries*” to exercise a number of powers without prior court approval. The Probate Code § 633.3(17) defines “*fiduciary*” as including a conservator, and HF 610 § 633.641 expressly states that a conservator is a fiduciary. (It should be noted that a district court has issued an order expressly confirming that “the provisions of Iowa Code Sections 633.63-633.162 are still applicable to conservators.” See Appendix B.)
2. Since the enactment of HF 610 on May 1 and continuing after it becomes effective on January 1, 2020, new and existing conservators have and will continue to have the authority and powers enumerated in the Probate Code’s General Provisions Relating to Fiduciaries.
3. These provisions deal with the following authority and powers of conservators (and other fiduciaries):
 - 633.67 Powers of surviving cofiduciary.
 - 633.68 Powers of successor fiduciary.
 - 633.77 Receipts by one fiduciary.
 - 633.78 Fiduciary written request and third-party protection.
 - 633.81 Suit by and against a fiduciary.
 - 633.82 Designation of attorney.
 - 633.84 Delegation of authority.
 - 633.87 Deposit of money in banks.
 - 633.89 Power of fiduciary or custodian to deposit securities.
 - 633.90 Power of a fiduciary to access digital assets.
 - 633.95 Release of liens and mortgages.
 - 633.96 Specific performance voluntary.

- 633.110 Receipts taken.
 - 633.123A Investments in investment companies and investment trusts.
 - 633.124 Investment may be held in name of nominee of bank or trust company.
 - 633.127 Establishment of common trust funds.
 - 633.144 Mortgages and judgments.
 - 633.156 Deposits by corporate fiduciaries.
4. Among the specific powers that conservators commonly need to exercise and will continue to be able to exercise without prior court approval include, but are not limited to, the following:
- Making of bank deposits—§ 633.87 expressly allows conservators as fiduciaries to deposit money in banks.
 - Making of request to third party about assets of protected party—§ 633.78 expressly allows conservator to submit written requests to third parties for information concerning protected person’s assets held by third parties and to obtain the protected person’s property from the third parties.
 - Designation of an attorney—§ 633.82 expressly allows conservators to designate an attorney to assist in the administration of the conservatorship.
 - Holding mutual funds as investments—§ 633.123 permits conservators as fiduciaries to hold mutual funds.
 - Holding of securities in nominee name—§ 633.124 permits conservators as fiduciaries to hold securities in nominee name.
5. HF 610 did repeal existing Probate Code § 633.649, which read: “*Except as expressly modified herein, conservators shall have the powers relating to all fiduciaries as set out in §§ 633.63 through 633.162.*” However, the repeal of this section by HF 610 was not intended to and does not strip conservators of existing conservatorships of all the enumerated powers contained in §§ 633.63 through 633.162 as of its effective date of January 1, 2020.

B. HF 610 repeal of § 633.646

1. HF 610 repeals existing Probate Code § 633.646, which authorized conservators to exercise five powers without a prior court order.
2. The repeal of § 633.646 will have limited impact on the authority and the powers of new or existing conservators.
 - HF 610 repealed § 633.646(1), providing that conservator could collect and receive any principal or income without prior court order, and § 633.646(4), providing that the conservator could receive other property from any source without prior court order. As it has been noted, however, the general Probate

Code provision § 633.78, remains in effect, which provides that a conservator may present a written request to any person for the purpose of obtaining property owned by the protected person or for information about such property needed to perform the conservator's duties.

- HF 610 repealed § 633.646(1) authorizing a conservator to enforce, defend against or prosecute any claim by or against the ward or the conservator; to sue on and defend claims in favor of, or against, the ward or the conservator without a prior court order. As it has been noted, however, the general Probate Code provision § 633.81 remains in effect, and provides a fiduciary with authority to “*sue, be sued and defend in such capacity*,” which is virtually identical to the repealed § 633.646(1).
- HF 610 repealed § 633.646(2) authorizing the sale or transfer of perishable personal property. However, the need to exercise this power without prior court order is extraordinarily rare in the vast majority of conservatorships. Similarly, although HF 610 repealed § 633.644(3) authorizing voting at corporate meetings, the need to exercise this power without a prior court order is not that common. In the event that there is a crucial vote in which a vote on behalf of the protected person will matter, affirmative authority from the court can easily be sought.
- Further, the requirements of HF 610 with respect to proactive court oversight of conservatorships negate much of the need for the repealed § 633.646(5), which allowed a conservator to hold assets for up to a year until the filing of the annual report. However, as it has been pointed out, HF 610 requires the conservator to file an initial financial management plan within 90 days of appointment, and the plan must set forth the conservator's proactive plan for managing the protected person's assets. In short, HF 610 better protects the protected person's assets than § 633.646(5).
- Given that the primary goal of HF 610 is to provide additional and stronger safeguards against the misfeasance or malfeasance of the protected person's assets by a conservator, the new provisions of HF 610 requiring enhanced court review and advance approval of the authority and powers to be exercised by conservators should assuage any remaining concerns about the repeal of § 633.646.

C. Conservator's authority and exercise of powers requiring prior court approval

1. Turning to the authority and powers of a conservator requiring prior court approval, once again it must be emphasized that HF 610 § 633.670 contains the new requirement that a conservator must file within 90 days of appointment an initial financial plan for protection, management, investment, and expenditure of the protected person's assets together with an inventory of the protected person's assets. Once the plan is approved by the court and the court has granted the conservator the necessary authority and powers to carry out the plan, the conservator can exercise the authority and powers described in the plan and order without further court order, subject to modification in subsequent annual reports.

2. HF 610 also repeals Probate Code § 633.647 which lists seven powers that a conservator can exercise subject to court approval. However, HF 610 § 633.642 contains a similar listing of eight powers that a conservator can exercise subject to court approval.

VI. Issuance and Use of Letters of Appointment

A. Significance of letters of appointment under current law

1. The current Probate Code 633.178 currently provides: “*Upon filing of an oath of office or certification and a bond, if any is required, the clerk shall issue letters under seal of the court, giving the fiduciary the powers **authorized by law.***” (emphasis added).
2. The letters of appointment issued under current law are typically no more than a page in length and lack substantive detail regarding the specific powers that a conservator may exercise.
3. Under current law, letters of appointment are not evidence of a conservator’s plenary authority to engage in any and all transactions, as such plenary authority does not exist. Letters of appointment typically lack any substantive detail as to the nature and extent of the conservator’s authority, and they **DO NOT** inform third parties as to what a conservator can or cannot do.
4. Many of the powers commonly exercised by conservators with regard to transactions with third parties may only be done with court approval, and hence the exercise of these powers is not “*authorized by law*” absent a court order. Thus, even under current law, prudent third parties must request proof of court authorization of the conservator’s power to engage in such transactions involving the exercise of such powers.

B. Effect of HF 610 on letters of appointment

1. HF 610 is designed to customize conservator’s authority and powers according to the needs of each individual situation. To make letters of appointment more effective in protecting the protected person’s assets they should either reflect the authority and powers granted to the conservator or the order granting the authority and powers to the conservator should be attached to the letters.
2. As it has been pointed out, HF 610 requires that a conservator proactively set forth a plan to manage the protected person’s assets, and that the courts approve the plan and provide the conservator with authority to act to implement the plan. A revision of the current form used for letters of appointment may be advisable so that the letters contain an explanation of the powers held by a conservator so that third parties will know the nature and extent of a conservator’s authority.

VII. HF 610 and Financial Institutions

A paper prepared by Michel Nelson for the Iowa Academy of Trust and Estate Counsel asserts that HF 610 renders letters of appointment moot. According to Nelson: “*With the inherent powers applicable currently, providing a copy of the conservator’s letters of appointment was sufficient to have third parties do what the conservator asked on behalf of the protected party,*” and that “*the letters alone are meaningless starting in 2020.*”² And the paper goes on to assert that “*[i]t is highly likely that effective January 1, 2020, financial institutions will freeze existing conservatorship accounts unless the conservator has already provided them with evidence of court issued authority to operate the account in the manner it has been.*”³ (Emphasis in original.) However, this concern, as expressed, is misleading about not only the effects of HF 610 but also current law.

First, as mentioned above, the powers “inherent” in all fiduciaries specified in general Probate Code provisions §§ 633.63 through 633.162 still apply without the need for further court order. Therefore, any letters of appointment should be sufficient proof to third parties of the conservator’s authority to engage in any such transactions, as they are “authorized” by §§ 633.63 through 633.162.

Second, and most importantly, as mentioned above, even under current law, letters of appointment are not evidence of a conservator’s plenary authority to engage in any and all transactions. Third parties, such as financial institutions, who currently rely upon the mere presentation of letters of appointment are doing so at their own peril, as the letters of appointment lack any substantive detail as to the nature and extent of the conservator’s authority. Many of the powers commonly exercised by conservators with regard to transactions with third parties may only be done with court approval, and hence the exercise of these powers is not “authorized by law” absent a court order. Thus, even under current law, prudent third parties must request proof of court authorization of the conservator’s power to engage in such transactions involving the exercise of such powers.

Third, Nelson declares that “*financial institutions will refuse to release financial information to an appointed conservator unless a court has authorized a conservator to obtain such information.*”⁴ However, Nelson ignores the existence of general Probate Code provision § 633.78, which specifically authorizes a fiduciary to make a written request to a third party for information and/or delivery of property held by the third party. HF 610 did not change § 633.78 and under that provision a conservator may still request information from financial institutions or any other third party. Nevertheless, third parties must be more thoroughly educated about what authority conservators make a request for information and/or the delivery of the property of a protected person.

Fourth, Nelson ignores the provisions of Article 3 of the Iowa Uniform Commercial Code (UCC) governing negotiable instruments and the law of contracts as it pertains to bank account agreements. Numerous provisions of the UCC govern bank transactions undertaken by fiduciaries, including, but not limited to:

- 554.3307 - Notice of breach of fiduciary duty;

- 554.3308 - Proof of signatures and status as holder in due course;
- 554.3402 - Signature by representative (If a person acting as a representative signs an instrument, the represented person is bound by the signature to the same extent the represented person would be bound if the signature were on a simple contract. If the represented person is bound, the signature of the representative is the "authorized signature of the represented person" and the represented person is liable on the instrument.);
- 554.3409 – Acceptance of draft (“Acceptance” means the [bank’s] signed agreement to pay a draft as presented.);
- 554.3413 – Obligation of acceptor (The acceptor of a draft is obliged to pay the draft according to its terms at the time it was accepted.);
- 554.3417 – Presentment warranties;
- 554.3501 – Presentment;
- 554.3502 – Dishonor;

In addition to the above UCC provisions, all or nearly all agreements between banks and customers contain provisions addressing fiduciary accounts. Below is a sample portion of an account agreement commonly used in Iowa banks. The pertinent language plainly absolves the bank from any liability concerning authority of the fiduciary in signing checks⁵:

“Fiduciary Accounts. Accounts may be opened by a person acting in a fiduciary capacity. A fiduciary is someone who is appointed to act on behalf of and for the benefit of another. We are not responsible for the actions of a fiduciary, including the misuse of funds. This account may be opened and maintained by a person or persons named as a trustee under a written trust agreement, or as executors, administrators, or conservators under court orders. You understand that by merely opening such an account, we are not acting in the capacity of a trustee in connection with the trust nor do we undertake any obligation to monitor or enforce the terms of the trust or letters.”

Thus, for existing conservatorships with existing bank accounts, the combination of the provisions of the UCC and the existing account agreements should reassure financial institutions that they do not need to freeze conservatorship bank accounts as a result of HF 610.

Since the filing of an initial financial management plan for review and approval by the court is a new requirement of HF 610, existing conservators of already established conservatorships obviously have not filed and obtained court approval of plans. As it has been recommended previously, if an existing conservator’s next annual report is due before January 1, 2020, the conservator should include in the annual report what should be included in an initial financial management plan. (See pp. 5-6 *infra*.)

If an existing conservator’s annual report is due after January 1, 2020, however, it has been pointed out that there is a simple solution to the temporary problem of bringing existing conservatorships into compliance with HF 610 prior to its effective date of January 1, 2020.

The conservator could apply to the court for an order clarifying that the conservator has authority to continue conducting the financial affairs and managing the assets of the protected person's in the same manner that they have been managed until the court's approval of the newly required financial management plan in the conservator's next annual report. An Institute proposed form for this purpose has been developed by the Institute on Guardianship and Conservatorship and is included in Appendix A of this paper. (See pp. 5-6 *infra*.)

VIII. Issuance of Iowa Supreme Court Forms

A. Supreme Court forms related to conservatorships

1. On August 20, 2019, the Iowa Supreme Court issued an administrative Order amending Iowa Court Rule 7.11 by deleting certain forms and issuing and authorizing the use of new forms for implementation of HF 610. The Order made the forms effective immediately on a temporary basis, subject to approval by the Iowa Legislative Council. However, the Legislative Council exercised its statutory authority to delay the effective date of the Supreme Court guardianship and conservatorship forms to May 1 of 2120. The Supreme Court is now in the process of soliciting input on these forms from legislators and other stakeholders.
2. From a review of the Court's Order and the Rule 7.11 forms, it appears that the relevant conservatorship forms are intended to do the following:

Form 2 – Conservator's Initial or Amended Plan – a generic initial or amended plan;

Form 3 – Notice of Filing of Conservator's Initial or Amended Plan – a form to notify the court and relevant others of the filing of the initial or amended plan;

Form 4 – Inventory of Protected Person – a generic form for filing of an inventory of assets

Form 5 – Report of Conservator – a generic form for filing of the annual report

Form 6 – Conservator's Request for Approval for Other Action on behalf of Protected Person – a new form that allows conservators to request authority for those items requiring prior court approval (see above).

These forms are included in Appendix C of this paper.

B. Observations regarding Supreme Court conservatorship forms

1. The Supreme Court Rule 7.11 forms appear to attempt to model the style and format of the forms used under the pre-HF 610 system, and with the exception of Form 6 (discussed below) only provide for the reporting of the minimum statutorily required content.
2. The Court-created Rule 7.11 forms, although containing the statutorily-required minimum information, lack the specificity of the Institute proposed forms. The Supreme Court Form 2, Conservator's Initial/Amended Plan, could be improved to

help a conservator provide the court a more complete and full picture of the protected person's/minor's financial status and assets, the proposed financial management plan, and the authority and powers necessary needed to carry out the plan. This would be especially important for the many family members and other lay conservators who do not have or seek legal counsel for assistance in performing their duties. Most importantly, this form is in need of improvement so as to furnish courts with the information they need to effectively and efficiently monitor conservatorships.

3. Prior to issuance of these forms, the Supreme Court was made aware of the concerns raised by a member of the Iowa Academy of Trusts and Estates Counsel concerning the alleged lack of authority of existing conservators to act after January 1, 2020. Despite this knowledge, the Supreme Court apparently did not consider it necessary to address those concerns through the issuance of its 8/20/19 administrative Order or the forms it created.
4. The last box of Form 6 ("Other action") allows the Form 6 to be used by a conservator to request authority for almost any proposed or desired act. Presumably, IF an existing conservator is concerned about a lack of authority to act after the effective date of HF 610 and before the filing of its first financial management plan, Form 6 could be used to request such authority by checking the "Other action" box and reciting in the narrative explanation section the authority it is seeking.

C. Best practice

For complex conservatorships, it may be a best practice to file an amended financial management plan with each annual report to ensure that the conservator's plan for the ongoing management of the protected person's financial affairs is appropriate and that the conservator has the authority and powers needed to implement the plan.

VI. Conclusion

House File 610 is reform legislation enacted to strengthen and enhance the substantive and procedural protections afforded vulnerable adults and minors under conservatorship in order to safeguard their assets against conservator misfeasance and malfeasance. HF 610 calls for more proactive prospective planning on the part of conservators to meet the needs of protected persons for financial management of their assets, and more proactive prospective court oversight of the authority and powers exercised by conservators to ensure their accountability.

Systemic change is challenging, especially for those who have been accustomed to operating for many years under the existing Probate Code framework. Unfortunately, the implementation of HF 610 is being hampered by misconceptions and misinformation about its conservatorship provisions.

But the unanimous passage of House File 610 through both chambers of the General Assembly and its signature by the Governor signify that it is now the public policy and law

of the State of Iowa to strengthen and enhance the substantive and procedural protections afforded vulnerable adults and minors under conservatorship. The time has come for all those involved with conservatorships to begin to work together to implement the mandates of HF 610 for the protection of highly vulnerable adults with diminished capacity and children.

¹ See IOWA SUPREME COURT GUARDIANSHIP AND CONSERVATORSHIP TASK FORCE, FINAL REPORT 89-15 (August 2017)

² Michel Nelson, “*Conservatorship Provisions of New 633 Law effective January 1, 2020*,” 3. (prepared for members of Iowa Academy of Trust and Estate Counsel, May 15, 2019).

³ *Id.*

⁴ *Id.*

⁵ Wolters Kluwer Financial Services, VMP Bankers System, Terms and Conditions IA, TC-IA 1/1/2018 (1801.00)

SESSION SEVEN:

APPENDIX A

Institute* Proposed Forms

* Institute on Guardianship and Conservatorship, University of Iowa and Drake University Law Schools

- Proposed Form One: Court Order Appointing Conservator and Establishing Initial Authority
- Proposed Form Two: Conservator's Initial Financial Management Plan
- Proposed Form Three: Court Order Approving Initial Plan and Establishing Authority of Conservator
- Proposed Form Four: Conservator's Application for Order Clarifying Authority
- Proposed Form Five: Court Order Clarifying Authority
- Proposed Form Six: Conservator's Annual Report

**PROPOSED FORM ONE
COURT ORDER APPOINTING CONSERVATOR
AND ESTABLISHING INITIAL AUTHORITY**

IN THE IOWA DISTRICT COURT IN AND FOR _____ COUNTY

IN THE MATTER OF THE
CONSERVATORSHIP OF

_____ ,

_____ ,

Conservator,

*

*

*

*

*

Court File No. _____

ORDER APPOINTING CONSERVATOR
AND ESTABLISHING INITIAL
AUTHORITY

This matter comes before the Court on this date upon a Petition for Appointment of a Conservator, filed pursuant to Iowa Code § [633.556 – for adult; 633.557 – for minor]. Upon review of the file, and being fully advised in the premises, the Court FINDS that the Petition should be granted.

IT IS HEREBY ORDERED that _____ is hereby appointed as Conservator of the property of [the Protected Person].

BOND / FINANCIAL SECURITY:

[If the Conservator is an individual – use ONE of the following paragraphs:]

[a] IT IS FURTHER ORDERED that the Conservator shall obtain and post a bond in the amount of \$ _____, and file the same with the Clerk of Court;

[b] IT IS FURTHER ORDERED that in lieu of a surety bond, the Conservator shall submit a plan with its proposed alternative to posting of a bond, pursuant to Iowa Code § 633.175(2), within ___ days of the date of this Order.

[If the Conservator is a financial institution with Iowa trust powers – use the following paragraph:]

IT IS FURTHER ORDERED that because the Conservator is a financial institution with Iowa trust powers, the Conservator is exempt from posting a bond.

IT IS FURTHER ORDERED that until such time as the Conservator files its initial plan as required by section 633.670, and such plan is approved by the Court, the Conservator has the authority granted by sections 633.63 - .162, which includes the authority to exercise the powers set forth in sections 633.78 (make written requests for purpose of obtaining property or information about property), 633.82 (designate and employ an attorney to assist in the administration of the estate), 633.87 (deposit moneys and other assets in a banking institution), 633.124 (hold investments in name of a nominee of a bank or trust company), and 633.125 (require a bank to show ownership of investments held in nominee name and keep them separate from assets of the bank).

Depending upon the particular circumstances of the conservatorship at issue and the evidence presented during the hearing upon the petition to establish the conservatorship, the Court may wish to consider including the following language:

[IT IS FURTHER ORDERED that based upon the facts and evidence presented to the Court during the hearing on this matter, the Conservator shall have authority to exercise the following powers until such time as the Conservator files its initial plan as required by section 633.670, and said plan is approved by the Court:

1. Collect, receive, and receipt for any principal or income of the Protected Person;
2. Receive property of the Protected Person from any source; and
3. Continue to hold any investment or other property of the Protected person.]

IT IS FURTHER ORDERED that upon the filing of an appropriate oath, the Clerk of Court issue Letters of Appointment accordingly, giving the Conservator the powers reflected herein. A copy of this Order and any future order granting or limiting the Conservator's authority to act on behalf of the Protected Person shall be attached to said Letters of Appointment to reflect the extent of the powers granted to the Conservator.

**INSTITUTE ON GUARDIANSHIP AND CONSERVATORSHIP
 CONSERVATOR'S INITIAL FINANCIAL MANAGEMENT PLAN: PROPOSED FORM TWO**

THIS PROPOSED FORM WAS DEVELOPED BY THE INSTITUTE ON GUARDIANSHIP AND CONSERVATORSHIP, A COLLABORATIVE EFFORT OF THE UNIVERSITY OF IOWA AND DRAKE UNIVERSITY LAW SCHOOLS, WITH INPUT AND ASSISTANCE FROM JUDGES, PRACTITIONERS AND CONSERVATORS.

In the Iowa District Court for _____ County	
In the Matter of the Conservatorship of: _____ <i>Full name: first, middle, last</i> <i>If the protected person is a minor, use initials only.</i> Protected Person.	Probate no. _____ <div style="text-align: center;"> Conservator's Initial Financial Management Plan </div>
<small>Iowa Code § 633.670(1)(a), (e)</small>	

NOTICE TO CONSERVATOR

- *The purpose of this plan is to give the court as complete a picture as possible of the current situation of the adult or minor under conservatorship (protected person), the need for financial management of his or her assets, and your plan to meet those needs.*
- *When answering questions in this plan, please provide specific details.*
- *DO NOT provide any personally-identifiable information with regard to the protected person or protected person's assets/liabilities, such as social security numbers or account numbers, unless the Court has approved an EDMS security level sufficient to protect such personally-identifiable information from public disclosure.*

1. Conservator–Information

A. Name: _____

B. Present address:

<i>Mailing address</i>	<i>City</i>	<i>State</i>	<i>ZIP code</i>
(____) _____	_____	_____	_____
<i>Phone number</i>	<i>Email address</i>		

C. What is your relationship to the adult or minor subject to conservatorship (protected person)? Spouse Adult Child Parent Adult Sibling Other
If Other, please describe: _____

D. (1) Has the court appointed a guardian for the protected person?
 Yes No

(2) *If Yes please indicate who is serving as the guardian:* You Other Person

(3) *If Other Person, please provide:*

Full name: first, middle, last

Mailing address

City

State

ZIP code

(____) _____
Phone number

Email address

2. Protected Person – Personal Information

A. Age of protected person subject to conservatorship: _____

B. Reason for protected person's conservatorship: _____

C. Residence

(1) Protected person is: now living in protected person's own residence
 now living in conservator's home now living in home of another person
 now living in facility or other place.

(2) If he/she is NOT living in your home, please provide:

Name of person(s) or name of facility

Mailing address

City

State

ZIP code

(____) _____
Phone number

Email address

D. Powers of Attorney, Will, and Prepaid Burial Plan/Trust

(1) Power of Attorney (POA)

Does the protected person have a valid durable (financial) power of attorney? Yes No *If Yes, a copy of the power of attorney is attached or filed separately. (If filed separately, the Conservator should ensure that an appropriate EDMS security level is ordered by the Court to prevent public disclosure of the document.)*

(2) Health Care Power of Attorney (POA)

Does the protected person have a valid health care power of attorney? Yes No *If Yes, attach or file separately a copy of the power of attorney.. (If filed separately, the Conservator should ensure that an appropriate EDMS security level is ordered by the Court to prevent public disclosure of the document.)*

(3) Will

Does the protected person have a last will and testament? Yes No *If Yes, file the original last will and testament with the clerk of the court. (If filed separately, the Conservator should ensure that an appropriate EDMS security level is ordered by the Court to prevent public disclosure of the document.)*

(4) Prepaid Burial Plan/Trust

Does the protected person have a prepaid burial plan or irrevocable burial trust? Yes No *If Yes, attach or file separately a copy of the contract, plan or trust. (If filed separately, the Conservator should ensure that an appropriate EDMS security level is ordered by the Court to prevent public disclosure of the document.)*

3. Inventory of Assets

- A. Use attachment A or file separately an inventory of assets of the protected person. *(The Conservator should ensure that an appropriate EDMS security level is ordered by the Court to prevent public disclosure of the document.)*
- B. Are any of the protected person’s assets listed in the inventory owned jointly with another person? Yes No *If Yes, explain, including who has been responsible for the management of said assets and the amount and source of payment for any expenses associated with said asset in attachment A.*

4. Proposed Budget and Budget Related Information (Receipts/Income, Liabilities/Debts, Expenses)

INFORMATION REQUESTED IS FOR TWELVE-MONTH PERIOD PRIOR TO DATE OF NEXT REQUIRED ANNUAL REPORT.

- A. Receipts/Income. *Fill in only receipts/income that apply.*
Indicate the estimated amount of receipts/income received on both a monthly and annual basis. If an income amount (e.g. wages) is to be received on a monthly basis multiply the amount by 12 to determine the estimated annual amount. If an estimated income amount (e.g. dividends) is to be received on an annual basis divide the amount by 12 to determine the monthly amount.

<u>Receipt/Income Source</u>	<u>Monthly Amount (estimate)</u>	<u>Annual Amount (estimate)</u>
(1) Wages	_____	_____
(2) Social Security Benefits	_____	_____
a. Social Security (SS)	_____	_____
b. Social Security Disability Insurance (SSDI)	_____	_____
c. Supplemental Security Income (SSI)	_____	_____
(3) Pension/Retirement Plan Distribution	_____	_____
Specify type: _____		
(4) Veterans Benefits	_____	_____
(5) Rental Income	_____	_____
(6) Interest/Dividends	_____	_____
(7) Long-term care insurance	_____	_____

Continued on next page

(8) Other receipts/income. (Use attachment B if necessary.)

_____	_____	_____
_____	_____	_____

Total Receipts/Income _____

(The Annual Amount stated must equal twelve times the Monthly Amount stated.)

B. Liabilities/Debts. *Fill in only those liabilities/debts that apply.*

Indicate the estimated amount of liability/debt payable on both a monthly and annual basis. If a debt amount is payable on a monthly basis multiply the amount by 12 to determine the estimated annual amount. If a debt amount is payable on an annual basis divide the amount by 12 to determine the monthly amount.

(The Annual Amount stated must equal twelve times the Monthly Amount stated.)

<u>Type of Liability/Debt</u>	<u>Monthly Amount (estimate)</u>	<u>Annual Amount (estimate)</u>
(1) Mortgage	_____	_____
(2) Car Loans	_____	_____
(3) Credit Card Debt	_____	_____
(4) Federal Taxes Owed	_____	_____
(5) State Taxes Owed	_____	_____
(6) Property Taxes Owed	_____	_____
(7) Other Liabilities/Debt. (Use attachment B if necessary.)	_____	_____
_____	_____	_____
_____	_____	_____

Total Liabilities and Debts _____

Is any listed liability/debt owed by the protected person to the conservator?

Yes No *If Yes, explain, including the nature and amount of the original liability/debt, the current balance of the liability/debt, and attach any written documentation evidencing the liability/debt in attachment B.*

Is any other person liable for all or part of any listed liability debt of the protected person? Yes No *If Yes, explain, including the name and address of said person, the relationship of the person to the protected person, if any, and the source of funds being used to repay the liability/debt in attachment B.*

C. Proposed Budget Expenses. *Fill in only those expenses that apply.*

Indicate the estimated amount of expense on both a monthly and annual basis. If an expense amount is to be incurred on a monthly basis multiply the amount by 12 to determine the estimated annual amount. If an estimated expense amount is to be incurred on an annual basis divide the amount by 12 to determine the monthly amount.

<u>Description of Estimated Expenses</u>	<u>Monthly Payment (estimate)</u>	<u>Annual Payment (estimate)</u>
(1) Nursing Home or Facility Charges	_____	_____
(2) Real Property Expenses—Residence (e.g. mortgage, insurance, maintenance, repair, property taxes)	_____	_____
(3) Food and Household Expenses	_____	_____
(4) Utilities including phone, internet, and cable TV	_____	_____
(5) Household Help and/or Caregivers	_____	_____
(6) Medical/Dental/Health Services and Health Insurance Expenses	_____	_____
(7) Educational/Vocational Expenses	_____	_____
(8) Personal Auto and Other Transportation Expenses (e.g. auto insurance)	_____	_____
(9) Clothing	_____	_____
(10) Other Personal Expenses (e.g. life insurance)	_____	_____
(11) Personal Allowance	_____	_____
(12) Liabilities/Debts. (Use attachment B if necessary.)	_____	_____
(13) Attorney Fees and/or Other Professional Fees	_____	_____
(14) Conservator Fees and Administrative Expenses*	_____	_____
(15) Other Expense(s). (Use attachment B if necessary.)	_____	_____
_____	_____	_____
_____	_____	_____
<u>Total Estimated Expenses</u>	_____	_____

* If conservator fees will be requested, include an estimate of the total amount of fees the conservator anticipates providing to the protected person in attachment B.

Are any of the listed expenses shared with another person? Yes No

If Yes, explain, including the name and address of said person, the relationship of the person to the protected person, if any, the total amount of the monthly/annual expense, the portion for which the protected person is liable, and the source of funds being used to pay the expense in attachment B.

Is the protected person currently enrolled in Medicaid? Yes No

If No, does the protected person qualify for Medicaid and is it the plan to have the protected person apply for Medicaid? Yes No If Yes, explain the plan for liquidation of assets and/or restriction of income needed to qualify the protected person for Medicaid assistance in attachment B.

D. Request for Approval of Proposed Budget and Authority for Related Expenditures. Check only those requests that apply. Conservator requests approval of foregoing budget and grant of the foregoing requests for authority (powers) as follows:

(1) Proposed Budget

Approval of proposed budget.

(2) Income and Expenses

Authority to apply for and receive protected person's income and make reasonably necessary expenditures for protected person's expenses from conservatorship income and/or assets.

(3) Medical, Dental and Other Health Care Expenses

Authority for payment of any reasonable and necessary medical, dental, and other health services the conservator determines be in the best interest of the protected person from conservatorship income and/or assets.

(4) Miscellaneous Expenses

Authority for payment of miscellaneous expenses of protected person in amount not to exceed _____per month without further order of the court.

(5) Income Tax and Other Tax Payment/Account Fees

Authority to file federal and state income tax returns and pay income tax and local property tax from the conservatorship income and/or assets.

(6) Conservator Administrative Expenses

Authority for payment of conservatorship administrative expenses from conservatorship income and/or assets.

(7) Attorney's Fees and Other Professional Fees

Authority for payment of attorney's fees and other professional fees from the conservatorship income and/or assets.

(8) Other Authority

Additional authority (Describe. Use attachment B if needed):

5. Management of Assets of Protected Person

INFORMATION REQUESTED IS FOR TWELVE-MONTH PERIOD PRIOR TO DATE OF NEXT REQUIRED ANNUAL REPORT.

A. Assets in Need of Management. Fill in only assets applicable.

(1) Financial Accounts (e.g. Bank Checking/Savings Account, Certificate of Deposit) and Cash

Yes Not Applicable *If Yes, describe plan for management of financial accounts and cash in attachment C.*

(2) Investments (e.g. Stocks, Bonds, Mutual Funds, ETFs, IRA, and Investment Accounts)

Yes Not Applicable *If Yes, describe plan for management of investments. Describe any planned change in investments to be made in next 12 months and reason for changes in attachment C.*

(3) Pension, Profit Sharing, Annuities or Retirement Funds

Yes Not Applicable *If Yes, describe management plan and authority (powers) requested to carry out plan in attachment C.*

(4) Real Property

Yes Not Applicable *If Yes, describe management plan and authority (powers) needed to carry out plan in attachment C.*

(5) Personal Property (e.g. Household Goods, Vehicles)

Yes Not Applicable *If Yes, describe management plan and needed authority (powers) to carry out plan in attachment C.*

(6) Receivables (e.g. Mortgages, Liens) Payable to the Protected Person, the Estate or Trust

Yes Not Applicable *If Yes, describe management plan and needed authority (powers) to carry out plan in attachment C.*

(7) Life Insurance

Yes Not Applicable *If Yes, describe management plan and needed authority (powers) to carry out plan in attachment C.*

(8) Other Property

Yes Not Applicable *If Yes, describe management plan and needed authority (powers) to carry out plan in attachment C.*

B. Request Approval of Asset Management and Related Authority (Powers)

(1) Conservator requests approval of foregoing asset management plans and foregoing requested authority (powers) to carry out those plans.

Yes No

(2) Conservator requests the following additional authority:

Yes No

If Yes, describe (use attachment C if needed):

6. Involvement of Protected Person and Restoration to Conservatorship Assets

A. Indicate whether protected person can be involved in decisions about management of assets and, if applicable, indicate how the conservator will involve the protected person in decisions:

B. If ordered by the court, indicate the steps the conservator plans to take to develop or restore the ability of the protected person to manage the conservatorship assets:

7. Request for Attorney’s Fees

Request for approval of fees for legal services provided by an attorney on behalf of the conservatorship and for the protected person may be filed with this initial financial management plan or filed separately with the required Affidavit pursuant to Iowa Code § 633.202.

8. Request for Conservator’s Fees

Request for court approval of fees by the conservator on behalf of the conservatorship and/or the protected person may be filed with this initial financial management plan or filed separately with an Affidavit pursuant to Iowa Code § 633.202 or § 633.203.

9. Estimated Duration of Conservatorship

Estimated duration of conservatorship _____
Months *Years*

10. Additional Information (optional)

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

I, _____, have read this initial financial management plan, and I certify *Print Conservator’s name*

under penalty of perjury and pursuant to the laws of the State of Iowa that the information I have provided in this initial financial management plan is true and correct.

Date

*Signature of Conservator**

**Whether filing electronically or in paper, please handwrite your signature on this form. If you are filing electronically, scan the form after signing it and then file electronically.*

PROPOSED FORM THREE
COURT ORDER APPROVING INITIAL PLAN AND ESTABLISHING AUTHORITY
OF CONSERVATOR

IN THE IOWA DISTRICT COURT IN AND FOR _____ COUNTY

IN THE MATTER OF THE
CONSERVATORSHIP OF

_____ ,

_____ ,

Conservator,

*

*

*

*

Court File No. _____

ORDER APPROVING INITIAL PLAN
AND ESTABLISHING AUTHORITY
OF CONSERVATOR

This matter comes before the Court on this date upon the Conservator's Application for Approval of Initial Financial Management Plan and Establishing Authority of Conservator, filed pursuant to Iowa Code § [633.556 – for adult; 633.557 – for minor]. Notice of the filing of the Application has been given to [protected person, protected person's attorney, and court visitor] within the time required.

The court has reviewed the conservator's initial management plan and any response or objection received from interested persons.

Upon review of the file, and being fully advised in the premises, the Court FINDS that the Petition should be granted.

IT IS THEREFORE HEREBY ORDERED that:

- The Initial Financial Management Plan is APPROVED and the conservator is granted the requested authority (powers) to do the following in order to carry out the plan:
- a. Apply for and receive income of or for the benefit of [protected person];
 - b. Collect, receive and hold assets of [protected person];

c. Pay reasonable and necessary expenses of or for the benefit of [protected person], including but not limited to: [list of budgeted expenses];

The Initial Financial Management Plan is APPROVED with the following conditions:

The Initial Financial Management Plan is NOT APPROVED for the following reasons:

The conservator shall file an amended Initial Financial Management Plan by _____ (date).

A hearing is required to address the Initial Financial Management Plan. Hearing is set for _____, at _____ o'clock __.M., at the _____ County Courthouse. The Conservator shall provide all interested persons with a copy of this Order no later than _____ days prior to the hearing.

PROPOSED FORM FOUR
CONSERVATOR'S APPLICATION FOR ORDER CLARIFYING AUTHORITY

IN THE IOWA DISTRICT COURT IN AND FOR _____ COUNTY

IN THE MATTER OF THE
CONSERVATORSHIP OF

_____ ,

_____ ,

Conservator,

*

*

*

*

Court File No. _____

CONSERVATOR'S APPLICATION FOR
ORDER CLARIFYING AUTHORITY

COMES NOW, the undersigned Conservator in the above-captioned matter, and for its Application for Order Clarifying Authority, states and alleges as follows:

1. This Conservatorship was established on this date for the benefit and protection of _____ ("Protected Person").
2. _____ is the duly-appointed, qualified and currently acting Conservator for the assets and financial affairs of the Protected Person.
3. The Conservator's last Annual Report in this matter was filed on _____, 20____, and covered the period from _____ to _____.
4. The Court approved the Conservator's last Annual Report on _____, 20____.
5. The Conservator's next annual report is due _____.
6. On May 1, 2019, Iowa House File 610 was enacted, making several changes to Iowa's conservatorship statute, including a requirement for conservators to file a financial plan for the future use and management of the protected person's assets.

7. House File 610 and the resulting changes made to Iowa's conservatorship statute go into effect as of January 1, 2020.

8. The effective date of House File 610 takes place before the Conservator's next annual report in this matter is due.

9. To ensure the continued authority of the Conservator to conduct the financial affairs for and on behalf of the Protected Person and manage the Protected Person's assets in a consistent manner both before and after the effective date of House File 610, the Conservator seeks an Order from the Court clarifying that the Conservator has authority to continue conducting the financial affairs for and on behalf of the Protected Person and managing the Protected Person's assets in the same manner as it has been, said authority to exist until and through the time of the filing and approval of the newly-required financial plan and next annual report.

10. It is in the Protected Person's best interests for the Conservator to have the authority requested herein for purposes of continuity of the Protected Person's financial affairs and asset management, until such time as the Conservator can prepare and file, and the Court can approve, a financial plan and annual report.

WHEREFORE, the Conservator respectfully requests that the Court grant this Application and issue an Order clarifying that the Conservator has authority to continue conducting the Protected Person's financial affairs and managing the Protected Person's assets in the same manner as it currently has for the period after January 1, 2020, and until the filing and approval of a financial plan and next annual report.

**PROPOSED FORM FIVE
COURT ORDER CLARIFYING AUTHORITY**

IN THE IOWA DISTRICT COURT IN AND FOR _____ COUNTY

IN THE MATTER OF THE
CONSERVATORSHIP OF

_____ ,

_____ ,

Conservator,

*

*

*

*

Court File No. _____

ORDER CLARIFYING AUTHORITY

This matter comes before the Court on this date upon the Conservator's Application for Order Clarifying Authority. Upon review of the file, and upon receipt of no objections, the Court FINDS that the Application should be granted.

IT IS THEREFORE HEREBY ORDERED that on and after January 1, 2020, the Conservator shall have authority to engage in and perform any transaction concerning the Protected Person's financial affairs and assets that the Conservator had prior to the enactment and effective date of Iowa House File 610 (2019 Legislative Session) until such time as the Conservator prepares and files a financial plan as required by Iowa Code Chapter 633 as effective on and after January 1, 2020, and the Court approves said plan and report.

C. What is your relationship to the adult or minor subject to conservatorship (protected person)? Spouse Adult Child Parent Adult Sibling Other

If Other, please describe:

D. Has the court appointed a guardian for the protected person? No Yes

If Yes, please indicate who is serving as the guardian: You Another Person. If Another Person, provide:

Name of guardian

Mailing address

City

State

ZIP code

(____) _____
Phone number

Email address

3. Protected Person—Information

A. Current age of protected person subject to conservatorship: _____

B. Reason for protected person's conservatorship: _____

C. Residence of protected person

(1) Protected person is: now living in protected person's own residence
 now living in conservator's home now living in home of another person now living in facility or other place (describe):

(2) If he/she is not living in your home, provide:

Name of person(s) protected person is living with or of facility

Mailing address

City

State

ZIP code

(____) _____
Phone number

Email address

4. Inventory of Assets and Transactions During Accounting Period

A. Inventory of Assets

(1) Use attachment A or file separately an inventory of assets of the protected person as of the last day of the accounting period. *(The Conservator should ensure that an appropriate EDMS security level is ordered by the Court to prevent public disclosure of the document.)*

(2) Total value of assets at the end of prior accounting period: \$ _____

(3) Total value of assets at the end of this accounting period: \$ _____

(4) Cash on hand at end of prior accounting period: \$ _____

(5) Cash on hand at end of this accounting period: \$ _____

- (6) Are any of the protected person's assets owned jointly with another person?
 Yes No *If Yes explain, including who has been responsible for the management of said assets and the amount and source of payment for any expenses associated with said asset in attachment A.*

B. Transactions During Accounting Period

- (1) Use attachment B or file separately an itemization of all income or funds received on behalf of the protected person during the accounting period. *(The Conservator should ensure that an appropriate EDMS security level is ordered by the Court to prevent public disclosure of the document.)*

Total sum of funds received during this accounting period: \$ _____

- (2) Use attachment B or file separately an itemization of all disbursements or funds spent on behalf of the protected person during the accounting period. *(The Conservator should ensure that an appropriate EDMS security level is ordered by the Court to prevent public disclosure of the document.)*

Total sum of disbursements/expenditures during this accounting period: \$ _____

- (3) Were any of the above expenditures or disbursements made to provide support for or pay the debts of another person? *If Yes, explain, including the name and address of said person, the relationship of said person to the protected person, the date(s) and amount(s) of the expenditures, and the reason for the expenditure in attachment B.*

- (4) Were any of the above expenditures or disbursements made to pay any liability/debt owed by the protected person to the conservator? Yes No *If Yes, explain, including the nature and amount of the original liability/debt, the current balance of the liability/debt, and the amounts paid towards the liability/debt in attachment B.*

- (5) Were any of the above expenditures or disbursements made to pay any liability/debt that is also owed by another person or entity? Yes No *If Yes, explain, including the name and address of said person or entity, the relationship of the person to the protected person, if any, and the amounts paid towards the liability/debt in attachment B.*

C. Approval of inventory of assets and transactions during accounting period.

Conservator requests approval of inventory of assets and transactions during accounting period. Yes No

5. Proposed Budget and Budget Related Information for Next Reporting Period

INFORMATION REQUESTED IS FOR THE TWELVE-MONTH PERIOD FOLLOWING THE LAST DAY OF THIS REPORTING PERIOD.

A. Receipts/Income. *Fill in only receipts and income that apply.*

Indicate the estimated amount of receipts/income received on both a monthly and annual basis. If an income amount (e.g. wages) is to be received on a monthly basis multiply the amount by 12 to determine the estimated annual amount. If an estimated income amount (e.g. dividends) is to be received on an annual basis divide the amount by 12 to determine the monthly amount.

<u>Receipt/Income Source</u>	<u>Monthly Amount</u> <u>(estimate)</u>	<u>Annual Amount</u> <u>(estimate)</u>
(1) Wages	_____	_____
(2) Social Security Benefits	_____	_____
a. Social Security (SS)	_____	_____
b. Social Security Disability Insurance (SSDI)	_____	_____
c. Supplemental Security Income (SSI)	_____	_____
(3) Pension/Retirement Plan Distribution	_____	_____
Specify type:	_____	_____
_____	_____	_____
(4) Veterans Benefits	_____	_____
(5) Rental Income	_____	_____
(6) Interest/Dividends	_____	_____
(7) Long-term care insurance	_____	_____
(8) Other receipts/income. (Use attachment B if necessary.)	_____	_____
_____	_____	_____
_____	_____	_____
<u>Total Receipts/Income</u>	_____	_____

(The Annual Amount stated must equal twelve times the Monthly Amount stated.)

B. Liabilities/Debts. *Fill in only those liabilities/debts that apply.*

Indicate the estimated amount of liability/debt payable on both a monthly and annual basis. If a debt amount is payable on a monthly basis multiply the amount by 12 to determine the estimated annual amount. If a debt amount is payable on an annual basis divide the amount by 12 to determine the monthly amount.

<u>Type of Liability/Debt</u>	<u>Monthly Amount</u> <u>(estimate)</u>	<u>Annual Amount</u> <u>(estimate)</u>
(1) Mortgage	_____	_____

Continued on next page

(2) Car Loans	_____	_____
(3) Credit Card Debt	_____	_____
(4) Federal Taxes Owed	_____	_____
(5) State Taxes Owed	_____	_____
(6) Property Taxes Owed	_____	_____
(7) Other Liabilities/Debt. (<i>Use attachment C if necessary.</i>)	_____	_____
_____	_____	_____
_____	_____	_____
<u>Total Liabilities and Debts</u>	_____	_____

(The Annual Amount stated must equal twelve times the Monthly Amount stated.)

Is any listed liability/debt owed by the protected person to the conservator?
 Yes No *If Yes, explain, including the nature and amount of the original liability/debt, the current balance of the liability/debt, and attach any written documentation evidencing the liability/debt in attachment C.*

Is any other person liable for all or part of any listed liability debt of the protected person? Yes No *If Yes, explain, including the name and address of said person, the relationship of the person to the protected person, if any, and the source of funds being used to repay the liability/debt in attachment C.*

C. Proposed Budget for the Next Reporting Period. *Fill in only those expenses that apply.*

Indicate the estimated amount of expense on both a monthly and annual basis. If an expense amount is to be incurred on a monthly basis multiply the amount by 12 to determine the estimated annual amount. If an estimated expense amount is to be incurred on an annual basis divide the amount by 12 to determine the monthly amount.

<u>Description of Estimated Expenses</u>	<u>Monthly Payment (estimate)</u>	<u>Annual Payment (estimate)</u>
(1) Nursing Home or Facility Charges	_____	_____

Continued on next page

(2) Real Property Expenses— Residence (e.g. mortgage, insurance, maintenance, repair, property taxes)	_____	_____
(3) Food and Household Expenses	_____	_____
(4) Utilities including phone, internet, and cable TV	_____	_____
(5) Household Help and/or Caregivers	_____	_____
(6) Medical/Dental/Health Services and Health Insurance Expenses	_____	_____
(7) Educational/Vocational Expenses	_____	_____
(8) Personal Auto and Other Transportation Expenses (e.g. auto insurance)	_____	_____
(9) Clothing	_____	_____
(10) Other Personal Expenses (e.g. life insurance)	_____	_____
(11) Personal Allowance	_____	_____
(12) Liabilities/Debts. (Use attachment B if necessary.)	_____	_____
(13) Attorney Fees and/or Other Professional Fees	_____	_____
(14) Conservator Fees and Administrative Expenses*	_____	_____
(15) Other Expense(s). (Use attachment B if necessary.)	_____	_____
_____	_____	_____
_____	_____	_____
<u>Total Estimated Expenses</u>	_____	_____

* If conservator fees will be requested, include an estimate of the total amount of fees the conservator anticipates providing to the protected person in attachment B.

Are any of the listed expenses shared with another person? Yes No

If Yes, explain, including the name and address of said person, the relationship of the person to the protected person, if any, the total amount of the monthly/annual expense, the portion for which the protected person is liable, and the source of funds being used to pay the expense in attachment C.

Is the protected person currently enrolled in Medicaid? Yes No

If the answer above is No, does the protected person qualify for Medicaid and is it the plan to have the protected person apply for Medicaid? Yes No *If Yes, explain the plan for liquidation of assets and/or restriction of income needed to qualify the protected person for Medicaid assistance in attachment C.*

D. Request for Approval of Proposed Budget and Authority for Related Expenditures. Conservator requests approval of foregoing proposed budget and grant of the foregoing requests for authority (powers) as follows. *Check only those requests that apply.*

(1) Approval of Budget

Approval of proposed budget.

(2) Income and Expenses

Authority to apply for and receive protected person's income and make reasonably necessary expenditures for protected person's expenses from conservatorship income and/or assets.

(3) Medical, Dental and Other Health Care Expenses

Authority for payment of any reasonable and necessary medical, dental, and other health services the conservator determines to be in the best interest of the protected person from conservatorship income and/or assets.

(4) Miscellaneous Expenses

Authority for payment of miscellaneous expenses of protected person in amount not to exceed _____ per month without further order of the court.

(5) Income Tax and Other Tax Payment/Account Fees

Authority to file federal and state income tax returns and pay income tax and local property tax from the conservatorship income and/or assets.

(6) Conservator Administrative Expenses

Authority for payment of expenses that conservator may incur in administration of conservatorship from conservatorship income and/or assets.

(7) Attorney's Fees and Other Professional Fees

Authority for payment of attorney's fees and other professional fees from the conservatorship income and/or assets. *If attorney fees are requested, attach Affidavit required pursuant to Iowa Code 633.202.*

(8) Other Authority

Additional authority (*describe, use attachment C if needed*):

6. Management of Assets of Protected Person

INFORMATION REQUESTED IS FOR TWELVE-MONTH PERIOD PRIOR TO DATE OF NEXT REQUIRED ANNUAL REPORT.

A. Were changes made in investment of the protected person's assets during the accounting period? Yes No

If Yes, were the changes made consistent with the investment management plan approved by the Court at the time of the last reporting? Yes No

If No, describe the investment changes made, how they differed from the last investment management plan, and the reason for the deviation from the last approved plan in attachment D.

B. Assets in Need of Management During Next Reporting Period. *Fill in only assets applicable.*

(1) Other Financial Accounts (e.g. Bank Checking/Savings Account, Certificate of Deposit) Yes Not Applicable *If Yes, describe of plan for management of financial accounts in attachment D.*

(2) Investments (e.g. Stocks, Bonds, Mutual Funds, ETFs, IRA, and Investment Accounts) Yes Not Applicable *If Yes, describe plan for management of investments. Describe any planned change in investments to be made in next 12 months and reason for changes in attachment D.*

(3) Pension, Profit Sharing, Annuities or Retirement Funds Yes Not Applicable *If Yes, describe management plan and authority (powers) requested to carry out plan in attachment D.*

(4) Real Property Yes Not Applicable *If Yes, describe management plan and authority (powers) needed to carry out plan in attachment D.*

(5) Personal Property (e.g. Household Goods, Vehicles) Yes Not Applicable *If Yes, describe management plan and needed authority (powers) to carry out plan in attachment D.*

- (6) Receivables (e.g. Mortgages, Liens) Payable to the Protected Person, the Estate or Trust Yes Not Applicable *If Yes, describe management plan and needed authority (powers) to carry out plan in attachment D.*
- (7) Life Insurance Yes Not Applicable *If Yes, describe management plan and needed authority (powers) to carry out plan in attachment D.*
- (8) Other Property Yes Not Applicable *If Yes, describe management plan and needed authority (powers) to carry out plan in attachment D.*

C. Request Approval of Asset Management and Related Authority (Powers)

(1) Conservator requests approval of foregoing asset management plans and foregoing requested authority to carry out those plans.

Yes No

D. Conservator requests other additional authority:

Yes No *If Yes, explain (use attachment D if needed):*

7. Involvement of Protected Person and Restoration to Conservatorship Assets

(1) Indicate whether protected person can be involved in decisions about management of assets and, if applicable, indicate how the conservator will involve the protected person in decisions:

(2) If ordered by the court, indicate the steps the conservator plans to take to develop or restore the ability of the protected person to manage the conservatorship assets:

8. Request for Attorney's Fees

Request for approval of fees for legal services provided by an attorney on behalf of the conservatorship and for the protected person may be filed with this annual report or filed separately with the required Affidavit pursuant to Iowa Code § 633.202.

9. Request for Conservator’s Fees

Request for court approval of fees by the conservator on behalf of the conservatorship and/or the protected person may be filed with this annual report or filed separately with an Affidavit pursuant to Iowa Code § 633.202 or § 633.203.

10. Additional Information (optional)

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

I, _____, have read this Report, and I certify under penalty of perjury and pursuant to the laws of the State of Iowa that the information I have provided herein is true and correct.

Date

*Signature of Conservator**

**Whether filing electronically or in paper, please handwrite your signature on this form. If you are filing electronically, scan the form after signing it and then file electronically.*

SESSION SEVEN:

APPENDIX B

Court Documents

- In the matter of The Conservatorship of [REDACTED], Ward, District 8A. (October 25, 2019)
- In the matter of Guardianships and Conservatorships Pending on December 31, 2019, Administrative Order, District 2.

IN THE IOWA DISTRICT COURT IN AND FOR KEOKUK COUNTY
(Probate Division)

IN THE MATTER OF)	
)	Probate No. GCPR [REDACTED]
THE CONSERVATORSHIP OF)	
)	
[REDACTED],)	ORDER CONFIRMING
Ward.)	AUTHORITY

BE IT REMEMBERED the Conservator’s Application for Order Confirming Authority coming before the Court, and the Court, having reviewed the file, the relevant code sections, and House File 610, and makes the following findings of fact:

1. MidWestOne Bank was appointed successor conservator for the above-named Ward on December 21, 2018.

2. On May 1, 2019, Governor Kim Reynolds signed into law House Files 610 and 591 which made significant changes to guardianships and conservatorships in Iowa, including the repeal of Iowa Code Section 633.649.

3. There is currently a disagreement among the legal community as to the rights, powers, and duties of conservators on January 1, 2020, when House File 610 is fully implemented. Due to the differing legal opinions, it is necessary to determine whether the provisions of Iowa Code Sections 633.63-633.162 are still applicable to conservators.

ANALYSIS AND CONCLUSION

Iowa Code Section 633.649 currently provides the, “Except as expressly modified herein, conservators shall have the power relating to all fiduciaries as set out in sections 633.63 to 633.162.” Sections 633.63-633.162 are in Subchapter III “General Provisions Relating to Fiduciaries.” Provisions include qualifications of a fiduciary (Sections 633.63 and 633.64); designation of an attorney (Section 633.82); authorization to make bank deposits (Section

633.87); investment in securities and bond (Section 633.123 and 633.124); and provisions regarding corporate fiduciary deposits (Section 633.156).

Upon first glance, the repeal of Section 633.649 would appear to remove conservatorships from the provisions of Iowa Code Sections 633.63-633.162. Such an argument, however, ignores the plain reading of *the entire* Iowa Code Chapter 633, as modified, and the provisions of Section 633.3(17) which defines “fiduciary” to specifically include conservators, which remains unmodified by House File 610. Sections 633.63-633.162 continuously use the term fiduciary. Fiduciary specifically include conservatorship. Section 633.649 was unnecessary as these provisions already applied to conservators and they continue to do so even after the passage of House File 610.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that MidWestOne Bank, as conservator, shall continue to be governed by the provisions of Iowa Code Sections 633.62-633.162, and shall have all the power, rights, authority and responsibilities provided for in these sections. It is not necessary for MidWestOne to seek prior authorization for actions specifically allowed by Sections 633.63-633.162, UNLESS another provision of the code requires such approval.



State of Iowa Courts

Type: OTHER ORDER

Case Number
GCPR [REDACTED]

Case Title
[REDACTED] GUARD/CONSV

So Ordered

Shawn Showers
Judge

Electronically signed on 2019-10-25 09:27:16 page 3 of 3

IN THE IOWA DISTRICT COURT FOR
THE SECOND JUDICIAL DISTRICT

IN THE MATTER OF)
)
GUARDIANSHIPS AND) ADMINISTRATIVE ORDER
CONSERVATORSHIPS PENDING)
ON DECEMBER 31, 2019)

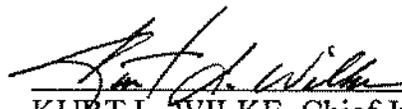
The Iowa legislature has made significant changes to the laws relating to guardianships and conservatorships. The new laws take effect on January 1, 2020. In order to effectuate efficient and effective compliance with the new laws, the following administrative order will be entered:

ORDER

IT IS HEREBY ORDERED that all guardians appointed prior to January 1, 2020, shall file an Initial Care Plan with their 2020 Annual Report.

IT IS FURTHER ORDERED that all conservators appointed prior to January 1, 2020, shall file their Initial Plan with their 2020 Annual Report.

IT IS FURTHER ORDERED that until such time as an Initial Plan is filed and approved by the Court, all conservators appointed prior to January 1, 2020, shall have continuing authority to perform acts concerning the Protected Person's financial affairs and assets that were authorized by statute prior to January 1, 2020.



KURT L. WILKE, Chief Judge 2nd Judicial District

SESSION SEVEN:

APPENDIX C

Supreme Court Forms

- Supreme Court Rule 7.11—Form 2: Conservator’s Initial or Amended Plan
- Supreme Court Rule 7.11—Form 3: Notice of Filing of Conservator’s Initial or Amended Plan
- Supreme Court Rule 7.11—Form 4: Inventory of Protected Person
- Supreme Court Rule 7.11—Form 5: Report of Conservator
- Supreme Court Rule 7.11—Form 6: Conservator’s Request for Approval for Other Action on behalf of Protected Person

2. Annual Budget

A. Annual projected expenses: \$ _____

Include as attachment "A" a list of each projected expense and the total monthly and annual amount.

B. Annual projected resources: \$ _____

Include as attachment "B" a list of each of the conservatorship's projected resources and the total monthly and annual amount.

3. Conservatorship fees

A. Conservatorship services:

List the services the Conservator will provide as well as the amount to be charged for each service.

Service	Amount
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

Check this box if you have attached a sheet with additional information.

B. Conservatorship annual fee for services:

Total amount of fees the Conservator anticipates charging annually for services: \$ _____

4. Involvement of Protected Person

State how the Conservator will involve Protected Person in decisions about the management of the conservatorship estate:

Continued on next page

Rule 7.11—Form 3: Notice of Filing of Conservator's Initial or Amended Plan

In the Iowa District Court for _____ County

In the Matter of the Conservatorship of:

Full name: first, middle, last

If the protected person is a minor, use initials only.

Protected Person.

Probate no. _____

**Notice of Filing of
Conservator's** *check one*

Initial

**Amended
Plan**

Iowa Code § 633.670(1)(b)

To: _____

Full name: first, middle, last

You are notified that _____, as conservator of _____,
Name of Conservator *Name of Protected Person*

filed a Conservator's *check one*

Initial Plan

Amended Plan

on _____, 20____.
Month *Day* *Year*

A copy of the filed plan is included with this notice. Any objections to the plan must be filed with the clerk of court no later than fifteen days after the plan was filed.

_____, _____, 20____
Month *Day* *Year*

Conservator's signature

Conservator's name

Mailing Address

City *State* *ZIP code*

If you need assistance to participate in court due to a disability, call the disability coordinator (information at www.iowacourts.gov/Administration/Directories/ADA_Access/). Persons who are hearing or speech impaired may call Relay Iowa TTY (1-800-735-2942). **Disability coordinators cannot provide legal advice.**

In the Iowa District Court for _____ County	
In the Matter of the Conservatorship of: _____ <i>Full name: first, middle, last</i> <i>If the protected person is a minor, use initials only.</i> Protected Person.	Probate no. _____ <p style="text-align: center;">Inventory of Protected Person</p> <p style="text-align: right; font-size: small;">Iowa Code § 633.670(2)</p>

**Copies of this inventory must be provided to the Protected Person, the Protected Person’s attorney and court advisor, if any, and others as the court directs.*

Conservator states as follows:

- Protected Person’s real and personal property as of the date Conservator was appointed, and the valuation of each item, is listed in Attachment “A.” A summary of Attachment “A” follows:

Conservatorship assets <i>Include descriptions in Attachment “A”</i>	Total value
A. Real estate	\$ _____
B. Stocks and bonds	\$ _____
C. Mortgages, notes, deposits, and cash	\$ _____
D. Life insurance	\$ _____
E. Jointly owned property	\$ _____
F. Miscellaneous property	\$ _____
Total of all assets	\$ _____

- A conservatorship checking account: has has not been established.

The checking account is interest-bearing non-interest-bearing.

The conservatorship checking account is located at:

Name of financial institution

Mailing address

City

State

ZIP code

The (partial) account number is: _____
Last 4 digits of account number

If you need assistance to participate in court due to a disability, call the disability coordinator (information at www.iowacourts.gov/Administration/Directoriest/ADA_Access/). Persons who are hearing or speech impaired may call Relay Iowa TTY (1-800-735-2942). **Disability coordinators cannot provide legal advice.**

Rule 7.11—Form 5: Report of Conservator

THE JUDICIAL COUNSEL UNANIMOUSLY DELAYED THE EFFECTIVE DATE OF GUARDIANSHIP AND CONSERVATORSHIP FORMS INCLUDING THE AFFIDAVIT FORM UNTIL MAY 2020.

In the Iowa District Court for _____ County

In the Matter of the Conservatorship of:

Probate no. _____

Full name: first, middle, last

If the protected person is a minor, use initials only.

Protected Person.

Report of Conservator

Iowa Code § 633.670(3)

1. This report is for the period from: *Use ending date of last accounting.*

_____/_____/_____ to ____/____/_____
Month Day Year Month Day Year

2. This report is *check one*

- A. an annual report.
- B. a report filed within thirty days following the removal of the Conservator.
- C. a report filed with the Conservator's filing of a resignation and before the resignation is accepted by the court.
- D. a report filed within sixty days following the termination of the conservatorship.
- E. a report filed pursuant to court order.

3. Total funds on hand at close of the last accounting: \$ _____

4. Total funds received during this report period: \$ _____
Include as attachment "A" an itemization showing date received, source of funds, and amount.

5. Total disbursements made during this report period: \$ _____
Include as attachment "B" an itemization showing date, recipient of disbursement, and amount paid for item or service.

6. Total funds on hand at the close of this report period: \$ _____

7. Other assets of Protected Person at the close of this report period are:
Include as attachment "C" a listing of assets held and the value or remaining balances.

8. The total value of assets of Protected Person at the close of this report period: \$ _____

9. Were changes made in investment during this report period? Yes No
If yes, include as attachment "D" an itemized list of changes.

10. Amount of Conservator's bond: \$ _____. Surety is: _____
Company providing bond

Continued on next page

14. Other information reflecting the condition of the conservatorship estate:

Check this box if you have attached a sheet with additional information.

15. Fees for Conservator are *check one*

applied for.

waived.

Attach affidavit relative to compensation. (Iowa Code section 633.202)

16. Fees for Conservator's attorney *check one*

should be set by the court.

are not requested.

are waived or not applicable.

Attach affidavit relative to compensation. (Iowa Code section 633.202)

17. Oath and signature

I, _____, have read this conservator's report, and I certify

Print Conservator's name

under penalty of perjury and pursuant to the laws of the State of Iowa that the information I have provided in this report is true and correct.

_____, 20____
*Month Day Year Conservator's signature**

Mailing address City State ZIP code

(_____) _____
Phone number Email address Additional email address, if applicable

**Whether filing electronically or in paper, you must handwrite your signature on this form. If you are filing electronically, scan the form after signing it and then file electronically.*

Note: Bank statements, checks, receipts, stubs, and other items evidencing receipt of funds and payment must be available to the court on demand.

Rule 7.11—Form 6: Conservator's Request for Approval for Other Action on Behalf of Protected Person

In the Iowa District Court for _____ County	
In the Matter of the Conservatorship of: _____ <i>Full name: first, middle, last</i> <i>If the protected person is a minor, use initials only.</i> Protected Person.	Probate no. _____ Conservator's Request for Approval for Other Action on behalf of Protected Person
Iowa Code § 633.642	

**Copies of this Request must be provided to the Protected Person, the Protected Person's attorney and court advisor, if any, and others as the court directs.*

I, _____, as the Conservator of
Full name: first, middle, last

_____, request authorization by the court to take the
Name of Protected Person/Initials of Protected Minor

following action(s) on behalf of Protected Person: *Mark all that apply.*

- Invest Protected Person's assets consistent with Iowa Code section 633.123.
- Make gifts on Protected Person's behalf from conservatorship assets to persons or religious, educational, scientific, charitable, or other nonprofit organizations to whom or to which such gifts were regularly made prior to Conservator's appointment; or on a showing that such gifts would benefit Protected Person from the perspective of gift, estate, inheritance, or other taxes. (No gift will be allowed that would foreseeably prevent adequate provision for Protected Person's best interest.)
- Make payments consistent with Conservator's Initial or Amended Plan directly to Protected Person or to others for Protected Person's education and training needs.
- Use Protected Person's income or assets to provide for any person that Protected Person is legally obligated to support.
- Compromise, adjust, arbitrate, or settle any claim by or against Protected Person or Conservator.
- Make elections for the Protected Person who is the surviving spouse as provided in Iowa Code sections 633.236 and 633.240.
- Exercise the right to disclaim on behalf of Protected Person as provided in Iowa Code section 633E.5.
- Sell, mortgage, exchange, pledge, or lease Protected Person's real and personal property consistent with Iowa Code sections 633.383-633.403 regarding sale of property from a decedent's estate.
- Other action. *Describe on next page.*

Continued on next page

If you need assistance to participate in court due to a disability, call the disability coordinator (information at www.iowacourts.gov/Administration/Directories/ADA_Access/). Persons who are hearing or speech impaired may call Relay Iowa TTY (1-800-735-2942). **Disability coordinators cannot provide legal advice.**

**HF 591,
Signed into Law,
May 1, 2019**



KIM REYNOLDS
GOVERNOR

OFFICE OF THE GOVERNOR

ADAM GREGG
LT GOVERNOR

May 1, 2019

The Honorable Paul Pate
Secretary of State of Iowa
State Capitol
Des Moines, Iowa 50319

Dear Mr. Secretary,

I hereby transmit:

House File 591, an Act providing for juvenile court jurisdiction over minor guardianship proceedings and including effective date and applicability provisions.

The above House File is hereby approved on this date.

Sincerely,

A handwritten signature in black ink that reads "Kim Reynolds".

Kim Reynolds
Governor of Iowa



House File 591

AN ACT

PROVIDING FOR JUVENILE COURT JURISDICTION OVER MINOR
GUARDIANSHIP PROCEEDINGS AND INCLUDING EFFECTIVE DATE AND
APPLICABILITY PROVISIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

DIVISION I

IOWA MINOR GUARDIANSHIP PROCEEDINGS ACT

Section 1. NEW SECTION. 232D.101 Title.

This chapter shall be known as the "*Iowa Minor Guardianship Proceedings Act*".

Sec. 2. NEW SECTION. 232D.102 Definitions.

1. "*Adult*" means a person eighteen years of age or older or a person declared to be emancipated by a court of competent jurisdiction.

2. "*Conservator*" means a person appointed by a court to have custody and control of the property of a minor.

3. "*Court*" means the juvenile court established under section 602.7101.

4. "*Demonstrated lack of consistent parental participation*" means the refusal of a parent to comply with duties and responsibilities imposed upon a parent by the parent-child relationship, including but not limited to providing the minor with necessary food, clothing, shelter, health care, education, and other care and supervision necessary for the minor's physical, mental, and emotional health and development.

5. "*Guardian*" means a person appointed by the court to have custody of a minor.

6. "*Legal custodian*" means a person awarded legal custody of a minor.

7. "*Legal custody*" means an award of the rights of legal custody of a minor under which a parent has legal custodial rights and responsibilities toward the minor child including but not limited to decision making affecting the minor's legal status, medical care, education, extracurricular activities, and religious instruction.

8. "*Limited guardianship*" means a guardianship that grants the guardian less than all powers available under this chapter or otherwise restricts the powers of the guardian.

9. "*Minor*" means an unmarried and unemancipated person under the age of eighteen years.

10. "*Parent*" means a biological or adoptive mother or father of a child, a person whose parental status has been established by operation of law due to the person's marriage to the mother at the time of the conception or birth of the child, by order of a court of competent jurisdiction, or by an administrative order when authorized by state law. "*Parent*" does not include a person whose parental rights have been terminated.

Sec. 3. NEW SECTION. 232D.103 **Jurisdiction.**

The juvenile court has exclusive jurisdiction in a guardianship proceeding concerning a minor who is alleged to be in need of a guardianship.

Sec. 4. NEW SECTION. 232D.104 **Venue.**

1. Venue for guardianship proceedings under this chapter shall be in the judicial district where the minor is found or in the judicial district of the minor's residence.

2. The court may transfer a guardianship proceeding brought under this chapter to the juvenile court of any county having venue at any stage in the proceedings as follows:

a. When it appears that the best interests of the minor or the convenience of the proceedings shall be served by a transfer, the court may transfer the case to the court of the county of the minor's residence.

b. With the consent of the receiving court, the court may transfer the case to the court of the county where the minor is found.

3. The court shall transfer the case by ordering the transfer and a continuance and by forwarding to the clerk of the receiving court a certified copy of all papers filed together with an order of transfer. The judge of the receiving court may accept the filings of the transferring court or may direct the filing of a new petition and hear the case anew.

Sec. 5. NEW SECTION. 232D.105 Proceedings governed by other law.

1. A petition alleging that a minor is in need of a conservatorship is not subject to this chapter. Such proceedings shall be governed by chapter 633 and may be initiated pursuant to section 633.627.

2. A petition for the appointment of a guardian for a minor and a petition for appointment of a conservator of a minor shall not be combined.

3. If a minor guardianship proceeding under this chapter pertains to an Indian child as defined in section 232B.3 and the proceeding is subject to the Iowa Indian child welfare Act under chapter 232B, the proceeding and other actions taken in connection with the proceeding shall comply with chapter 232B.

Sec. 6. NEW SECTION. 232D.106 Applicability of rules of civil procedure.

The rules of civil procedure shall govern guardianship proceedings concerning a minor who is alleged to be in need of a guardianship except as otherwise set forth in this chapter.

Sec. 7. NEW SECTION. 232D.201 Termination of parental rights and child in need of assistance cases.

1. The court may appoint a guardian for a minor who does not have a guardian if all parental rights have been terminated.

2. The court may appoint a guardian for a minor in a child in need of assistance case pursuant to section 232.101A, 232.103A, or 232.104.

Sec. 8. NEW SECTION. 232D.202 Death of parents.

1. The court may appoint a guardian for a minor if both parents are deceased.

2. In appointing a guardian for a minor whose parents are deceased, the court shall give preference to a person, if qualified and suitable, nominated as guardian for a minor by a will that was executed by the parent or parents having legal custody of the minor at the time of the parent's or parents' death, and that was admitted to probate under chapter 633.

Sec. 9. NEW SECTION. 232D.203 Guardianship with parental consent.

1. The court may appoint a guardian for a minor if the court finds all of the following:

a. The parent or parents having legal custody of the minor understand the nature of the guardianship and knowingly and voluntarily consent to the guardianship.

b. The minor is in need of a guardianship because of any one of the following:

(1) The parent having legal custody of the minor has a physical or mental illness that prevents the parent from providing care and supervision of the child.

(2) The parent having legal custody of the minor is incarcerated or imprisoned.

(3) The parent having legal custody of the minor is on active military duty.

(4) The minor is in need of a guardianship for some other reason constituting good cause shown.

c. Appointment of a guardian for the minor is in the best interest of the minor.

2. If the guardianship petition requests a guardianship with parental consent, the petition shall include an affidavit signed by the parent or parents verifying that the parent or parents knowingly and voluntarily consent to the guardianship. The consent required by this subsection shall be on a form prescribed by the judicial branch.

3. On or before the date of the hearing on the petition,

the parent or parents and the proposed guardian shall file an agreement with the court. This agreement shall state the following:

- a. The responsibilities of the guardian.
- b. The responsibilities of the parent or parents.
- c. The expected duration of the guardianship, if known.

4. If the court grants the petition, it shall approve the guardianship agreement between the custodial parent and the proposed guardian and incorporate its terms by reference unless the court finds the agreement was not reached knowingly and voluntarily or is not in the best interests of the child.

Sec. 10. NEW SECTION. 232D.204 Guardianship without parental consent.

1. The court may appoint a guardian for a minor without the consent of the parent or parents having legal custody of the minor if the court finds by clear and convincing evidence all of the following:

a. There is a person serving as a de facto guardian of the minor.

b. There has been a demonstrated lack of consistent parental participation in the life of the minor by the parent. In determining whether a parent has demonstrated a lack of consistent participation in the minor's life, the court may consider all of the following:

(1) The intent of the parent in placing the custody, care, and supervision of the minor with the person petitioning as a de facto guardian and the facts and circumstances regarding such placement.

(2) The amount of communication and visitation of the parent with the minor during the alleged de facto guardianship.

(3) Any refusal of the parent to comply with conditions for retaining custody of the minor set forth in any previous court orders.

2. The court may appoint a guardian for a minor without the consent of the parent or parents having legal custody of the minor if the court finds by clear and convincing evidence all of the following:

a. No parent having legal custody of the minor is willing or able to exercise the power the court will grant to the guardian

if the court appoints a guardian.

b. Appointment of a guardian for the minor is in the best interest of the minor.

3. Prior to granting a petition for guardianship, the court shall consider whether the filing of a child in need of assistance petition is appropriate under section 232.87. If the court determines a child in need of assistance petition is not appropriate, the court shall make findings of why a child in need of assistance petition is not appropriate.

4. A proceeding under this section shall not create a new eligibility category for the department of human services protective services.

Sec. 11. NEW SECTION. 232D.301 Petition.

1. Proceedings for guardianship pursuant to this chapter may be initiated by the filing of a petition by any person with an interest in the welfare of the minor.

2. The petition shall list, to the extent known, all of the following:

a. The name, age, and address of the minor who is the subject of the petition.

b. The name and address of the petitioner and the petitioner's relationship to the minor.

c. If the petitioner is not the proposed guardian, the name and address of the proposed guardian and the reason the proposed guardian should be selected.

d. The name and address, to the extent known and ascertainable, of the following:

(1) Any living parents of the minor.

(2) Any legal custodian of the minor.

(3) Any adult who has had the primary care of the minor or with whom the minor has lived for at least six months prior to the filing of the petition.

3. The petition shall contain a concise statement of the factual basis for the petition.

4. The petition shall state whether a limited guardianship is appropriate.

5. Any additional information, to the extent known and reasonably ascertainable, required by section 598B.209 shall be included in an affidavit attached to the petition.

6. The petition may request that a temporary guardian for a minor may be appointed. Such a petition shall specify the duration of the requested temporary guardianship and the reason for a temporary guardianship.

Sec. 12. NEW SECTION. 232D.302 Notice.

1. The filing of a petition shall be served upon the minor who is the subject of the petition in the manner of an original notice in accordance with the rules of civil procedure governing such notice. Notice to the attorney representing the minor, if any, is notice to the minor.

2. Notice shall be served upon the minor's known parents listed in the petition in accordance with the rules of civil procedure.

3. Notice shall be served upon other known persons listed in the petition in the manner prescribed by the court, which may be notice by mail. Failure of such persons to receive actual notice does not constitute a jurisdictional defect precluding the appointment of a guardian by the court.

4. Notice of the filing of a petition given to a person under subsection 2 or 3 shall include a statement that the person may register to receive notice of the hearing on the petition and other proceedings and the manner of such registration.

Sec. 13. NEW SECTION. 232D.303 Attorney for minor.

1. Upon the filing of a petition for appointment of a guardian pursuant to section 232D.301, the court shall appoint an attorney for the minor, if the court determines that the interests of the minor are or may be inadequately represented.

2. An attorney representing the minor shall advocate for the wishes of the minor to the extent that those wishes are reasonably ascertainable and advocate for best interest of the minor if the wishes of the minor are not reasonably ascertainable.

Sec. 14. NEW SECTION. 232D.304 Attorney for parent.

Upon the filing of a petition for appointment of a guardian, the court shall appoint an attorney for the parent identified in the petition if all of the following are true:

1. The parent objects to the appointment of a guardian for the minor.

2. The parent requests appointment of an attorney and the court determines that the parent is unable to pay for an attorney in accordance with section 232D.505.

Sec. 15. NEW SECTION. 232D.305 Court visitor.

1. The court may appoint a court visitor for the minor.
2. The same person shall not serve both as the attorney representing the minor and as court visitor.
3. Unless otherwise enlarged or circumscribed by the court, the duties of a court visitor with respect to the minor shall include all of the following:
 - a. Conducting, if the minor's age is appropriate, an initial in-person interview with the minor.
 - b. Explaining to the minor, if the minor's age is appropriate, the substance of the petition, the purpose and effect of the guardianship proceeding, the rights of the minor at the hearing, and the general powers and duties of a guardian.
 - c. Determining, if the minor's age is appropriate, the views of the minor regarding the proposed guardian, the proposed guardian's powers and duties, and the scope and duration of the proposed guardianship.
 - d. Interviewing the parent or parents and any other person with legal responsibility for the custody, care, or both, of the minor.
 - e. Interviewing the petitioner, and if the petitioner is not the proposed guardian, interviewing the proposed guardian.
 - f. Visiting, to the extent feasible, the residence where it is reasonably believed that the minor will live if the guardian is appointed.
 - g. Making any other investigation the court directs, including but not limited to interviewing any persons providing medical, mental health, educational, social, or other services to the minor.
4. The court visitor shall submit a written report to the court that contains all of the following:
 - a. A recommendation regarding the appropriateness of a guardianship for the minor.
 - b. A statement of the qualifications of the guardian together with a statement of whether the minor has expressed

agreement with the appointment of the proposed guardian.

c. Any other matters the court visitor deems relevant to the petition for guardianship and the best interests of the minor.

d. Any other matters the court directs.

5. The report of the court visitor shall be made part of the court record unless otherwise ordered by the court.

Sec. 16. NEW SECTION. 232D.306 Hearing on petition.

1. The court shall fix the time and place of hearing on the petition and shall prescribe a time not less than twenty days after the date the notice is served unless the court finds there is good cause shown to shorten the time period. The court shall also prescribe the manner of service of the notice of such hearing.

2. The minor who is the subject of a petition filed pursuant to section 232D.301 shall be entitled to attend the hearing on the petition if the minor is of an age appropriate to attend the hearing. A presumption shall exist that a minor fourteen years of age or older is of an age appropriate to attend the hearing.

3. The court shall not exclude a minor entitled to attend the hearing under subsection 2 unless the court finds that there is good cause shown for excluding the minor from attendance.

Sec. 17. NEW SECTION. 232D.307 Background checks of proposed guardians.

1. The court shall request criminal record checks and checks of the child abuse, dependent adult abuse, and sex offender registries in this state for all proposed guardians other than financial institutions with Iowa trust powers unless a proposed guardian has undergone the required background checks in this section within the twelve months prior to the filing of a petition.

2. The court shall review the results of background checks in determining the suitability of a proposed guardian for appointment.

3. The judicial branch in conjunction with the department of public safety, the department of human services, and the state chief information officer shall establish procedures for electronic access to the single contact repository necessary to

conduct background checks requested under subsection 1.

4. The person who files a petition for appointment of guardian for a minor shall be responsible for paying the fee for the background check conducted through the single contact repository unless the court waives the fee for good cause shown.

Sec. 18. NEW SECTION. 232D.308 Selection of guardian — qualifications and preferences.

1. The court shall appoint as guardian a qualified and suitable person who is willing to serve subject to the preferences as to the appointment of a guardian set forth in subsections 2 and 3.

2. In appointing a guardian for a minor, the court shall give preference to a person, if qualified and suitable, nominated as guardian for a minor by a will that was executed by the parent or parents having legal custody of the minor at the time of the parent's or parents' death, and that was admitted to probate under chapter 633.

3. In appointing a guardian for a minor, the court shall give preference, if qualified and suitable, to a person requested by a minor fourteen years of age or older.

Sec. 19. NEW SECTION. 232D.309 Emergency appointment of temporary guardian.

1. A person authorized to file a petition under section 232D.301 may file a petition for the emergency appointment of a temporary guardian for the minor.

2. The petition shall state all of the following:

a. The name and address of the minor and the birthdate of the minor.

b. The name and address of the living parents of the minor, if known.

c. The name and address of any other person legally responsible for the custody or care of the minor, if known.

d. The reason the emergency appointment of a temporary guardian is sought.

3. The court may enter an ex parte order appointing a temporary guardian for a minor on an emergency basis under this section if the court finds that all of the following are met:

a. There is not sufficient time to file a petition and hold

a hearing pursuant to section 232D.301.

b. The appointment of temporary guardian is necessary to avoid immediate or irreparable harm to the minor.

4. Notice of the emergency appointment of a temporary guardian shall be provided to persons required to be listed in the petition under subsection 2.

5. The parents of the minor and any other person legally responsible for the custody or care of the minor may file a written request for a hearing. Such hearing shall be held no later than seven days after the filing of the written request.

6. The powers of the temporary guardian set forth in the ex parte order shall be limited to those necessary to address the emergency situation requiring the appointment of a temporary guardian.

7. The ex parte order shall terminate within thirty days after the order is issued.

Sec. 20. NEW SECTION. 232D.310 Appointment of a guardian for a minor on a standby basis.

1. An adult person having physical and legal custody of a minor may execute a verified petition for the appointment of a guardian of the minor upon the express condition that the petition shall be acted upon by the court only upon the occurrence of an event specified or the existence of a described condition of the mental or physical health of the petitioner, the occurrence of which event, or the existence of which condition, shall be established in the manner directed in the petition. The petition, in addition to containing the information required in section 232D.301, shall include a statement that the petitioner understands the result of a guardian being appointed for the minor. An appointment of a guardian for a minor shall only be effective until the minor attains full age.

2. A standby petition may nominate a person for appointment to serve as guardian as well as alternate guardians if the nominated person is unable or unwilling or is removed as guardian. The court in appointing the guardian shall appoint the person or persons nominated by the petitioner unless the person or persons are not qualified or for other good cause and shall give due regard to other requests and recommendations

contained in the petition.

3. A standby petition may be deposited with the clerk of the county in which the minor resides or with any person nominated by the petitioner to serve as guardian.

4. A standby petition may be revoked by the petitioner at any time before appointment of a guardian by the court, provided that the petitioner is of sound mind at the time of revocation. Revocation shall be accomplished by the destruction of the petition by the petitioner, or by the execution of an acknowledged instrument of revocation. If the petition has been deposited with the clerk, the revocation may likewise be deposited there.

5. If the standby petition has been deposited with the clerk under the provisions of subsection 3 and has not been revoked under the provisions of subsection 4, the petition may be filed with the court upon the filing of a verified statement to the effect that the occurrence of the event or the condition provided for in the petition has occurred. If the petition has not been deposited with the clerk under the provisions of subsection 3 and has not been revoked under the provisions of subsection 4, then the petition shall be filed with the court at the time a verified statement that the occurrence of the event or the condition provided for in the petition has occurred is filed with the court in the county where the minor then resides. Upon filing of the petition and verified statement, the person filing the verified statement shall become the petitioner and the proceedings shall be thereafter conducted as provided for in this chapter.

6. A standby petition for the appointment of a guardian for a minor shall not supersede any contradictory provision in a will admitted to probate of a parent, guardian, or custodian having physical and legal custody of a minor in the event of the parent's, guardian's, or custodian's death.

Sec. 21. NEW SECTION. 232D.311 Appointment of guardian for minor approaching majority on a standby basis.

Notwithstanding section 232D.103, any adult with an interest in the welfare of a minor who is at least seventeen years and six months of age may file a verified petition pursuant to section 633.552 to initiate a proceeding to appoint a guardian

of the minor to take effect on the minor's eighteenth birthday.

Sec. 22. NEW SECTION. 232D.401 Order appointing guardian and powers of guardian.

1. The order by the court appointing a guardian for a minor shall state the basis for the order.

2. The order by the court appointing a guardian for a minor shall state whether the guardianship is a limited guardianship.

3. An order by the court appointing a guardian for a minor shall state the powers granted to the guardian. Except as otherwise limited by court order, the court may grant the guardian the following powers, which may be exercised without prior court approval:

a. Taking custody of the minor and establishing the minor's permanent residence if otherwise consistent with the terms of any order of competent jurisdiction relating to the custody, placement, detention, or commitment of the minor within the state.

b. Consenting to medical, dental, and other health care treatment and services for the minor.

c. Providing or arranging for the provision of education for the minor including but not limited to preschool education, primary education and secondary education, special education and related services, and vocational services.

d. Consenting to professional services for the minor to ensure the safety and welfare of the minor.

e. Applying for and receiving funds and benefits payable for the support of the minor.

f. Any other powers the court may specify.

4. The court may grant the guardian the following powers, which shall only be exercised with prior court approval:

a. Consenting to the withholding or withdrawal of life-sustaining procedures, as defined in section 144A.2, from the minor, the performance of an abortion on the minor, or the sterilization of the minor.

b. Establishing the residence of the minor outside of the state.

c. Consenting to the marriage of the minor.

d. Consenting to the emancipation of the minor.

5. The guardian shall obtain prior court approval for denial

of all visitation, communication, or interaction between the minor and the parents of the minor. The court shall approve such denial of visitation, communication, or interaction upon a showing by the guardian that significant physical or emotional harm to the minor has resulted or is likely to result to the minor from parental contact. The guardian may place reasonable time, place, or manner restrictions on visitation, communication, or interaction between the minor and the minor's parents without prior court approval.

Sec. 23. NEW SECTION. 232D.402 Duties and responsibilities of guardian.

1. A guardian is a fiduciary and shall act in the best interest of the minor and exercise reasonable care, diligence, and prudence in performing guardianship duties and responsibilities. The fiduciary duties of a guardian for an adult set forth in chapter 633 are applicable to a guardian under this chapter.

2. Except as otherwise limited by the court, a guardian has the duty and responsibility to ensure the minor's health, education, safety, welfare, and support.

3. A guardian with whom the minor is not living should maintain regular contact with the minor.

4. A guardian should make reasonable efforts to facilitate the continuation of the relationship of the minor and the minor's parents subject to section 232D.401, subsection 5.

5. A guardian shall file the reports with the court required under section 232D.501.

6. A guardian shall promptly inform the court of any change in the permanent residence of the minor and the minor's new address.

7. A guardian shall promptly inform the court of any change in the minor's school or school district.

Sec. 24. NEW SECTION. 232D.403 Guardian's acceptance of appointment and oath and issuance of letters of appointment.

The court shall issue letters of appointment to a guardian upon the guardian's acceptance of appointment and the guardian's subscription of an oath, or certification under penalties of perjury, that the guardian will faithfully discharge the duties imposed by law, according to the best of

the guardian's ability.

Sec. 25. NEW SECTION. 232D.501 Reports of guardian.

1. A guardian appointed by the court under this chapter shall file the following reports which shall not be waived by the court:

a. A verified initial care plan filed within sixty days of appointment. The information in the initial care plan shall include but not be limited to the following information:

(1) The minor's current residence and guardian's plan for the minor's living arrangements.

(2) The guardian's plan for payment of the minor's living expenses and other expenses.

(3) The minor's health status and the guardian's plan for meeting the minor's health needs.

(4) The minor's educational training and vocational needs and the guardian's plan for meeting the minor's educational training and vocational needs.

(5) The guardian's plan for facilitating contacts of the minor with the minor's parents.

(6) The guardian's plan for contact with and activities on behalf of the minor.

b. A verified annual report filed within thirty days of the close of the reporting period. The information in the annual report shall include but not be limited to the following information:

(1) The current residence and living arrangements of the minor.

(2) The sources of the payment for the minor's living expenses and other expenses.

(3) The minor's health status and health services provided the minor.

(4) The minor's mental, behavioral, or emotional problems, if any, and professional services provided the minor for such problems.

(5) The minor's educational status and educational training and vocational services provided the minor.

(6) The nature and extent of parental visits and communication with the minor.

(7) The nature and extent of the guardian's visits with and

activities on behalf of the minor.

(8) The need for continuation of guardianship.

(9) The ability of the guardian to continue as guardian.

(10) The need of the guardian for assistance in providing or arranging for the provision of care for the minor.

c. A final report filed within thirty days of the termination of the guardianship under section 232D.503.

2. The judicial branch shall prescribe the forms for use by the guardian in filing the reports required by this section.

3. The clerk of the court shall notify the guardian in writing of the reporting requirements and shall provide information and assistance to the guardian in filing the reports.

4. Reports of the guardian shall be reviewed and approved by the court.

Sec. 26. NEW SECTION. 232D.502 Removal of guardian — appointment of successor guardian.

1. The court may remove a guardian for a minor for failure to perform guardianship duties or for other good cause shown.

2. The court shall conduct a hearing to determine whether a guardian should be removed on the filing of a petition by a minor under guardianship who is fourteen years of age or older, the parent of a minor, or other person with an interest in welfare of the minor if the court determines that there are reasonable grounds for believing that removal is appropriate based on the allegations stated in the petition.

3. The court may conduct a hearing to determine whether the guardian should be removed on the receipt of a written communication from a minor under guardianship who is fourteen years of age or older, the parent of the minor, or other person with an interest in welfare of the minor if the court determines that a hearing would be in the best interest of the minor.

4. The court may decline to hold a hearing under subsection 2 or 3 if the same or substantially similar facts were alleged in a petition filed in the preceding six months or in a written communication received in the preceding six months.

5. The court may appoint a successor guardian on the removal of a guardian pursuant to subsection 1, the death of a

guardian, or the resignation of a guardian.

Sec. 27. NEW SECTION. 232D.503 Termination and modification of guardianships.

1. A guardianship shall terminate on the minor's death, adoption, emancipation, or attainment of majority.

2. The court shall terminate a guardianship established pursuant to section 232D.203 if the court finds that the basis for the guardianship set forth in section 232D.203 is not currently satisfied unless the court finds that the termination of the guardianship would be harmful to the minor and the minor's interest in continuation of the guardianship outweighs the interest of a parent of the minor in the termination of the guardianship.

3. The court shall terminate a guardianship established pursuant to section 232D.204 if the court finds that the basis for the guardianship set forth in section 232D.204 is not currently satisfied. A person seeking termination of guardianship established pursuant to section 232D.204 has the burden of making a prima facie showing that the guardianship should be terminated. If such a showing is made, the guardian has the burden of going forward to prove by clear and convincing evidence that the guardianship should not be terminated.

4. The court shall modify the powers granted to the guardian if the court finds such powers no longer meet the needs of the minor or are not in the minor's best interest.

5. The court may conduct a hearing to determine whether termination or modification of a guardianship is appropriate on the filing of a petition by a minor fourteen years of age or older who is under guardianship, a guardian, or other person with an interest in the welfare of the minor or on receipt of a written communication from such persons.

Sec. 28. NEW SECTION. 232D.504 Rights and immunities of a guardian.

1. A guardian is not required to use the guardian's personal funds for the minor's expenses. If a conservator has been appointed for the estate of the minor, the guardian may request and the conservator may approve and pay for the requested reimbursement without prior court approval.

2. A guardian may submit a request, together with the guardian's annual report, for approval by the court of reasonable compensation for services as guardian.

3. Notwithstanding section 137C.25B or any other provision of law to the contrary, a guardian is not liable to a third person for an act or omission of the minor solely by reason of the guardianship.

Sec. 29. NEW SECTION. 232D.505 Expenses.

1. Except as otherwise provided by law, the court shall inquire into the ability of the minor or the minor's parent to pay expenses incurred pursuant to the guardianship proceedings established under this chapter. After giving the minor and the parent a reasonable opportunity to be heard, the court may order the minor or the parent to pay all or part of the following:

- a. Costs of legal expenses of the minor and the parent.
- b. Expenses for a court visitor.
- c. Filing fees and other court costs, unless the costs are waived for good cause shown.

2. If the court finds a minor's parents to be indigent, or if the minor has no parent, costs shall be assessed against the county in which the proceeding is pending. For purposes of assessing costs under this subsection, the court shall find a minor's parents to be indigent if the minor's or the parent's income and resources do not exceed one hundred fifty percent of the federal poverty level, or the minor's parent would be unable to pay such costs without prejudicing the parent's ability to provide economic necessities for the parent or the parent's dependents.

DIVISION II

CORRESPONDING CODE CHANGES

Sec. 30. Section 232.101A, Code 2019, is amended to read as follows:

232.101A Transfer of guardianship to custodian.

1. After a dispositional hearing the court may ~~enter an order transferring guardianship of the child to a custodian~~ close the child in need of assistance case and appoint a guardian pursuant to sections 232D.308 and 232D.401 if all of the following conditions are met:

a. The person receiving guardianship meets the definition of custodian in section 232.2.

b. The person receiving guardianship has assumed responsibility for the child prior to filing of the petition under this division and has maintained placement of the child since the filing of the petition under this division.

c. The parent of the child does not appear at the dispositional hearing, or the parent appears at the dispositional hearing, does not object to the transfer of guardianship, and agrees to waive the requirement for making reasonable efforts as defined in section 232.102.

2. If the court ~~transfers guardianship~~ appoints a guardian pursuant to subsection 1, the court may close the child in need of assistance case ~~by transferring jurisdiction over the child's guardianship to the probate court.~~ The court shall inform the proposed guardian of the guardian's reporting duties under section ~~633.669~~ 232D.501 and other duties under chapter ~~633~~ 232D. ~~Upon transferring jurisdiction, the~~ The court shall direct the ~~probate clerk of court,~~ once the proposed guardian has filed an oath of office and identification ~~in accordance with section 602.6111,~~ to issue letters of appointment for guardianship and ~~docket the case in probate.~~ ~~Records contained in the probate case file that were copied or transferred from the juvenile court file concerning the case shall be subject to section 232.147 and other confidentiality provisions of this chapter for cases not involving juvenile delinquency.~~

Sec. 31. Section 232.104, subsection 8, paragraph b, Code 2019, is amended to read as follows:

b. In lieu of the procedures specified in paragraph "a", the court may close the child in need of assistance case ~~by transferring jurisdiction over the child's guardianship to the probate court~~ and may appoint a guardian pursuant to chapter 232D. ~~The court shall inform the proposed guardian of the guardian's reporting duties under section 633.669 and other duties under the probate code. Upon transferring jurisdiction, the court shall direct the probate clerk, once the proposed guardian has filed an oath of office and identification in accordance with section 602.6111, to issue letters of appointment for guardianship and docket the case in probate.~~

~~Records contained in the probate case file that were copied or transferred from the juvenile court file concerning the case shall be subject to section 232.147 and other confidentiality provisions of this chapter for cases not involving juvenile delinquency.~~

Sec. 32. Section 235A.15, subsection 2, paragraph d, subparagraphs (1) and (2), Code 2019, are amended to read as follows:

(1) To a juvenile court involved in an adjudication or disposition of a child named in a report or a child that is the subject of a guardianship proceeding under chapter 232D.

(2) To a district court upon a finding that data is necessary for the resolution of an issue arising in any phase of a case involving child abuse or guardianship proceedings for a child under chapter 232D.

Sec. 33. Section 235B.6, subsection 2, paragraph d, Code 2019, is amended by adding the following new subparagraphs:

NEW SUBPARAGRAPH. (5) To a juvenile court involved in an adjudication or disposition of a child that is the subject of a guardianship proceeding under chapter 232D.

NEW SUBPARAGRAPH. (6) To a district court upon a finding that data is necessary for the resolution of an issue arising in any phase of a case involving proceedings for a child guardianship under chapter 232D.

Sec. 34. Section 602.7101, subsection 1, Code 2019, is amended to read as follows:

1. A juvenile court is established in each county. The juvenile court is within the district court and has the jurisdiction provided in ~~chapter~~ chapters 232 and 232D.

Sec. 35. Section 602.8102, subsection 42, Code 2019, is amended to read as follows:

42. Serve as clerk of the juvenile court and carry out duties as provided in ~~chapter~~ chapters 232 and 232D and article 7 of this chapter.

Sec. 36. Section 633.10, subsection 3, Code 2019, is amended to read as follows:

3. *Conservatorships and guardianships.*

a. The Except as provided for in paragraph "b", the appointment of conservators and guardians; the granting

of letters of conservatorship and guardianship; the administration, settlement and closing of conservatorships and guardianships.

b. Beginning the effective date of this Act, minor guardianships are under the exclusive jurisdiction of the juvenile court pursuant to, and except as limited by, chapter 232D.

Sec. 37. Section 633.552, subsection 2, Code 2019, is amended to read as follows:

2. That the proposed ward is ~~in either of the following categories:~~

~~a. Is a person whose decision-making capacity is so impaired that the person is unable to care for the person's personal safety or to attend to or provide for necessities for the person such as food, shelter, clothing, or medical care, without which physical injury or illness might occur.~~

~~b. Is a minor.~~

Sec. 38. Section 633.554, subsection 2, Code 2019, is amended to read as follows:

2. ~~a. If the proposed ward is a minor or if the~~ proposed ward is an adult under a standby petition and the court determines, pursuant to section 633.561, subsection 1, paragraph "b", that the proposed ward is entitled to representation, notice in the manner of original notice, or another form of notice ordered by the court, given to the attorney appointed to represent the ward is notice to the proposed ward.

~~b. Notice shall also be served upon:~~

~~(1) The parents of the proposed ward, if the proposed ward is a minor.~~

~~(2) The~~ the spouse of the proposed ward, if the proposed ward is an adult. If the proposed ward has no spouse, notice shall be served upon the proposed ward's adult children, if any.

Sec. 39. Section 633.557, subsection 1, Code 2019, is amended to read as follows:

1. A guardian may also 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. However, if an involuntary petition is pending, the court shall be governed by section 633.634. The petition shall provide the proposed ward notice of a guardian's powers as provided in section 633.562.

Sec. 40. Section 633.561, subsection 1, paragraph b, Code 2019, is amended to read as follows:

b. If the proposed ward is ~~either a minor or~~ an adult under a standby petition, the court shall determine whether, under the circumstances of the case, the proposed ward is entitled to representation. The determination regarding representation may be made with or without notice to the proposed ward, as the court deems necessary. If the court determines that the proposed ward is entitled to representation, the court shall appoint an attorney to represent the proposed ward. After making the determination regarding representation, the court shall set a hearing on the petition, and provide for notice on the determination regarding representation and the date for hearing.

Sec. 41. Section 633.635, subsection 5, Code 2019, is amended to read as follows:

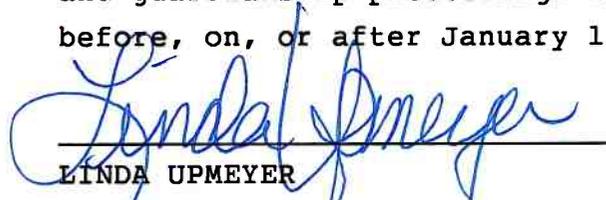
5. From time to time, upon a proper showing, the court may modify the respective responsibilities of the guardian and the ward, after notice to the ward and an opportunity to be heard. Any modification that would be more restrictive or burdensome for the ward shall be based on clear and convincing evidence that the ward continues to fall within the categories of section 633.552, subsection 2, ~~paragraph "a" or "b"~~, and that the facts justify a modification of the guardianship. Section 633.551 applies to the modification proceedings. Any modification that would be less restrictive for the ward shall be based upon proof in accordance with the requirements of section 633.675.

Sec. 42. Section 633.679, subsection 2, Code 2019, is amended by striking the subsection.

Sec. 43. REPEAL. Section 633.559, Code 2019, is repealed.

Sec. 44. EFFECTIVE DATE. This Act takes effect January 1, 2020.

Sec. 45. APPLICABILITY. This Act applies to guardianships and guardianship proceedings of minors established or pending before, on, or after January 1, 2020.



LINDA UPMEYER
Speaker of the House



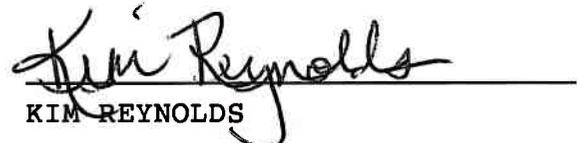
CHARLES SCHNEIDER
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 591, Eighty-eighth General Assembly.



CARMINE BOAL
Chief Clerk of the House

Approved May 1st, 2019



KIM REYNOLDS
Governor