

# Relationships and Advocacy Within Guardianship

March 11, 2025



# Objectives

- ▶ Recognize the responsibilities of guardians, conservators, and representative payees and the limits on their authority.
- ▶ Understand the rights that adults have when they have a guardian, conservator, or representative payee.
- ▶ Identify different ways to address concerns or conflicts with a guardian, conservator, or representative payee.

# Representative Payees

# Representative Payee

- ▶ An individual or organization appointed by the Social Security Administration to manage Social Security benefits on behalf of a beneficiary who is incapable of managing or directing the management of their own benefits.
- ▶ Similar programs in other federal agencies which pay benefits (e.g. VA fiduciary).

# What Does a Representative Payee Do?

- ▶ Meet with the beneficiary on a regular basis to ascertain their needs.
- ▶ Use funds in the beneficiary's best interest.
- ▶ Conserve benefits not needed for the beneficiary's current needs.
- ▶ Keep detailed and accurate records of how the payee uses benefits and complete the accounting form each year.
- ▶ Report events that may affect the beneficiary's entitlement or amount of payment.
- ▶ Return any benefits to which the beneficiary is not entitled.

# Other Ways a Payee Can Help Beneficiaries

- ▶ Establish a budget and involve the beneficiary as much as possible in financial decisions.
- ▶ Explain benefit payments and the beneficiary's expenses to the beneficiary.
- ▶ Ensure the beneficiary is aware of current and large retroactive payments.
- ▶ Help the beneficiary find other services (e.g. food assistance, housing subsidies, medical treatment).
- ▶ Negotiate with the beneficiary's landlords and creditors to get favorable terms or change when bills are due to align with availability of funds.
- ▶ Recommend an alternate person or agency if the payee can no longer serve in that role.

# Things a Representative Payee Can and Cannot Do

## A representative payee CAN:

- ▶ Establish and manage an ABLE Act account on behalf of the beneficiary if no one with higher priority can do so.
- ▶ Complete a Medicaid application or renewal on behalf of a beneficiary.

## A representative payee CANNOT:

- ▶ Make decisions about the beneficiary's medical or personal care unless they have separate authority to do so.
- ▶ Manage any other income or property of the beneficiary unless they have separate authority to do so.

# If You Have Concerns About a Representative Payee

- ▶ Discuss your concerns directly with the payee. For example, request an accounting of funds spent or a copy of their budget for the beneficiary.
- ▶ Social Security Administration: 1-800-772-1213 or contact your local Social Security office.
- ▶ Disability Rights Iowa: 800-779-2502 (partners with SSA to oversee representative payees and educate them on their responsibilities)
- ▶ Iowa Department of Health and Human Services – Dependent Adult Protective Services: 1-800-362-2178



# Responsibilities of Guardians & Conservators

# Legal Standards for Guardianship & Conservatorship

**Guardianship:** A person whose **decision-making capacity is so impaired** that they are unable to care for their personal safety or to provide for their basic necessities, such as food, shelter, clothing or medical care, without which physical injury or illness might occur.

**Conservatorship:** A person whose **decision-making capacity is so impaired** that they are unable to make, communicate or carry out important decisions concerning the person's financial affairs.

# What Does a Guardian Do?

- ▶ Helps the protected person develop and maintain self-reliance.
- ▶ Makes decisions about the care, maintenance, health, education, welfare, and safety of the protected person.
- ▶ Establishes the protected person's permanent residence.
- ▶ Takes care of the protected person's personal property.
- ▶ Consents to medical and dental care and education, training, vocational and other professional services for the protected person.
- ▶ Helps the protected person develop and maintain supportive personal relationships.

# Powers Requiring Specific Court Approval

- ▶ Changing the protected person's permanent residence to a nursing home, other secure facility, or secure portion of a facility that restricts the person's ability to leave or have visitors.
- ▶ Consenting to the withholding or withdrawal of life-sustaining procedures.
- ▶ Consenting to the performance of an abortion on the protected person.
- ▶ Consenting to the sterilization of the protected person.
- ▶ Denying all communication or contact between the protected person and someone else.

# Things a Guardian Cannot Do

- ▶ Adults have the right to make their own decisions – including bad decisions!
- ▶ A guardian cannot force someone to
  - Eat healthy foods or exercise.
  - Take their medications.
  - Cooperate with service providers.
- ▶ A guardian cannot stop
  - Aggressive, violent, or self-harming behavior.
  - Taking things that belong to others.
  - Consensual sexual activity.
  - Staying up late, sleeping late, skipping work or school, etc.
  - Smoking, alcohol use, drug use.

# What Does a Conservator Do?

- ▶ Responsible for managing the protected person's money and property.
- ▶ Has a fiduciary duty to the protected person.
- ▶ Must make prudent decisions about how to save or spend the protected person's money.

# Reviewing Guardianship Paperwork

# Court Paperwork

## Order appointing guardian/conservator:

- ▶ Court order.
- ▶ Should list out the power and responsibilities the guardian/conservator has.
- ▶ Should also address rights retained by the protected person (e.g. voting, marriage, limited guardianship).

## Letters of appointment:

- ▶ Issued by clerk of court after the guardian/conservator files their oath.
- ▶ Shows that the guardian/conservator has legal authority to act.



# Letters of Appointment

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CLERK OF DISTRICT COURT      Page 1 of 1

IN THE IOWA DISTRICT COURT FOR JOHNSON COUNTY

IN THE MATTER OF THE

GUARDIANSHIP AND CONSERVATORSHIP OF [REDACTED]


Case No. 06521 GCP# [REDACTED]

**Letters of Appointment**

Docket Event Code: LEAP

KNOW ALL PERSONS BY THESE PRESENTS:  
That having been duly appointed and qualified as Guardian and Conservator of the above entitled matter,  
Decisions for Life, LLC, Local OPG  
is vested with all powers authorized by law in the premises.  
Letters issued: July 10, 2024

\_\_\_\_\_  
/s/ Mark Stimmel-Designee  
Clerk of Court/Designee  
JOHNSON County



# Order Appointing

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CLERK OF DISTRICT COURT

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IN THE IOWA DISTRICT COURT IN AND FOR JOHNSON COUNTY

IN THE MATTER OF THE  
GUARDIANSHIP AND  
CONSERVATORSHIP OF

[REDACTED]  
Protected Person

No. GCPR [REDACTED]  
ORDER ESTABLISHING  
GUARDIANSHIP AND  
CONSERVATORSHIP AND APPOINTING  
GUARDIAN AND CONSERVATOR

NOW on this date the Court enters the following **Order Establishing Guardianship and Conservatorship and Appointing Guardian and Conservator**. This matter came before the Court for hearing on July 10, 2024. The Protected Person is [REDACTED]. The Protected Person was represented at the hearing by attorney, [REDACTED], who was appointed to represent the Protected Person pursuant to Iowa Code 633.561. The Protected Person was present. The Court file reflects that [REDACTED] accepted notice of these proceedings on behalf of the Protected Person and an Acceptance of Service is on file.

The proposed Guardian/Conservator is Decisions for Life, Local OPG. They filed their Petition for Appointment of Guardian and Conservator in this matter on May 21, 2024. The proposed Guardian/Conservator appeared at the time of the hearing and was represented by legal counsel of record, Judy Johnson.

The Court, having heard the evidence offered, examined the file and being otherwise fully advised in the premises, **FINDS:**

1. This Court has jurisdiction of the parties hereto and the subject matter hereof and all requirements regarding legal notice of this proceeding are satisfied.
2. The determination of the need for the appointment of a Guardian/Conservator is supported by clear and convincing evidence that the Protected Person's decision-making capacity is so impaired that they are unable to care for their personal

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safety or attend to or provide for necessities such as food, shelter, clothing or medical care, without which physical injury or illness might occur and/or they may become subject to abuse by other persons.

3. Decisions for Life, Local OPG, has been appointed as the Local Office of the Public Guardian under Iowa Code chapter 231E.5
4. Decisions for Life, Local OPG has been assigned as the fiduciary in this matter pursuant to the terms of the Contract between Decisions for Life, Local OPG and the State of Iowa, Department of Aging (the "Contract").
5. This Court has considered the appropriateness of a limited Guardianship/Conservatorship and the effect of third-party assistance for the Protected Person and determined that neither will sufficiently address the Protected Person's needs.
6. The appointment of a permanent Guardian/Conservator is in the best interests of the Protected Person.
7. Decisions for Life, Local OPG is fully qualified to serve as Guardian/Conservator herein.
8. Fees may be paid to the fiduciary and to the attorney for the fiduciary by the State of Iowa pursuant to the Contract without further notice or Court approval. No fees may be paid out of the assets of the Protected Person without prior Court approval.

**IT IS THEREFORE ORDERED** that Decisions for Life, LLC, Local OPG, is appointed to serve as Guardian of [REDACTED] in this proceeding with full power and authority to exercise any and all of the duties, powers, and responsibilities granted to Guardians under Iowa law, including but not limited to, those enumerated in Iowa Code Chapter 633 and are hereby granted the responsibilities and powers prescribed by Iowa Code Section 633.635 except as otherwise limited by this Order.

**IT IS FURTHER ORDERED** that the Guardian is specifically vested with the following powers and authority, which may be exercised **without prior Court approval**:

# Order Appointing (pages 3 & 4)

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- a. Making decisions regarding the care, maintenance, health, education, welfare, and safety of the Protected Person.
- b. Establishing the Protected Person's permanent residence.
- c. Taking reasonable care of the Protected Person's clothing, furniture, vehicle, other personal effects, and companion animals, assistive animals, assistance animals, and service animals.
- d. Assisting the Protected Person in developing the maximum self-reliance and independence.
- e. Consenting to and arranging for medical, dental, and other health care treatment and services for the Protected Person.
- f. Consenting to and arranging for other needed professional services for the Protected Person.
- g. Consenting to and arranging for appropriate training, education, and vocation services for the Protected Person.
- h. Maintaining contact, including through regular visitation with the Protected Person.
- i. Making reasonable efforts to identify and facilitate supportive relationships and interactions of the Protected Person with family members and significant other persons. The Guardian may place reasonable time, place or manner restrictions on communication, visitation, or interaction between the adult Protected Person and another person.

**IT IS FURTHER ORDERED** if the protected person is determined to be a Veteran the Guardian is authorized and should be granted access to all of the Veterans military personnel and medical records including but not limited to the DD214.

**IT IS FURTHER ORDERED** that the Guardian may exercise the following powers and authority only with prior Court approval:

- a. Changing the Protected Person's permanent residence to a nursing home, other secure facility, or secure portion of a facility that restricts the Protected Person's ability to leave or have visitors.

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- b. Consenting the following:
  - (1) The withholding or withdrawal of life-sustaining procedures from the Protected Person in accordance with Iowa Code Chapter 144A or 144B.
  - (2) The sterilization of the Protected Person.
  - (3) Perform an abortion.
- c. Denying all communication, visitation, or interactions by a Protected Person with a person with whom the Protected Person has expressed a desire to communicate, visit, or interact or with a person who seeks to communicate, visit, or interact with the Protected Person.

**IT IS FURTHER ORDERED** fees may be paid to the fiduciary and to the attorney for the fiduciary by the State of Iowa pursuant to the Contract without further notice or Court approval.

**IT IF FURTHER ORDERED** no fiduciary fees or fees for the fiduciary's attorney may be paid out of the assets of the Protected Person without prior court approval.

**IT IS FURTHER ORDERED** that the Guardian shall file an Initial Care Plan within 60 days of the date of this Order and shall file annual reports, as applicable, thereafter to the Court in accordance with Iowa Code Section 633.669.

**IT IF FURTHER ORDERED** that Decisions for Life, LLC, Local OPG, is appointed to serve as Conservator for [REDACTED] in this proceeding with full power and authority to exercise any and all duties, powers and responsibilities granted to conservators under Iowa law, including not limited to, those enumerated in Iowa Code section 633.635.

**IT IS FURTHER ORDERED** that as Conservator, herein, the Conservator may exercise the following powers without prior Court approval:



# Order Appointing (pages 5 & 6)

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- a. Gathering the information needed to prepare an initial plan under Iowa Code Section 633.670(1) and an inventory under Iowa Code section 633.670(2).
- b. Collecting, receiving, and receipting for any principal income from any source;
- c. Enforcing, defending against, or prosecuting any claim by or against the protected person or the conservator;
- d. Selling and transferring personal property of a perishable nature and personal property for which there is a regularly established market.
- e. Voting at corporate meetings in person or by proxy;
- f. Depositing the protected person's money in FDIC-insured financial institutions and invest the protected person's assets subject to Iowa Code section 633.123;
- g. Applying for and managing Medicaid, Social Security benefits, and any other government benefits to which the protected person may be entitled; and
- h. Paying the protected person's room, board and living expenses.
- i. If it is determined that the protected person is a veteran the Conservator shall have access to the veteran's military records including but not limited to the DD214.

**IT IS FURTHER ORDERED** that the Guardian/Conservator shall file annual reports, as applicable in accordance with Iowa Code Section 633.669.

**IT IS FURTHER ORDERED** that the Protected Person **does not** retain the right to vote.

**IT IS FURTHER ORDERED** that the Protected Person **does not** retain the right to enter into a valid marriage without prior court approval.

**IT IS FURTHER ORDERED** that all exhibits admitted in this case shall be sealed at security level 2 and that all background check results admitted in this case shall be sealed at security level 5.

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**IT IS THEREFORE ORDERED** that [REDACTED] is hereby found to be indigent.


**IT IS FURTHER ORDERED** that all fees shall be assessed to the County and all Court Costs herein are waived.

**IT IS FURTHER ORDERED** that the Guardian/Conservator has executed and filed herein Oaths of Office and that the Clerk of Court, upon examination and approval of said Oaths, shall issue Letters of Appointment to said Guardian/Conservator, Decisions for Life, LLC, Local OPG.

**SO ORDERED.**

# Order Appointing (last page)

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State of Iowa Courts

**Case Number**  
GCPR [REDACTED]

**Case Title**  
GUARDIANSHIP AND CONSERVATORSHIP OF [REDACTED]

**Type:**      Order Appointing

So Ordered

*Elizabeth Dupuich*

Elizabeth Dupuich, District Court Judge,  
Sixth Judicial District of Iowa

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# Updating Guardianship Information

- ▶ Review any internal policies your organization or agency has.
- ▶ Ask guardians to tell you if there are any new orders that expand, limit, or terminate their authority and get a copy of the new orders for your records.
- ▶ Check Iowa Courts Online to see if the guardianship is still in place.
- ▶ Consult with your organization or agency's legal counsel.

# Rights of Protected Persons

# Limited Guardianship & Conservatorship

- ▶ Guardian or conservator only has authority to make decisions in certain areas.
- ▶ Protected person retains the right to make decisions in other areas.
- ▶ Judges are required to consider limited guardianship, but in practice many do not.



# Voting

- ▶ Court can find a protected person incompetent to vote only.
  - If the protected person has an intellectual disability AND
  - The court finds the protected person lacks sufficient mental capacity to comprehend and exercise the right to vote.
- ▶ Most protected persons should retain the right to vote.

# Marriage

- ▶ Court may make a finding that the protected person lacks the capacity to contract a valid marriage.

# Handling property/funds

- ▶ If a conservator is appointed, the protected person shall not have the power to convey, encumber, or dispose of property in any manner except:
  - Can execute a will if the protected person has testamentary capacity.
  - If the court determines the protected person has limited ability to handle their own funds.

# Guardianship Bill of Rights

- ▶ No nationally recognized statement of rights for adults with guardians.
- ▶ Some states have a bill of rights as part of their guardianship laws.
- ▶ National Guardianship Association
  - <https://www.guardianship.org/wp-content/uploads/NGA-Bill-of-Rights-rev-11-4-22.pdf>

# Access to Justice Rights

- ▶ All rights that the court has not granted to your guardian.
- ▶ Right to a lawyer who advocates for the outcome you want.
- ▶ Right to let the court know your concerns or complaints about your guardianship.
- ▶ Right to ask the court to review the need for guardianship.
- ▶ Right to a qualified evaluation to determine capacity.

# Access to Justice Rights (cont'd)

- ▶ Right to be present and participate in court hearings.
- ▶ Right to support and accommodations to be able to effectively communicate with the court and understand court proceedings.
- ▶ Right to have your rights explained to you in your preferred method of communication and in the language you choose.

# Core Human Rights

- ▶ Right to be treated with dignity and respect.
- ▶ Right to be free from abuse, neglect, exploitation, and discrimination.
- ▶ Right to remain as independent as you can.
- ▶ Right to express and practice your own religious preferences.
- ▶ Right to personal privacy.
- ▶ Right to humane, safe, and sanitary living, learning, and working environments.
- ▶ Right to sexual expression and to have your gender identity respected.

# Decision-Making Rights

- ▶ Right to a competent guardian who advocates for your goals, needs, and preferences and respects your desires.
  - Medical treatment preferences
  - Cultural practices
  - Religious beliefs
- ▶ Right to have your guardian (conservator) prudently manage your resources.
- ▶ Right to fully participate in all decisions to the extent you wish to be involved and are able.



# Decision-Making Rights (cont'd)

- ▶ Right to receive necessary services and rehabilitation, within available resources, which protect your personal liberty and are provided in the least restrictive conditions.
- ▶ Right to keep confidential those matters you wish to keep confidential unless the information is necessary to:
  - Obtain services
  - Prevent abuse, neglect, or exploitation
  - Modify the guardianship order

# How Do Guardians and Conservators Make Decisions?

**Substituted judgment** – attempts to make the decision that the protected person would make if they had the capacity to do so.

- ▶ Involve the protected person.
- ▶ Consider the protected person's past decisions and known wishes, preferences, values, and goals.

**Best interests** – when the protected person's wishes cannot be known, make decisions based on what would be in the best interests of the protected person.

# If You Have Concerns About a Guardian or Conservator

- ▶ Discuss your concerns directly with the guardian or conservator.
- ▶ Contact the court in the county where the case is filed. Write a letter to the court explaining your concerns.
- ▶ Iowa Department of Health and Human Services – Dependent Adult Protective Services: 1-800-362-2178
- ▶ Office of Public Guardian: 515-377-0334 or [opg@hhs.iowa.gov](mailto:opg@hhs.iowa.gov) (cannot investigate concerns but can provide guidance about how to resolve a situation)

# Other Resources

## Guardianship Association of Iowa Network (GAIN)

- ▶ GAIN is a membership association focused on providing advocacy, education, and resources to members and the community for the purpose of promoting best practices and the provision of ethical substitute decision making services in the least restrictive manner.
- ▶ [www.iowaguardianship.org](http://www.iowaguardianship.org)

## National Guardianship Association (NGA)

- ▶ National organization dedicated to improving the standard of excellence in guardianship.
- ▶ [www.guardianship.org](http://www.guardianship.org)

# Common Scenarios

# Scenario #1

- ▶ Mike is a 42 year-old man with ID, whose mom is his guardian.
- ▶ He lives in a group home with 24/7 staff support.
- ▶ Mike wants a tattoo.
- ▶ He has been obsessed with tattoos since he was a child and got temporary tattoos whenever he could.
- ▶ He got his ear pierced when he was a teenager but eventually lost his earring and the hole closed.
- ▶ Mike's guardian thinks tattoos are gross and trashy – she will not agree to him getting one.

# Scenario #1 - Questions

- ▶ What are valid considerations about whether Mike should get a tattoo?
- ▶ What are not valid considerations about whether Mike should get a tattoo?
- ▶ How would you approach this situation with Mike's guardian?

# Scenario #2

- ▶ Chrissy is a 28-year-old woman with ID, bipolar disorder, and borderline personality disorder.
- ▶ She lives in an apartment with two roommates, all of whom receive hourly SCL services.
- ▶ Chrissy has been going online and messaging men on Facebook and dating apps.
- ▶ She has invited several men to the apartment for sexual encounters.
- ▶ You are concerned that Chrissy is at risk of harm from these men and that she is also putting her roommates at risk.



# Scenario #2 - Questions

- ▶ What steps would you take to address these concerns?
- ▶ Does your answer change depending on your role (e.g. service provider, case manager)?
- ▶ Do you think that guardianship would be an appropriate response to this situation?
- ▶ What would a guardian's role be in addressing this situation?

# Scenario #3

- ▶ Pauline is 74 years old and has Alzheimer's.
- ▶ She lives in a nursing facility.
- ▶ She has two adult children – Amy and Brad.
- ▶ Amy has been appointed as Pauline's guardian and conservator.
- ▶ Amy says that Brad has taken advantage of their mom financially. She wants to prohibit him from visiting with or talking to their mom.

# Scenario #3 - Questions

- ▶ What would you say to Amy if she tells you that her brother is not allowed to visit or call Pauline?
- ▶ Would your answer change if Brad spends visits and calls badmouthing Amy and asking Pauline for money, and if Pauline becomes upset and agitated after visits/calls from him?

# Questions?

**Jennifer Donovan, Public Guardian**

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Health and  
Human Services