

633.561 Appointment and role of attorney for respondent.

1. In a proceeding for the appointment of a guardian or conservator for an adult or a conservator for a minor:

a. If the respondent is an adult and is not the petitioner, the respondent is entitled to representation by an attorney. Upon the filing of the petition, the court shall appoint an attorney to represent the respondent, set a hearing on the petition, and provide for notice of the appointment of counsel and the date for hearing.

b. If the respondent is an adult under a standby petition, the court shall determine whether, under the circumstances of the case, the respondent is entitled to representation. The determination regarding representation may be made with or without notice to the respondent, as the court deems necessary. If the court determines that the respondent is entitled to representation, the court shall appoint an attorney to represent the respondent. 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.

c. The court may take action under paragraph “a” or “b” prior to the service of the original notice upon the respondent.

d. The court may reconsider the determination regarding representation upon application by any interested person.

e. The court may discharge the attorney appointed by the court if it appears upon the application of the respondent or any other interested person that the respondent has privately retained an attorney who has filed an appearance on behalf of the respondent.

2. The court shall ensure that all respondents entitled to representation have been provided notice of the right to representation and right to be personally present at all proceedings and shall make findings of fact in any order of disposition setting out the manner in which notification was provided.

3. If the respondent is entitled to representation and is indigent or incapable of requesting counsel, the court shall appoint an attorney to represent the respondent. The cost of court appointed counsel for indigents, including the cost of the trial transcript, shall be assessed against the county in which the proceedings are pending. For the purposes of [this subsection](#), the court shall find a person is indigent if the person’s income and resources do not exceed one hundred fifty percent of the federal poverty level or the person would be unable to pay such costs without prejudicing the person’s financial ability to provide economic necessities for the person or the person’s dependents.

4. An attorney appointed pursuant to [this section](#) shall:

a. Ensure that the respondent has been properly advised of the nature and purpose of the proceeding.

b. Advocate for the wishes of the respondent to the extent those wishes are reasonably ascertainable. If the respondent’s wishes are not reasonably ascertainable, the attorney shall advocate for the least restrictive alternative consistent with the respondent’s best interests.

c. Ensure that the respondent has been properly advised of the respondent’s rights in a guardianship or conservatorship proceeding.

d. Personally interview the respondent.

e. File a written report stating whether there is a return on file showing that proper service on the respondent has been made and also stating that specific compliance with paragraphs “a” through “d” has been made or stating the inability to comply by reason of the respondent’s condition.

f. Ensure that the guardianship or conservatorship procedures conform to the statutory and due process requirements of Iowa law.

5. In the event that an order of appointment is entered, the attorney appointed pursuant to [this section](#), to the extent possible, shall:

a. Inform the respondent of the effects of the order entered for appointment of guardian or conservator.

b. Advise the respondent of the respondent’s rights to petition for modification or termination of the guardianship or conservatorship.

c. Advise the respondent of the rights retained by the respondent.

6. If the court determines that it would be in the respondent's best interest to have legal representation with respect to any proceedings in a guardianship or conservatorship, the court may appoint an attorney to represent the respondent at the expense of the respondent or the respondent's estate, or if the respondent is indigent the cost of the court appointed attorney, including the cost of the trial transcript, shall be assessed against the county in which the proceedings are pending.

7. If the court determines upon application that it is appropriate or necessary, the court may order that the attorney appointed pursuant to [this section](#) be given copies of and access to the respondent's health information by describing with reasonable specificity the health information to be disclosed or accessed, for the purpose of fulfilling the attorney's responsibilities pursuant to [this section](#).

84 Acts, ch 1299, §12; 85 Acts, ch 29, §3; 85 Acts, ch 148, §7; 89 Acts, ch 178, §10; 2000 Acts, ch 1036, §2; 2012 Acts, ch 1123, §14, 32; 2019 Acts, ch 56, §40, 44, 45; 2019 Acts, ch 57, §20, 43, 44; 2020 Acts, ch 1063, §349, 350; 2023 Acts, ch 124, §6

Referred to in §633.563

Subsections 3 and 6 amended