

633.561 Representation.

1. In a proceeding for the appointment of a guardian:

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

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.

c. The court may take action under paragraph "a" or "b" prior to the service of the original notice upon the proposed ward.

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 proposed ward or any other interested person that the ward has privately retained an attorney who has filed an appearance on behalf of the proposed ward.

2. The court shall ensure that all proposed wards entitled to representation have been provided with 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 proposed ward is entitled to representation and is indigent or incapable of requesting counsel, the court shall appoint an attorney to represent the proposed ward. The cost of court appointed counsel for indigents 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 proposed ward has been properly advised of the nature and purpose of the proceeding.

b. Ensure that the proposed ward has been properly advised of the ward's rights in a guardianship proceeding.

c. Personally interview the proposed ward.

d. File a written report stating whether there is a return on file showing that proper service on the proposed ward has been made and also stating that specific compliance with paragraphs "a" through "c" has been made or stating the inability to comply by reason of the proposed ward's condition.

e. Represent the proposed ward.

f. Ensure that the guardianship 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 proposed ward of the effects of the order entered for appointment of guardian.

b. Advise the ward of the ward's rights to petition for modification or termination of the guardianship.

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

6. If the court determines that it would be in the ward's best interest to have legal representation with respect to any proceedings in a guardianship, the court may appoint an attorney to represent the ward at the expense of the ward or the ward's estate, or if the ward

is indigent the cost of the court appointed attorney 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 proposed ward'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

Referred to in §633.554

[SP] Subsection 7 applies to all judicial proceedings on or after July 1, 2012, in which an order for the appointment of a guardian is sought or has been issued; 2012 Acts, ch 1123, §32

[T] NEW subsection 7