



GUARDIANSHIP ASSOCIATION OF IOWA NETWORK

Position Statement January 2018

Review of the Iowa Guardianship and Conservatorship Reform Taskforce Report

Summary

The Guardianship Association of Iowa Network (GAIN) is organized as a non-profit, 501c3, and is the only affiliate of the National Guardianship Association (NGA) in Iowa. GAIN provides advocacy, education, and professional growth opportunities across Iowa. This policy report is a response to the Iowa Guardianship and Conservatorship Reform Taskforce Report (2017) and is designed to provide education and information to its membership and for public consideration. GAIN does not support recommendations that create system inefficiencies, excessive costs, or are unnecessarily burdensome to persons subject to guardianship or conservatorship.

TOP RECOMMENDATIONS FOR LEGISLATIVE ACTION:

- 1) Require statewide certification for professional guardians and conservators and a basic training for all family or other non-professional guardians and conservators in Iowa (see Taskforce report Parts 3.9, 3.10, 3.17, 3.18 and Part 5).
- 2) Require training of clerks of court, judges, and attorneys to promote a statewide standard of practices, and require training of law enforcement officials to promote standardized enforcement of court orders regarding guardianships and conservatorships.
- 3) Move all funding for public guardianship programs to the Iowa Judicial Branch.
- 4) Replace the terms “ward” and “guardian ad litem” with “person subject to (guardianship or conservatorship)” and “court visitor,” respectively, which promotes person-centered language and dignity.

GAIN OPPOSES THE FOLLOWING RECOMMENDATIONS:

- 1) Part 5.8 as GAIN is Iowa’s affiliate of the National Guardianship Association and strongly urges certification and training that ensures statewide consistency and reliability. See GAIN’s recommendation #1.

Background

Guardianship Association of Iowa Network (GAIN)

GAIN is an affiliate of the National Guardianship Association (NGA) and promotes national best practices and ethical standards that align with NGA. It also provides an annual conference and is developing multiple training and certification opportunities for Iowa's guardians and conservators. GAIN's members and the public benefit from training, education, technical assistance, and advocacy provided by GAIN. The primary purpose in establishing GAIN was to develop training, education, and certification opportunities for guardians, conservators, and professionals who need to enhance their skills related to guardianship and conservatorship in Iowa. It is, therefore, GAIN's basic position that, as the NGA affiliate in Iowa, best positioned to provide training, education, support, and advocacy for Iowa's guardians and conservators.

Taskforce

The Iowa Supreme Court ordered the establishment of the Guardianship and Conservatorship Reform Task Force (Taskforce) on January 15, 2015. The Taskforce was charged with reviewing Iowa's system for guardianship and conservatorship and make recommended changes to laws, procedures, and processes that align with national best practices to improve the system for individuals receiving these services. The Taskforce established a Steering Committee, five work groups and a Resource Committee on Clinical Evaluation. Seventy-two members served on the Taskforce.

Note: No member of GAIN's board was included on the Taskforce.

The final report includes six key areas for reform. They include:

1. How adult guardianships and conservatorships are established;
2. Identifies qualifications, duties, and responsibilities of guardians and conservators;
3. Activities of court monitoring of adult guardianships and conservatorships;
4. How minor guardianships and conservatorships are established;
5. Activities of administering the guardianship and conservatorship system;
6. Use of clinical assessment for persons who may be in need of guardianship or conservatorship support.

Broadly, the Taskforce has recommended the following:

1. Guardianships and conservatorships should be established as a last resort when less restrictive and intrusive alternatives are not available.
2. Persons who may need guardianship or conservatorship support should be afforded procedural protections in guardianship and conservatorship proceedings.
3. The autonomy and self-determination of persons subject to guardianships and conservatorships, to the extent feasible, should be respected.
4. Potential guardians and conservators should be screened to ensure they are suitable for appointment.
5. Guardians and conservators should be provided the guidance, training and assistance they need to carry out their duties and responsibilities.
6. Judges should be provided the information they need to make informed decisions in guardianship and conservatorship proceedings in accordance with statutory requirements.
7. Court monitoring of guardians should be strengthened in order to ensure that persons subject to guardianships are provided needed care and protections.
8. Court monitoring of conservatorships should be strengthened to ensure that the property of persons subject to conservatorship are protected from misappropriation and misuse.
9. The existing resources of guardianship and conservatorship system should be allocated and used effectively and efficiently, and additional funding should be provided to the Judicial Branch to make needed improvements to the system.

Part One **Establishment of Adult Guardianship & Conservatorship**

GAIN supports efficient implementation of any Taskforce recommendations and is generally comfortable with recommendations in this Part. GAIN highlights the following responses and recommendations:

- 1) **GAIN strongly supports** replacement of the terms “ward” and “guardian ad litem” with “person subject to guardianship or conservatorship” and “court visitor,” respectively.
- 2) **GAIN strongly supports** strengthening of the petition process provided in this Part.

- 3) **GAIN is open to** “alternatives” in Part 1.4 but cautions that alternatives need to ensure strong protections regarding choices and that alternatives are applicable, understandable and functional.
- 4) **GAIN supports** Part 1.8 limited guardianship and conservatorship as a least restrictive means. However, GAIN has concerns about costs and additional burden that may result from this recommendation.
 - a) **GAIN recommends** use of an Interdisciplinary Team for emergency related concerns (e.g. issues of progressive illness, acute mental illness, or progression of Alzheimer’s disease and related dementias).
- 5) **GAIN does not support** Part 1.17 as written. There are concerns for respect for individual privacy. Notice given should not include private information..
 - a) **GAIN supports** subparts a, e and f.
 - b) **GAIN believes** the current code is sufficient.
 - c) **GAIN recommends** adding Part 1.18 into Part 1.17 and eliminate Part 1.7 (b), (c) and (d).
- 6) **GAIN highlights** its response to Part 1.17 in consideration of Parts 1.22 and 1.23.
- 7) **GAIN recommends** adding measures for qualifications of a Court Visitor in Part 1.31.
 - a) **GAIN recommends** clarification that Part 1.31 (a)(v) refers to a recommendation from a qualified person and not the court visitor.
- 8) **GAIN recommends** amending Part 1.34 to add questions be added to the standby petition to determine who is filing and why.
 - a) **GAIN is concerned** that this recommendation does not align with a person-directed model that empowers autonomy of the person subject to guardianship or conservatorship.
- 9) **GAIN encourages** clarification of the term “respondent” in Part 1.35.
- 10) **GAIN notes** there is no Part 1.37.
- 11) **GAIN notes** that Parts 1.40 and 1.41 align with GAIN’s mission.
- 12) **GAIN recommends** stressing the importance of the relationship between guardians and conservators, if they’re different individuals, in Category IX. Language that stresses collaboration would strengthen the Part.

Part Two

Establishment of Minor Guardianship & Conservatorship

GAIN supports efficient implementation of any Taskforce recommendations and is generally comfortable with recommendations in this Part. GAIN highlights the following responses and recommendations:

- 1) **GAIN can contribute** to the success of recommendations in this Part through education and advocacy efforts.
- 2) **GAIN strongly encourages** additional training related to the establishment of minor guardianship and conservatorship.
- 3) **GAIN supports** Part 2.3 recommendation for preference for surviving parent or preference nominated in the the custodial parent's will needs to be implemented.
- 4) **GAIN is concerned** that the Part 2.5 recommendation may be unnecessarily burdensome in the case of an absent parent.
- 5) **GAIN supports adjusting** Part 2.6 recommendation to account for parents deemed "unfit" for care.
- 6) **GAIN supports** Part 2.9 recommendation Alternative B.
- 7) **GAIN is concerned** about the increased costs to persons subject to guardianship or conservatorship for Parts 2.24-2.27, and 2.29.
- 8) **GAIN notes** that in Part 2.27 there are many cases where the court visitor and the attorney can be the same person.
- 9) **GAIN recommends** developing a separate code Part to address establishment of minor guardianship and conservatorships.

Part Three

Guardians & Conservators for Adults and Minors: Qualifications/Duties/Standards

GAIN supports efficient implementation of any Taskforce recommendations and is generally comfortable with recommendations in this Part. GAIN highlights the following responses and recommendations:

- 1) **GAIN strongly recommends requiring additional training** related to Parts 3.9, 3.17, and 3.18.
 - a) GAIN can contribute to the success of implementing these recommendations through education and advocacy.
- 2) GAIN notes that court discretion in Parts 3.4 and 3.5 is appreciated.

- 3) GAIN recommends the court test for sufficient funds in Part 3.7.
- 4) **GAIN strongly recommends guardianship and conservatorship basic training that results in a certification of completion for Part 3.10.**
- 5) **GAIN notes** that Part 3.12 aligns with the Uniform Power of Attorney Act.
- 6) **GAIN expresses** the following concerns for Part 3.21:
 - a) Does this Part make guardians and conservators mandatory reporters?
 - b) Will guardians and conservators then need to be listed in mandatory reporter rules?
 - c) How does this relate to the Graham-Leach-Biley Act's abuse reporting requirements for financial institutions?
 - d) GAIN highlights Parts 3.22-25 align with national best practices and GAIN's mission
- 7) **GAIN is concerned** that Part 3.26 may not restrict contact with individuals who might potentially exploit the adult subject to guardianship. "Consensual" terminology may be problematic if adult does not have capacity to consent to contact with other person.
- 8) **GAIN recommends** adding decision making priority education requirements for Part 3.27.
 - a) See Parts 3.39-3.44 for additional information.

Part Four

Court Monitoring Adult & Minor Guardianships & Conservatorships

GAIN supports efficient implementation of any Taskforce recommendations and is generally comfortable with recommendations in this Part. GAIN highlights the following responses and recommendations:

- 1) **GAIN highlights** Part 4.4 alignment with GAIN and NGA best practices.
- 2) **GAIN highlights** that Part 4.12 is a change in practice and will require additional training and education.
- 3) **GAIN takes no position on Parts 4.16-4.18.**

Part Five

Administration of Guardianship & Conservatorship System

GAIN supports efficient implementation of any Taskforce recommendations and is generally comfortable with recommendations in this Part. GAIN highlights the following responses and recommendations:

1. **GAIN is an affiliate of the National Guardianship Association (NGA) and is prepared to provide training and education recommended throughout Part Five.**
2. **GAIN recommends** a CASA be considered for situations associated with Part 5.3.
3. **GAIN recommends** statewide uniformity for Part 5.4.
4. **GAIN highlights** concerns for funding and efficiency for Part 5.6.
5. **GAIN opposes Part 5.8 as it GAIN is an affiliate of NGA and strongly urges certification and training that ensures statewide consistency and reliability.**
6. **GAIN strongly supports** Part 5.17 through professional certification and basic training for family guardians.
7. **GAIN strongly supports** “statewide” language for Part 5.26.
8. **GAIN encourages updating** current forms associated with Part 5.27 to indicate if the address/information is a change from a previous report.
9. **GAIN recommends** including GAIN representation in future committees associated with guardianship and conservatorship matters, including that which is described in Part 5.28.
10. **GAIN supports** Part 5.29 public guardianship programs.
11. **GAIN supports** moving all public guardianship and conservatorship funding to the Iowa Judicial Branch as this is where, operationally, all of the reporting and oversight activities occur throughout Iowa.
12. **GAIN strongly recommends a certification process** that includes a certification for professionals providing guardianship and conservatorship services and a basic training for family or other non-professional guardians and conservators.
 - a. **GAIN is the NGA affiliate in Iowa and is prepared to provide this service.**
13. **GAIN is concerned** that Part 5.34 recommendations will result in frivolous actions and undue financial burden for the person subject to guardianship and conservatorship will occur with Part.
 - a. GAIN recommend utilizing mediation complaint resolution to address this recommendation.

Part Six

Clinical Evaluations & Judicial Capacity Determinations

GAIN supports efficient implementation of any Taskforce recommendations and is generally comfortable with recommendations in this Part. GAIN highlights the following responses and recommendations:

- 1) **GAIN is concerned** about the cost of Part 6.4 to persons subject to guardianship or conservatorship as well as the time it takes for evaluations to be administered by an approved evaluator.
 - a) **GAIN recommends** a temporary/limited guardianship or conservatorship for specific emergencies or imminent danger for exploitation or safety matters.
- 2) **GAIN notes** that it can contribute to the success of Parts 6.12-6.14 through training, education, and consultation.

References

Iowa Guardianship and Conservatorship Reform Task Force (2017). Reforming Iowa's guardianship and conservatorship system: Final report. State of Iowa (August).