

## Court Appointed Attorneys' Role

Court Appointed Attorneys play an important role as an advocate to ensure the rights of the person subject to guardianship and/or conservatorship (hereafter referred to as “the person”) are not removed unless there is no other alternative to ensure basic needs are met and to protect finances.

It is important prior to the appointment of a guardian or conservator that the ramifications of the appointment are understood by the person. Guardianship/conservatorship means that rights will be removed from the person and transferred to the guardian/conservator, who will have broad authority over many areas of the person’s life. This must be thoroughly explained to the person; resist the temptation to water down the significance of this appointment.

Before appointment, and at any time during the course of the representation when a risk of a conflict of interest may arise, the proposed or appointed attorney shall disclose the risk of a conflict of interest.

Court appointed attorneys should meet with their clients as soon as possible after being assigned the case.

## Court Visitor’s Role

When appointed, a Court Visitor will meet with the person to serve the notice and petition. The Court Visitor will file a report after their visit and court-appointed attorneys should familiarize themselves with the Court Visitor’s Report.

## Interacting with the Person

What can be expected during the process of petitioning for guardianship/conservatorship should be made clear to the person. What will the person experience during their visit from their court-appointed attorney? This information should inform the person when they are allowed to speak up in the process.

Does the person feel they need a guardian? Does the person understand what having a guardian means for current and future decisions impacting their life?

Information should be provided in an accessible format at or below a sixth grade reading level.

## Interview of the Person by Court Appointed Attorney

### Determine Need

Guardianship is the most expensive option (to the person and/or counties, and local courts). There are ongoing costs to maintain, burden, continued court supervision, removal of a person’s rights, it’s slow to establish, and it takes significant time to maintain.

Guardianship can bring risk to the person with less focus on growth and skill building, loss of rights/autonomy, decreased self-worth, and loss of a sense of agency. It is important to ensure guardianship is granted only when needed and to ensure guardianship is not used proactively.

The American Bar Association published the [PRACTICAL Resource Guide](#) for lawyers to raise awareness about decision-making options that are less restrictive than guardianships:

- **P**resume guardianship is not needed.
- **R**eason. Explore the reason the individual’s needs are not being met.
- **A**sk if a triggering concern may be caused by temporary or reversible conditions.
- **C**ommunity. Determine if concerns can be addressed by connecting the person to family or community resources and making accommodations.
- **T**eam. Does the person have a team to help make decisions?
- **I**dentify abilities. Identify areas of strengths and limitations in decision-making.
- **C**hallenges. Screen for and address any potential challenges presented by the identified supports and supporters.
- **A**ppoint. Assist the person to appoint a legal supporter or surrogate consistent with person’s values and preferences.
- **L**imit any necessary guardianship petition and powers if guardianship/conservatorship cannot be avoided.
  - The powers that can be granted to a guardian are found in [Minnesota Statutes § 524.5-313](#).
  - The powers that can be granted to a conservator are found in [Minnesota Statutes § 524.5-417](#).

Other questions court-appointed attorneys might ask include:

- Do the presumed benefits of guardianship/conservatorship outweigh the potential harms/costs?
- Will guardianship/conservatorship even address the concerns?
  - Could “behaviors” be responses to others’ approaches or actions?
  - Could “behaviors” be result of pain, frustration, inability to express self with words?
  - Consider whether noncompliance is actually about lack of resources?

## The Person’s Preferences

What are the respondent’s views about proposed guardian/conservatorship, proposed powers & duties; scope & duration of the guardianship/conservatorship?

**Note:** just because the person is in an agreement, doesn’t mean the guardianship/conservatorship is appropriate.

## Less Restrictive Alternatives

- [Minnesota Statutes § 524.5-310](#) states a guardian may be appointed only if the court finds clear and convincing evidence that the respondent’s identified needs cannot be met by less restrictive means, including but not limited to use of appropriate technological assistance, supported decision making, community or residential services, or appointment of a health care agent.
- [Minnesota Statutes § 524.5-409](#) states the court may appoint a limited or unlimited conservator for a respondent only if it finds that: the respondent's identified needs cannot be met by less restrictive means, including but not limited to use of appropriate

technological assistance, supported decision making, representative payee, trusts, banking or bill paying assistance, or appointment of an attorney-in-fact under section [523.01](#). The court must make specific findings particular to the respondent as to why less restrictive alternatives do not work.

- What less restrictive means have been meaningfully attempted and considered, how long such less restrictive means have been attempted, and a description of why such less restrictive means are not sufficient to meet the respondent's identified needs. These should be stated in the petition and the court appointed attorney should make sure the evidence was presented during the hearing.

### Guardian/Conservator Fit for Appointment

Is the proposed guardian/conservator a good fit, who will work with the person, balancing quality of life with safety concerns?

### Interpreters

Is an interpreter needed if friends and family are unable to adequately translate?

### Resources

- [Less Restrictive Alternatives](#) from Working Interdisciplinary Networks (WINGS) MN
- Supported Decision Making (SDM) Resources:
  - [Supported Decision Making](#) from DisabilityHubMN.org.
  - [PRACTICAL Tool for Lawyers: Steps in Supported Decision-Making.](#)
  - SDM Resources for Guardians:
    - Center for Excellence in Supported Decision Making (CESDM), Guardianship Information Line: 952-945-4174, 1-844-333-1748, [cesdm@voamn.org](mailto:cesdm@voamn.org) – assistance with:
      - Phone Consultation, Advice, I&R.
      - Assessments.
      - Facilitation of Supported Decision Making & Surrogate Decision Making Legal Tools.
      - Petitioning for conservatorship/guardianship, terminations, and modifications.
    - [Best Practices in Supported Decision Making](#) from VOA of Minnesota.
    - [Guardianship & Supported Decision Making Explained](#) from VOA of Minnesota.
    - [Finding the Right Fit: Decision-Making Supports and Guardianship](#) from Elder Justice Initiative and National Center for State Courts.
    - [Finding the Right Fit: Supported Decision Making as a Less Restrictive Option](#) from Elder Justice Initiative and National Center for State Courts.
    - [Introduction and Guide to Supported Decision Making](#) from Minnesota Department of Human Services (DHS).
    - [Stop, Look, and Listen: Planning for Independence and Adult Decision-Making Support](#) from SupportedDecisionsMaking.org, The South Carolina Supported Decision Making Project.
    - [100 Ways to Use Supported Decision Making](#) from The Arc Northern Virginia.
    - [MN Guardianship & Conservatorship Law Handbook](#) from Minnesota CLE (fee).