

Guardianship and Conservatorship Program Regulations

406 Conflicts of Interest

406.1 The guardian and conservator shall exhibit the highest degree of trust, loyalty, and attentiveness in relation to the individual and the individual's estate, property and finances.

406.2 There shall be no self-interest in the management of the estate, property and finances or the management of the personal affairs of the individual by the guardian and conservator. The guardian and conservator shall exercise caution to avoid even the appearance of self-interest or conflict of interest. An appearance of conflict of interest is a situation that a reasonable person might perceive as self-serving or adverse to the interest of the individual subject to guardianship and/or conservatorship.

406.3 A conflict of interest arises when the guardian and conservator has some personal, family or agency interest that is self-serving or adverse to the interest of the individual. If the guardian and conservator intends to proceed in the face of a conflict of interest, a guardian and conservator shall disclose the conflict of interest to the court and seek prior court approval in accordance with the steps outlined in 406.4.

406.4 The role of a guardian and conservator is primarily that of a decision-maker and coordinator of services. The guardian and conservator or agency (or an entity in which a guardian and conservator has a financial interest) shall not directly provide services such as housing, medical, personal care, or therapeutic services to the individual or profit from any transaction made on behalf of the individual's estate, property or finances. In exceptional circumstances some direct services may be approved by the court provided written permission of the court is given in advance of the service being provided. When requesting court approval, the guardian and conservator must demonstrate in writing and with prior notice to notice parties that all alternatives have been identified and considered and that no alternative is available that is reasonable or practical.

406.5 A guardian or conservator who is also an attorney may represent themselves or their agency with respect to the administration of a guardianship or conservatorship. The guardian/conservator and the attorney must submit separate statements to the court for approval of fees and costs.

406.6 A guardian and conservator who is an attorney may provide legal services to the individual subject to guardianship and/or conservatorship only when doing so best meets the needs of the individual and is approved by the court following full disclosure of the conflict of interest.

406.7 A guardian and conservator shall not accept a gift from an individual subject to guardianship and/or conservatorship or from their estate, property or finances, other than ordinary social hospitality.

406.8 Payment of fees or other compensation for guardianship and/or conservatorship services by a party other than the individual subject to guardianship and/or conservatorship is a potential conflict of interest which shall be fully disclosed to the court.

406.9 The guardian and conservator shall protect the individual subject to guardianship and/or conservatorship's rights and best interests against infringement by third parties.

406.10 A guardian and conservator shall not petition, nor request or cause counsel to petition, to be appointed as a guardian and/or conservator unless the guardian and conservator follows the guidelines set out in Ethics Advisory Opinion No. 2005-001.

[Ethics Advisory Opinion No. 2005-001](#)

406.10.1 If a guardian and conservator has already been appointed to serve as guardian or conservator, and has good cause to believe appointment to the other fiduciary role is necessary to protect the person, or their estate, the guardian or conservator may petition for appointment to the other role.

Effective January 1, 2022