

Guardianship and Conservatorship Program Rules 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 ~~incapacitated person individual subject to guardianship and/or conservatorship~~ and the ~~incapacitated person's 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 ~~incapacitated person 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 ~~incapacitated person individual subject to guardianship and/or conservatorship~~. 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. ~~(Revised 1-9-12)~~

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 ~~incapacitated person individual subject to guardianship and/or conservatorship~~ or profit from any transaction made on behalf of the ~~incapacitated person's estate individual subject to guardianship and/or conservatorship~~. 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. ~~(Revised 1-9-12)~~

406.5 A guardian and conservator who is an attorney may provide legal services to the ~~incapacitated person individual subject to guardianship and/or conservatorship~~ only when doing so best meets the needs of the ~~incapacitated person individual~~ and is approved by the court following full disclosure of the conflict of interest. ~~(Adopted 1-9-12)~~

406.6 A guardian and conservator shall not accept a gift from an ~~incapacitated person individual subject to guardianship and/or conservatorship~~ or from their ~~estate property or financial assets~~, other than ordinary social hospitality.

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

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

406.9 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 discloses the conflict of interest to the court in the petition for guardianship and/or conservatorship. The guardian and conservator shall provide the court with information demonstrating sufficient efforts were made to identify other individuals, and that no other suitable individual is available and willing to be appointed.

406.9.1 If a guardian and conservator has already been appointed to serve to one role, and has good cause to believe appointment to the other role is necessary to protect the person, or their property and finances, they may petition for appointment to the other role.