

# Free Britney: How a Pop Culture Icon Brought to Light Guardianship and Conservatorship Inequities and How Kansas Statutes Can Better Prevent Against Them

Stephany Rohleder\*

## I. INTRODUCTION

Pop culture icon Britney Spears fought for her life back.<sup>1</sup> Spears was subject to a conservatorship since 2008.<sup>2</sup> The conservatorship covered decisions about Britney's estate and health.<sup>3</sup> Because of the conservatorship, Spears was not able to remove her IUD<sup>4</sup> or have another child.<sup>5</sup> However, although Spears' story was the one that gripped the nation, there are many others who are in a similar battle to get their life back. As of 2021, approximately 1.3 million adults are in active

---

\* J.D. Candidate 2022, University of Kansas School of Law; B.A. Political Science, magna cum laude, 2016, Fort Hays State University. I would like to thank Dahnika Short and Minha Jutt for their insightful suggestions and edits, and all of the other members of the Kansas Law Review for their thoughtful review of this Comment. I would also like to thank my husband, Cameron, for all of his support and patience throughout the entire writing process. And to all of my family and friends alike, thank you for all of the support you have given me throughout law school and my life. I am truly and forever grateful.

1. Liz Day, Samantha Stark & Joe Coscarelli, *Britney Spears Quietly Pushed for Years to End Her Conservatorship*, N.Y. TIMES (Nov. 2, 2021), <https://www.nytimes.com/2021/06/22/arts/music/britney-spears-conservatorship.html> [<https://perma.cc/KJT4-H2MV>].

2. Heran Mamo, *A Timeline of Britney Spears' Conservatorship*, BILLBOARD (Sept. 30, 2021), <https://www.billboard.com/pro/britney-spears-conservatorship-timeline/> [<https://perma.cc/N8S9-WL3S>]. Spears' conservatorship officially ended in November of 2021. See Anastasia Tsioulcas, *Britney Spears' Conservatorship Has Finally Ended*, NPR (Nov. 12, 2021, 5:16 PM), <https://www.npr.org/2021/11/12/1054860726/britney-spears-conservatorship-ended> [<https://perma.cc/MW8R-XM4C>].

3. *Britney Spears: Singer's Conservatorship Case Explained*, BBC NEWS (Nov. 12, 2021), <https://www.bbc.com/news/world-us-canada-53494405> [<https://perma.cc/W73P-MA9V>].

4. IUD stands for Intrauterine Device. It is a device that is "put into your uterus to prevent pregnancy." IUD, PLANNED PARENTHOOD, <https://www.plannedparenthood.org/learn/birth-control/iud> [<https://perma.cc/2WHG-Z8YZ>] (last visited Apr. 7, 2022).

5. Jon Blistein, *Britney Spears' Conservatorship: What's Going On and What's Next?*, ROLLING STONE (Nov. 12, 2021, 5:25 PM), <https://www.rollingstone.com/music/music-news/britney-spears-conservatorship-timeline-1193156/> [<https://perma.cc/5DYQ-V9XH>].

guardianships or conservatorships.<sup>6</sup> From this 1.3 million, it is estimated that eighty-five percent of these adults are over the age of sixty-five.<sup>7</sup> Britney shed light on some inequities surrounding guardianships and conservatorships. However, her case is in the minority compared to adults who are over the age of sixty-five, and thus should not be the sole focus when reforming laws to prevent these inequities.

When a person is placed under a guardianship or conservatorship, they may lose the ability to make decisions for themselves including where to live, who to marry, and whether to vote.<sup>8</sup> Although a ward or conservatee loses their ability to make decisions, a guardian or a conservator is supposed to represent their best interests.<sup>9</sup> Guardianships and conservatorships are only supposed to be a crutch for an elderly person, allowing them to maintain the maximum amount of personal freedom.<sup>10</sup> However, when an elderly person is placed under a guardianship or conservatorship, it could mean the loss of personal freedom, autonomy, and, in the extreme, it could mean a death sentence.<sup>11</sup> Although an elderly

---

6. Dennis Thompson, *How 1.3 Million Americans Became Controlled by Conservatorships*, U.S. NEWS (Oct. 18, 2021, 8:10 AM), <https://www.usnews.com/news/health-news/articles/2021-10-18/how-13-million-americans-became-controlled-by-conservatorships>.

7. Kenneth Miller, *What Happens When a Guardianship Gets Contentious*, AARP (Oct. 4, 2018), <https://www.aarp.org/caregiving/financial-legal/info-2018/court-ordered-guardianship-separates-family.html?intcmp=AE-HP-TTN-R1-POS2-REALPOSS-TODAY> [https://perma.cc/U7RY-P8DS].

8. *The Ins and Outs of Guardianship and Conservatorship*, ELDER L. ANSWERS (July 20, 2021), <https://www.elderlawanswers.com/guardianship-and-conservatorship-12096#:~:text=Every%20adult%20is%20assumed%20to,unless%20a%20court%20determines%20otherwise.&text=Depending%20on%20the%20terms%20of,court%20approval%20for%20various%20decisions> [https://perma.cc/UG84-542V]; Elder Justice Initiative, *Guardianship: Key Concepts and Resources*, DEP'T OF JUST., <https://www.justice.gov/elderjustice/guardianship-key-concepts-and-resources> [https://perma.cc/L2P7-BAPJ] [hereinafter Elder Justice Initiative, *Guardianship*] (last visited Apr. 7, 2022); Elder Justice Initiative, *About Elder Abuse*, DEP'T OF JUST., <https://www.justice.gov/elderjustice/about-elder-abuse#:~:text=Elder%20abuse%20is%20an%20intentional,Psychological%20Abuse> [https://perma.cc/2MVH-6QQT] (last visited Apr. 7, 2022) (discussing the five major subtypes of elder abuse).

9. *Guarding the Guardians: The Red Flags of Guardian Financial Abuse*, N. AM. SECS. ADM'RS ASS'N, <https://serveourseniors.org/about/investors/red-flags-guardian-financial-abuse/> [https://perma.cc/GL5L-XFQW] (last visited Apr. 7, 2022).

10. A. Kimberly Dayton & Molly M. Wood, *Elder Law: Readings, Cases, and Materials* 544 (4th ed. 2015).

11. See *Mary Jane Mann*, NAT'L ASS'N TO STOP GUARDIAN ABUSE, <https://stopguardianabuse.org/victim-profiles/mary-jane-mann-ca/> [https://perma.cc/5SWK-49S2] (last visited Apr. 7, 2022); *Marcelle Halpern*, NAT'L ASS'N TO STOP GUARDIAN ABUSE, <https://stopguardianabuse.org/victim-profiles/marcelle-halpern-ny/> [https://perma.cc/PB9F-G9LE] (last visited Apr. 7, 2022); *Dorothy Wilson*, NAT'L ASS'N TO STOP GUARDIAN ABUSE, <https://stopguardianabuse.org/victim-profiles/dorothy-wilson-ny-2/> [https://perma.cc/3XF2-HS8Z] (last visited Apr. 7, 2022).

person still has rights under a guardianship or conservatorship, those rights may not be respected which in turn could lead to the caregiver speeding up the process of the elderly person dying earlier than they should.<sup>12</sup>

This Comment argues that, as they currently stand, Kansas statutes surrounding guardianships and conservatorships are outdated and should be updated to include requirements that would help prevent elder abuse. While guardianships and conservatorships play an important role in the lives of some individuals, sometimes a less restrictive option like partial guardianship or partial conservatorship provides a better balance of agency and support for the individual. That is why Kansas statutes should require guardians and conservators to show why a less restrictive option is not feasible, should require expanded notice of guardianship or conservatorship proceedings, and should require guardians and conservators to file a plan. Kansas has not had a full revamp of their statutes surrounding guardianships and conservatorships since 2002.<sup>13</sup> Thus, Kansas should completely overhaul its current statutes and replace them with the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act (the “UGCOPAA”) to better combat possible elder abuse, which would include the requirements of showing that a less restrictive option would not be available, expanded notice, and having a filed plan.<sup>14</sup>

Short of this, Kansas should implement other measures that will help better protect elders from abuse, including implementing fee limits and allowing a ward or conservatee to hire or verify the appointment of their own attorney. Guardianships and conservatorships are supposed to be legal devices that help incapacitated individuals when they cannot care for themselves.<sup>15</sup> However, some bad actors have used these legal devices to exploit and abuse the elderly.<sup>16</sup> Current Kansas statutes surrounding

---

12. Witness, *An Age for Justice: Confronting Elder Abuse in America*, YOUTUBE (Apr. 21, 2010), <https://www.youtube.com/watch?v=-eaJXbj87to> [https://perma.cc/CMB9-BK7T] [hereinafter *Age for Justice*].

13. KAN. STAT. ANN. § 59-3050 *et seq.* (2002).

14. *Guardianship, Conservatorship, and Other Protective Arrangements Act*, UNIF. L. COMM’N, <https://www.uniformlaws.org/committees/community-home?CommunityKey=2eba8654-8871-4905-ad38-aabbd573911c> [https://perma.cc/5NWR-B7HL] (last visited Apr. 7, 2022).

15. *Guardianship and Conservatorship*, NAT’L ACAD. OF ELDER L. ATT’YS, [https://www.naela.org/web/consumers\\_tab/consumers\\_library/consumer\\_brochures/elder\\_law\\_and\\_special\\_needs\\_law\\_topics/guardianship\\_conservatorship.aspx](https://www.naela.org/web/consumers_tab/consumers_library/consumer_brochures/elder_law_and_special_needs_law_topics/guardianship_conservatorship.aspx) [https://perma.cc/S7H7-8PJA] (last visited Apr. 7, 2022).

16. See Mary Jane Mann, *supra* note 11; Marcelle Halpern, *supra* note 11; Dorothy Wilson, *supra* note 11; Age for Justice, *supra* note 12; Rick Green, *State Supreme Court Holds Lawyers, Conservators Accountable in Probate Cases*, NAT’L ASS’N TO STOP GUARDIAN ABUSE (Mar. 23,

guardianships and conservatorships must evolve and implement some of the above measures so they can help prevent elder abuse.

Part II of this Comment discusses the differences between guardianships and conservatorships and examines the UGCOPAA and current Kansas statutes surrounding guardianships and conservatorships. Part III highlights three reasons why the UGCOPAA is better law than current Kansas law and advises that Kansas should adopt the UGCOPAA with amendments because the UGCOPAA will provide a better consistency to the laws surrounding guardianships and conservatorships and will bring Kansas law on guardianships and conservatorships up to date. Part III also discusses other specific measures that can be taken to help prevent the abuse and exploitation of the elderly short of a full repeal of current Kansas law.

## II. BACKGROUND

Current Kansas law on guardianships and conservatorships do not do enough to help prevent elder abuse and should be updated to reflect changes that have been made in this area of the law. Guardianships and conservatorships have been a part of American history for a long time.<sup>17</sup> With such a long history, laws surrounding guardianships and conservatorships have changed and evolved over time. Guardianships and conservatorships are governed by state law.<sup>18</sup> Because of this, statutes related to guardianships and conservatorships can vary widely depending on the state. Due to this variation, the Uniform Law Commission steps in to draft uniform laws that help provide consistency across all states.<sup>19</sup>

Section II.A. of this Comment details the differences between guardianships and conservatorships, and which form this Comment will use. This Comment will then discuss in Sections II.B. and II.C. guardianship and conservatorship provisions in both the UGCOPAA and

---

2012), <https://stopguardianabuse.org/victim-profiles/daniel-gross-ctny/> [https://perma.cc/H6GK-YVNA].

17. See Lawrence M. Friedman, Joanna L. Grossman & Chris Guthrie, *Guardians: A Research Note*, 40 AM. J. LEGAL HIST. 146, 146 (1996); *Conservatorship*, ONLINE ETYMOLOGY DICTIONARY, <https://www.etymonline.com/search?q=conservatorship> [https://perma.cc/2DPT-QYAV] (last visited Apr. 7, 2022); *Guardianship*, ONLINE ETYMOLOGY DICTIONARY, <https://www.etymonline.com/search?q=guardianship> [https://perma.cc/E8J6-2S3U] (last visited Apr. 7, 2022); *Guardian*, BRITANNICA, <https://www.britannica.com/topic/guardian> [https://perma.cc/LFT6-XGYV] (last visited Apr. 7, 2022).

18. Elder Justice Initiative, *Guardianship*, *supra* note 8.

19. *About Us*, UNIF. L. COMM'N, <https://www.uniformlaws.org/aboutulc/overview> [https://perma.cc/F73V-K6GN] (last visited Apr. 7, 2022).

current Kansas law. Comparing the differences between the UGCOPAA and current Kansas law will show why guardianship and conservatorship laws in Kansas need to be updated.

#### A. *Differences between Guardianships and Conservatorships*

Because guardianship and conservatorship laws are determined at the state rather than the federal level, there is no uniform way to describe what this Comment refers to as guardianships and conservatorships.<sup>20</sup> Some states refer to guardianships and conservatorships separately as two distinct topics.<sup>21</sup> Others refer to guardianships as guardianship of the person and conservatorships as guardianship of the property or estate.<sup>22</sup> Because of this non-uniformity, this Comment defines how it will be using terms related to guardianships and conservatorships.

This Comment will be using the following terms, as defined:

- Guardianship is a legal relationship where a guardian is given the ability to make decisions about the ward’s person, including the ward’s personal, day-to-day decisions.<sup>23</sup>
- A guardian is a person who “can make a wide range of personal and medical decisions for the person in their care.”<sup>24</sup>
- A ward is a person who is subject to a guardianship.<sup>25</sup>
- Conservatorship is a legal relationship where a conservator is given the ability to make decisions about the conservatee’s finances or estate.<sup>26</sup>
- A conservator is in charge of the conservatee’s financial

---

20. Elder Justice Initiative, *Guardianship*, *supra* note 8.

21. *See, e.g.*, KAN. STAT. ANN. § 59-3050 (2008); OR. REV. STAT. ANN. §§ 125.300–540 (2003); MO. ANN. STAT. § 475.010 (2000); N.M. STAT. ANN. § 45-5-101 (2014); WIS. STAT. ANN. § 54.01 (2008).

22. *See, e.g.*, N.Y. MENTAL HYG. LAW § 81.03(a) (McKinney 2006); OKLA. STAT. ANN. tit. 30, § 1-105 (2009); MD. CODE ANN., EST. & TRUSTS § 13-101(h) (2014); DEL. CODE ANN. tit. 12, § 3903 (2016).

23. *Guardianship*, BLACK’S LAW DICTIONARY, POCKET EDITION (5th ed. 2016); Belle Wong, *Conservatorship vs. Guardianship*, LEGALZOOM (Oct. 23, 2020), <https://www.legalzoom.com/articles/conservatorship-vs-guardianship> [<https://perma.cc/7TPU-N9HE>].

24. *What Are the Differences Between Guardianships & Conservatorships?*, BRATTON L., <https://www.brattonlawgroup.com/faqs/what-are-the-differences-between-guardianships-and-conservatorships/> [<https://perma.cc/6DAP-P8U6>] (last visited Apr. 7, 2022).

25. *What’s the Difference Between a Guardianship and Conservatorship in Kansas?*, FLEESON GOOING (July 14, 2017), <https://www.fleeson.com/difference-between-guardianship-conservatorship-kansas/> [<https://perma.cc/4JVZ-QVFH>] [hereinafter FLEESON GOOING].

26. *Id.*

affairs or their estate.<sup>27</sup>

- A conservatee is a person who is subject to a conservatorship.<sup>28</sup>

Thus, this Comment will consider conservatorships as only related to financial affairs, and guardianships as only related to personal, day-to-day decisions. However, it is pertinent to note that a person subject to a guardianship can also be subject to a conservatorship, and vice versa. With the proper framework in place, we now consider how the UGCOPAA addresses guardianships and conservatorships.

### *B. Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act*

The Uniform Law Commission is an association that looks to determine whether different areas of state law should be uniform.<sup>29</sup> This commission drafts and proposes statutes in these different areas of state law where uniformity is desirable.<sup>30</sup> To date, the Commission has drafted and proposed over 160 uniform acts for states to adopt.<sup>31</sup> The most recent update regarding guardianships and conservatorships comes in the form of the UGCOPAA.<sup>32</sup>

The UGCOPAA was added in 2017 and encourages courts to impose the least restrictive means possible to protect vulnerable individuals from potential abuse, even from individuals who become their guardian.<sup>33</sup> Thus far, the UGCOPAA has been enacted by two states, Washington and Maine, each enacted in 2019 and 2018, respectively.<sup>34</sup> Since the drafted acts are only models for states to use, a state's legislature has to consider an act and determine whether to adopt it.<sup>35</sup>

27. *Dispute Resolution*, TURNER L., <https://www.decaturestateplanning.com/dispute-resolution/> [<https://perma.cc/A69U-WMG7>] (last visited Apr. 7, 2022).

28. FLEESON GOOING, *supra* note 25.

29. *About Us*, *supra* note 19.

30. *Id.*

31. *Id.*; *see also Acts Overview*, UNIF. L. COMM'N, <https://www.uniformlaws.org/acts/overview> [<https://perma.cc/X533-NBHH>] (last visited Apr. 7, 2022).

32. *Search Acts*, UNIF. L. COMM'N, <https://www.uniformlaws.org/acts/catalog/searchacts> (last visited Apr. 13, 2022) (type "Guardianship" in the search bar and hit the search button).

33. *Guardianship, Conservatorship, and Other Protective Arrangements Act*, *supra* note 14; *How the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act Combats Elder Abuse*, UNIF. L. COMM'N (Oct. 23, 2019), <https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=cd888995-7004-a968-bcf7-c0b41bb8ec6e&forceDialog=0> [<https://perma.cc/6UFJ-ASWN>].

34. *Guardianship, Conservatorship, and Other Protective Arrangements Act*, *supra* note 14.

35. *FAQs*, UNIF. L. COMM'N, <https://www.uniformlaws.org/aboutulc/faq> [<https://perma.cc/VCG4-42C9#What%20is%20the%20Uniform%20Law%20Commission?>] (last visited Apr. 7, 2022).

In Section II.B., we will look at various provisions of the UGCOPAA that are necessary to help prevent abuse of elders. Section II.B.1. of this Comment discusses how the UGCOPAA defines both guardianships and conservatorships. In Section II.B.2., this Comment considers how guardians and conservators are appointed. Section II.B.3. lays out the various powers and duties of a guardian or conservator. Section II.B.4. discusses the monitoring, removal and termination of a guardian or conservator. We will consider guardianships and conservatorships simultaneously as many of the provisions between guardianships and conservatorships are similar as laid out in the UGCOPAA.

### 1. Guardianships and Conservatorships Defined

The UGCOPAA defines a guardian as “a person appointed by the court to make decisions with respect to the personal affairs of an individual.”<sup>36</sup> It defines a conservator as “a person appointed by a court to make decisions with respect to the property or financial affairs of an individual subject to conservatorship.”<sup>37</sup> It differentiates between a full guardianship or conservatorship and a limited guardianship or conservatorship by the amount of powers available to the guardian or conservator.<sup>38</sup> A full guardianship or conservatorship receives all powers available and a limited guardianship or conservatorship receives less than all available powers.<sup>39</sup> It defines an adult subject to a guardianship as “an adult for whom a guardian has been appointed under this [act],”<sup>40</sup> and an adult subject to a conservatorship as “an adult for whom a conservator has been appointed under this [act].”<sup>41</sup> These definitions are the bedrock for developing better laws surrounding guardianships and conservatorships.

### 2. Appointment of a Guardian or Conservator

The UGCOPAA lays out several provisions prior to the hearing and appointment of a guardian or conservator. The UGCOPAA lays out what needs to be present in a petition for guardianship or conservatorship. What needs to be present includes: the names of those related to the potential

---

36. Unif. Guardianship, Conservatorship, and Other Protective Arrangements Act § 102(9) (Unif. L. Comm’n 2017).

37. *Id.* § 102(5).

38. *Id.* §§ 102(7)–(8), (15)–(16).

39. *Id.*

40. *Id.* § 102(3).

41. *Id.* § 102(2).

adult in need of a guardian or conservator, the adult in need of a guardian or conservator's lawyer (if they have one), the reason for the guardianship or conservatorship, the type of guardianship or conservatorship that is being requested (limited or full), and, if full, the reason why limited is not appropriate.<sup>42</sup> It also requires that the adult in need of a guardian or conservator receives notice of the hearing on the petition, as do those who are listed in the petition, which include the adult's spouse and adult children, if any.<sup>43</sup>

Prior to appointment of a guardian or conservator, the court shall appoint a visitor to interview and assess the adult in need of a guardian or conservator to determine if the adult in fact does need a guardian or conservator, along with other recommendations.<sup>44</sup> Sections 305 and 406 of the UGCOPAA provide that the court will appoint an attorney for the adult in need of a guardian or conservator, respectively, unless the adult already has an attorney.<sup>45</sup> Also before appointment of a guardian or conservator, the court can order a professional evaluation of the adult in need of a guardian or conservator if the adult requests one.<sup>46</sup>

The UGCOPAA lays out other provisions that relate to the appointment hearing. A hearing appointing a guardian or conservator for an adult in need of a guardian or conservator cannot take place without the adult present.<sup>47</sup> If the adult in need of a guardian or conservator is not able to attend the hearing, the UGCOPAA provides alternatives the court can use so the adult is able to participate.<sup>48</sup> The UGCOPAA provides a clear-and-convincing evidence standard that must be met before the court can appoint a guardian or conservator.<sup>49</sup> The standard required to determine if a guardian should be appointed evaluates the adult's ability to meet certain health and safety requirements as well as their ability to evaluate and make decisions for themselves.<sup>50</sup> The standard for determining if a conservator should be appointed evaluates the adult's ability to manage their property

---

42. *Id.* §§ 302(b), 402(b).

43. *Id.* §§ 303(b)–(c), 403(b)–(c).

44. *Id.* §§ 304, 405.

45. *Id.* §§ 305(a), 406(a). There are two alternative (a) provisions under these sections. Alternative A requires the court to appoint an attorney if either the adult requests or visitor recommends one or if the court determines one is needed. Alternative B requires the court to appoint an attorney if the adult does not already have one.

46. *Id.* §§ 306(a), 407(a).

47. *Id.* §§ 307(a), 408(a).

48. *Id.*

49. *Id.* §§ 301(a)(1), 401(b).

50. *Id.* § 301(a)(1).



and financial affairs to make sure the adult's estate is not dissipating.<sup>51</sup>

The UGCOPAA also provides a priority list for who should be appointed as guardian or conservator but caveats that if the list is not in the adult's best interest, the court does not have to follow the list.<sup>52</sup> The UGCOPAA also has a provision that bars owners of long-term-care facilities from being a guardian or conservator, unless they are related to the adult.<sup>53</sup> UGCOPAA sections 312 and 413 provide for the appointment of an emergency guardian or conservator, respectively, but limits the duration and provides for the appointment of an attorney for the adult.<sup>54</sup> The UGCOPAA also lays out what happens if the court must appoint an emergency guardian or conservator without notice to the adult and the attorney.<sup>55</sup>

### 3. Powers and Duties of a Guardian or Conservator

The powers and duties of a guardian or conservator should be the least restrictive when caring for a ward. The UGCOPAA lays out that when a court is appointing a guardian or conservator, the court should only grant

those powers necessitated by the demonstrated needs and limitations of the respondent and issue orders that will encourage development of the respondent's maximum self-determination and independence. The court may not establish a full guardianship [or full conservatorship] if a limited guardianship [or limited conservatorship], protective arrangement instead of guardianship [or conservatorship], or other less restrictive alternatives would meet the needs of the respondent.<sup>56</sup>

The UGCOPAA emphasizes that the adult in need of a guardian or conservator should have a central role in their care by participating in making decisions with the guardian or conservator about their personal affairs.<sup>57</sup> The UGCOPAA limits a guardian's and conservator's duties to the adult's limitations, and discusses what happens when the adult cannot help in making decisions regarding their care and personal affairs.<sup>58</sup> The UGCOPAA allows the court to authorize any power it believes would be

---

51. *Id.* § 401(b).

52. *Id.* §§ 309(a), 410(a).

53. *Id.* §§ 309(e), 410(d)–(e).

54. *Id.* §§ 312, 413.

55. *Id.* §§ 312(d), 413(d).

56. *Id.* §§ 301(b), 401(c).

57. *Id.* §§ 313(b), 418(b).

58. *Id.* §§ 313(a), 313(e), 418(d).

in the best interests of the adult.<sup>59</sup>

Section 314 also lists specific powers of a guardian including establishing the adult's dwelling and making health care decisions for the adult, among other powers.<sup>60</sup> Section 315 provides limitations on the powers of the guardian.<sup>61</sup> These limitations include that a guardian cannot revoke a power of attorney executed by the adult, cannot commit an adult without following state commitment procedure, and cannot isolate the adult unless authorized by the court or other order.<sup>62</sup> The UGCOPAA requires the conservator to "invest and manage the conservatorship estate as a prudent investor would."<sup>63</sup> It then goes on to provide specifics on how the conservator should manage the adult in need of a conservatorship's estate.<sup>64</sup> Section 414 places limits on the powers of the conservator.<sup>65</sup> A conservator is required to get court approval before exercising some of their powers.<sup>66</sup> These powers include the ability of the conservator to make a gift, sell the primary household of the adult in need of a conservatorship, create a revocable or irrevocable trust, change a beneficiary under an insurance policy, release a power of appointment, and modify a will.<sup>67</sup>

#### 4. Monitoring, Removal, and Termination of a Guardian or Conservator

The UGCOPAA requires a guardian or conservator to file a plan with the court regarding the care of the adult or the management of the conservatorship estate, respectively.<sup>68</sup> The UGCOPAA sets out what should be included in the plan, requiring it to be needs-based and take into account the adult's best interests as well as their "preferences, values, and prior directions."<sup>69</sup> The plan must be filed with the court within sixty days of the guardian or conservator's appointment, and whenever there is a significant change in circumstances or the guardian or conservator

---

59. *Id.* §§ 314(d), 418(d).

60. *Id.* § 314(a).

61. *Id.* § 315.

62. *Id.*

63. *Id.* § 418(e).

64. *Id.* § 418(f)–(k).

65. *Id.* § 414.

66. *Id.* § 414(a).

67. *Id.*

68. *Id.* §§ 316, 419.

69. *Id.* §§ 316(a), 419(a).

deviates from the plan.<sup>70</sup> Following the filing, the court must review the plan and either approve it or require the guardian or conservator to make a new plan.<sup>71</sup> Once approved, a copy must go to the adult subject to the guardianship or conservatorship and any other person entitled to notice, such as the adult's spouse or adult children.<sup>72</sup>

The guardian or conservator's plan has to be submitted annually.<sup>73</sup> The plan is then either reviewed by the court or a visitor appointed by the court.<sup>74</sup> Upon review of the plan, the court can determine that the guardianship or conservatorship should be modified or terminated if there is reason to do so and can hold a hearing to adjust the guardian or conservator's fees if they are not reasonable.<sup>75</sup>

Sections 318 and 430 discuss the removal of a guardian or conservator, respectively, if the guardian or conservator fails to perform their duties or for good cause.<sup>76</sup> These sections also lay out that a hearing can be held for the removal of a guardian or conservator if an adult subject to a guardianship or conservatorship wants a hearing, among other things.<sup>77</sup> Once a guardian or conservator is removed, the court will appoint a new one, unless the guardianship or conservatorship is terminated.<sup>78</sup> Sections 319 and 431 cover termination or modification of a guardianship or conservatorship, respectively.<sup>79</sup> These sections lay out multiple ways for a guardian or conservator to be removed from their position, or for a modification of the guardianship or conservatorship.<sup>80</sup> These include that there is no longer a basis for the guardianship or conservatorship, on petition by the adult, and if the guardian or conservator's powers are excessive.<sup>81</sup> These provisions are the baseline of what should be included in current laws surrounding guardianships and conservatorships. We next consider how current Kansas statutes address guardianships and conservatorships.

---

70. *Id.*

71. *Id.* §§ 316(d), 419(d).

72. *Id.* §§ 316(e), 419(e).

73. *Id.* §§ 317(a), 423(a).

74. *Id.* §§ 317(c), 423(c).

75. *Id.* §§ 317(f)–(g), 423(f)–(g).

76. *Id.* §§ 318(a), 430(a).

77. *Id.* §§ 318(b), 430(b).

78. *Id.* §§ 318, 430.

79. *Id.* §§ 319, 431.

80. *Id.*

81. *Id.*

*C. Kansas State Statutes on Guardianships and Conservatorships*

Kansas statutes on guardianships and conservatorships had their last major revision in 2002.<sup>82</sup> In Section II.C., we will look at various statutes of current Kansas law that discuss guardianships and conservatorships that are necessary to help prevent elder abuse. Section II.C.1. of this Comment discusses how current Kansas statutes define both guardianships and conservatorships. In Section II.C.2., this Comment considers how guardians and conservators are appointed. Section II.C.3. lays out the various powers and duties of a guardian or conservator. Section II.C.4. discusses the monitoring, removal and termination of a guardian or conservator. Since Kansas statutes combine most provisions regarding guardianships and conservatorships, both will be considered in tandem.

## 1. Definitions

Kansas Statutes Annotated utilizes the following definitions:

- A guardian is someone appointed to make decisions for a ward.<sup>83</sup>
- A ward is an individual with a guardian.<sup>84</sup>
- A conservator is someone appointed to make decisions for a conservatee.<sup>85</sup>
- A conservatee is an individual with a conservator.<sup>86</sup>
- An adult with an impairment in need of a guardian or a conservator—or both—is an individual over the age of majority who cannot effectively evaluate information or communicate their decisions; they lack the requisite capacity to manage their health, safety, welfare, and estate.<sup>87</sup>

With the understanding of how Kansas statutes define pertinent terms related to guardianships and conservatorships, we now consider other statute sections to see how Kansas deals with guardianships and conservatorships.

---

82. See Benjamin Orzeske, Chief Couns., Unif. L. Comm'n, & Diana Noel, Senior Legis. Representative, AARP, PowerPoint Presentation for Nat'l Conf. on Guardianship, Unif. Guardianship, Conservatorship, and Other Protective Arrangements Act (July 9, 2018), [https://www.guardianship.org/wp-content/uploads/2018/09/UGCOPPAAct\\_presentation.pdf](https://www.guardianship.org/wp-content/uploads/2018/09/UGCOPPAAct_presentation.pdf).

83. KAN. STAT. ANN. § 59-3051(e) (2005 & Supp. 2021).

84. *Id.* § 59-3051(q).

85. *Id.* § 59-3051(d).

86. *Id.* § 59-3051(c).

87. *Id.* § 59-3051(a).

## 2. Appointment of a Guardian or Conservator

Kansas statutes require a petition to be filed for appointment of a guardian or conservator.<sup>88</sup> This petition can be filed by any person, or, in the case of a conservator, can be voluntarily filed by an adult who wants a conservator.<sup>89</sup> The statute lays out what needs to be present in the petition including a statement of why the petitioner believes the adult needs a guardian or conservator, the factual basis of the petitioner's belief, and, if applicable, the names of those related to the adult in need of a guardian or conservator.<sup>90</sup>

After the petition has been filed, the court shall issue an order for the potential adult in need of a guardian or conservator to appear at the trial.<sup>91</sup> The court may find before the trial that the adult's appearance at the trial would either be injurious to the adult or that the adult would not be able to meaningfully participate.<sup>92</sup> If the adult is unable to appear, the court must enter into the record why the adult is excused.<sup>93</sup> The adult may file a notice with the court stating they want to be at the trial, and the court can issue an order requiring them to be present.<sup>94</sup> The court may also appoint an attorney—either one who has previously represented the adult, or one the adult requests—to represent the adult in need of a guardian or conservator.<sup>95</sup> The adult may also engage their own attorney, at which point the court appointed attorney would be discharged.<sup>96</sup> The court appointed attorney is also discharged after final determination of the petition and is only reappointed if requested.<sup>97</sup>

The court may also issue an order for an examination and evaluation of the adult in need of a guardianship or conservatorship. However, if the petition is accompanied by a report of an examination and evaluation that meets the statutory requirements, then the court does not have to order a new examination and evaluation unless the adult requests one.<sup>98</sup> If the adult requests one, they must submit to the court a statement of the reasons

---

88. *Id.* § 59-3058.

89. *Id.* §§ 59-3056, -3058(a)(1).

90. *Id.* § 59-3058(b).

91. *Id.* § 59-3063(a)(2) (2005).

92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.* § 59-3063(a)(3).

96. *Id.*

97. *Id.*

98. *Id.* § 59-3063(a)(6).

why a new evaluation is requested.<sup>99</sup>

Once a petition is filed, the court can issue a notice of the filing.<sup>100</sup> The notice shall be served on the adult in need of a guardian or conservator, the adult's attorney, and anyone else the court deems should have notice.<sup>101</sup> Before a court will appoint a guardian or conservator, it has to find by clear and convincing evidence that the adult is one that has an impairment and is in need of a guardian, conservator, or both.<sup>102</sup>

The statute also provides a priority list for who should be appointed as guardian or conservator of the adult with an impairment.<sup>103</sup> Before making the appointment, the court can consider workload and capabilities of the proposed guardian or conservator.<sup>104</sup> The statute also provides that a person or an employee of an agency that provides care for conditions similar to those of the adult in need of a guardian or conservator may be appointed guardian or conservator over the adult. But they may only do so if they are related to the adult, do not supervise the care of the adult, or are the only person available to be appointed.<sup>105</sup>

Kansas statutes also provide for the appointment of a temporary guardian or conservator for an adult with an impairment.<sup>106</sup> The court can grant an ex parte emergency order appointing a guardian or conservator if there is good cause to believe there is an imminent danger to the adult's physical health or safety, or if there is an imminent danger that the adult's estate will be significantly depleted.<sup>107</sup> The court can specify the powers and duties of the temporary guardian or conservator, and can specify a date when the authority of the temporary guardian or conservator will expire, which cannot be beyond thirty days after appointment.<sup>108</sup> The adult, the adult's attorney, or the adult's spouse can make a written request to have a hearing on the entry for the temporary guardian or conservator.<sup>109</sup>

---

99. *Id.* § 59-3064(d).

100. *Id.* § 59-3063(a)(5).

101. *Id.* § 59-3066(c).

102. *Id.* § 59-3067(e)(1) (2005 & Supp. 2021).

103. *Id.* § 59-3068(a).

104. *Id.* § 59-3068(b)(1) (Supp. 2021).

105. *Id.* § 59-3068(b)(2).

106. *Id.* § 59-3073 (2005 & Supp. 2021).

107. *Id.* § 59-3073(b)(1).

108. *Id.* §§ 59-3073(b)(2)–(3).

109. *Id.* § 59-3073(c).

### 3. Powers and Duties of a Guardian or Conservator

Kansas statutes state the general powers and duties of a guardian or conservator, but the court can also authorize other specific powers and duties.<sup>110</sup> Even with these duties and powers, the statutes emphasize that the guardian and conservator should exercise authority only as necessitated by the adult's limitations and should encourage the adult to help make their own decisions.<sup>111</sup> Whether or not the adult participates, the statute provides that the guardian or conservator should consider the adult's expressed desires when making decisions on their behalf.<sup>112</sup>

The powers and duties the statute authorizes for guardians include the ability to take charge of the adult's care, to consent on behalf of the adult if necessary, to assure the adult lives in a setting that is the least restrictive, and to promote the "comfort, safety, health and welfare of the [adult]."<sup>113</sup> The powers and duties authorized for a conservator include the ability to pay charges associated with the adult's care and maintenance, to manage all of the adult's assets, to sell assets if the interests of the adult require it, and to be a prudent investor of the adult's funds.<sup>114</sup>

Both the statutes for guardians and for conservators provide limitations on the powers of the guardian or conservator.<sup>115</sup> For example, a guardian may not prohibit the adult's marriage or divorce, consent to the adult's removal of an organ or limb unless medically necessary, consent to sterilization of the adult, or place the adult in a treatment facility.<sup>116</sup> A conservator may not sell the adult's interest in a home, extend the adult's existing mortgage more than five years, or make a gift on behalf of the adult that was not approved by the court.<sup>117</sup> If these limitations are not followed, it could lead to the guardian or conservator being removed or terminated.

---

110. *Id.* §§ 59-3075, -3078.

111. *Id.* §§ 59-3075(a)(2), -3078(a)(2).

112. *Id.*

113. *Id.* § 59-3075(b).

114. *Id.* § 59-3078(b).

115. *Id.* §§ 59-3075(e), -3078(f).

116. *Id.* § 59-3075(e).

117. *Id.* § 59-3078(f).

#### 4. Monitoring, Removal and Termination of a Guardian or Conservator

For monitoring purposes, Kansas statutes provide that a guardian or conservator may either be required by the court to file a plan or may file a plan on their own at any time.<sup>118</sup> If they submit a plan, the statute lays out the items that the guardian or conservator must include in their plan.<sup>119</sup> Regardless of whether a party files a plan, the guardian and conservator must file an annual report and accounting concerning the status of the adult and the adult's estate.<sup>120</sup> Section 59-3083 goes on to further state special instances when a guardian or conservator must also file a report and accounting including, but not limited to, when there is a change of address, a change in health of the adult, property of the adult exceeds \$10,000, or death of the adult.<sup>121</sup> Upon the death of the adult or upon the termination, resignation, or removal of the guardian or conservator, the guardian or conservator should file a final report with the court.<sup>122</sup>

After a guardian or conservator files a report with the court, the court or its designee reviews the report and other relevant documents to affirm that the guardian or conservator are performing their duties, and to determine if anything further is needed for the guardianship or conservatorship.<sup>123</sup> If something in the report catches the court's attention, the court can set a hearing to discuss the report.<sup>124</sup> Following the court's review or hearing, the court can either approve or disapprove the report or have the guardian or conservator amend the report.<sup>125</sup>

A petitioner may request that the court remove a guardian or conservator.<sup>126</sup> The petition must include a basis for removal of the guardian or conservator.<sup>127</sup> The court in its own capacity, without a petition, may set a hearing for removal of the guardian or conservator if the court has reason to believe the removal is necessary.<sup>128</sup> At the hearing,

---

118. *Id.* §§ 59-3076(a), (c), -3079(a), (c) (2005).

119. *Id.* §§ 59-3076(a), -3079(a).

120. *Id.* § 59-3083(a) (2005 & Supp. 2021).

121. *Id.* § 59-3083(b).

122. *Id.* § 59-3083(c), (e), (f).

123. *Id.* §§ 59-3084, -3085 (2005).

124. *Id.*

125. *Id.* §§ 59-3084(c), -3085(c) (2005).

126. *Id.* § 59-3088(a).

127. *Id.* § 59-3088(a)(4).

128. *Id.* § 59-3088(c).



the court has to find by a preponderance of the evidence that the guardian or conservator should be removed, and if removed, the court can appoint a successor guardian or conservator.<sup>129</sup> The court can also issue a show cause order to the guardian or conservator if the court believes they are failing to execute their duties.<sup>130</sup>

A petitioner may also request, at any time, that the court terminate the appointment of a guardian or conservator.<sup>131</sup> In the petition, the petitioner must state the basis for why they believe the adult no longer needs a guardian or conservator.<sup>132</sup> The court will review the petition and determine if there should be further proceedings; if they determine there should not be further proceedings, the court can still order an investigation into the guardianship or conservatorship.<sup>133</sup> If there are further proceedings, the court, in a hearing, has to find by clear and convincing evidence that the guardianship or conservatorship must be terminated.<sup>134</sup> The statutes list a few instances where a court may enter an order terminating the guardianship or conservatorship including that the adult is deceased or that there is no longer a need for the guardianship or conservatorship.<sup>135</sup> Now with a better understanding of the types of provisions in both the UGCOPAA and current Kansas statutes, we will compare and contrast the two and analyze why the UGCOPAA is set up to better protect elders from abuse than current Kansas law.

### III. ANALYSIS

The Kansas Legislature should update Kansas Statutes Annotated (“K.S.A.”) Ch. 59, Art. 30 to better reflect the times and to help combat elder abuse. K.S.A. Ch. 59, Art. 30 last went through a major revision in 2002.<sup>136</sup> Although almost half of the Article’s sections have been amended since 2002, only ten out of the forty-seven sections have been amended in the last decade.<sup>137</sup> And the number goes even lower when considering the

---

129. *Id.* § 59-3088(e).

130. *Id.* § 59-3089(a).

131. *Id.* § 59-3091(a).

132. *Id.* § 59-3091(b)(4).

133. *Id.* § 59-3091(c)(1).

134. *Id.* § 59-3091(h).

135. *Id.* § 59-3092(a)–(b).

136. *Id.* § 59-3050 (2002).

137. Kansas statutes relating to guardianships and conservatorships that have been amended since 2011 include: KAN. STAT. ANN. §§ 59-3065 (2014), 59-3067 (2014), 59-3069 (2014), 59-3070 (2014), 59-3075 (2017), 59-3077 (2018), 59-3078 (2017), 59-3080 (2014), 59-3086 (2015), and 59-3094

release of new acts related to the topic of guardianships and conservatorships from the Uniform Law Commission.<sup>138</sup> Since the 2002 revision, the Uniform Law Commission has come out with two Acts pertaining to the topic of guardianships and conservatorships.<sup>139</sup>

Since Kansas has not had a major revision of its statutes related to guardianships and conservatorships in almost two decades, the Kansas Legislature should update these outdated laws. A major way for the Legislature to revise the current law to better protect elders is to adopt a state-specific version of the UGCOPAA. Adopting a state-specific version of the UGCOPAA would include provisions that require a reason why a less restrictive option than a guardianship or conservatorship is not feasible, expand the notice requirement, and require that a plan be filed, among others. Short of this, Kansas should implement some provisions that will help better protect elders from abuse.

Section III.A. discusses why Kansas should repeal its current law on guardianships and conservatorships and replace it with the UGCOPAA. Section III.A. will discuss this by highlighting three differences between the UGCOPAA and current Kansas law. Section III.A.1. highlights the first difference—a reason should be needed as to why a less restrictive option is not feasible. Then, Section III.A.2. will discuss how the UGCOPAA provides a more expanded notice requirement than current Kansas law. Finally, Section III.A.3. will discuss why a guardian or conservator should be required to file a plan. Section III.B. will then go onto discuss other measures that can be implemented in current Kansas law that would better help protect elders from abuse. Section III.B.1. will discuss why, at the very least, Kansas should set fee limits for a guardian or conservator. Section III.B.2. will then discuss why a ward or conservatee should be able to hire or have an attorney with their best interests appointed for them.

---

(2014).

138. The oldest acts released by the Uniform Law Commission relating to guardianships and conservatorships date to 1997 and 2007. *See* UNIF. GUARDIANSHIP AND PROTECTIVE PROC. ACT §§ 101–504 (UNIF. L. COMM’N 1997); UNIF. ADULT GUARDIANSHIP AND PROTECTIVE PROC. JURISDICTION ACT §§ 101–505 (UNIF. L. COMM’N 2016). However, one of these acts was further updated in 2017. *See* UNIF. GUARDIANSHIP, CONSERVATORSHIP, AND OTHER PROTECTIVE ARRANGEMENTS ACT §§ 101–706 (UNIF. L. COMM’N 2017).

139. *Search Acts*, *supra* note 32.

A. *Repealing K.S.A. Ch. 59, Art. 30 and Replacing It With the UGCOPAA*

Current Kansas statutes regarding guardianships and conservatorships are outdated and should be replaced by the UGCOPAA to provide updated, consistent, and better ways to combat elder abuse.<sup>140</sup> There are multiple reasons why the UGCOPAA would be better law that would help prevent the inequities seen in guardianships and conservatorships towards the elderly. These reasons include that there should be a reason why a less restrictive option is not feasible, expanded notice, and a requirement to file a plan, among others.<sup>141</sup> We will consider each of these reasons in turn and compare them to what Kansas statutes currently state.

1. A Less Restrictive Option Should Be Utilized Over a Guardianship or Conservatorship

If a less restrictive option can be used to help the elderly person, it should be used before a guardianship or conservatorship. The UGCOPAA provides different definitions for a full guardianship or conservatorship, versus a limited guardianship or conservatorship.<sup>142</sup> Providing this distinction showcases that guardianships and conservatorships should always be the last resort to another less restrictive option. The UGCOPAA supports having the least restrictive option throughout many of its provisions. It also includes an entire article based on alternatives that can be put in place instead of a guardianship or conservatorship.<sup>143</sup> In comparison, Kansas statutes only discuss that a guardian or conservator should only do what is necessary based on the adult's limitations and should consider the adult's expressed wishes.<sup>144</sup> It does not expressly state that a guardianship or a conservatorship should be the last possible option

---

140. Unif. Guardianship, Conservatorship, and Other Protective Arrangements Act §§ 101–706 (Unif. L. Comm'n 2017).

141. *How the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act Combats Elder Abuse*, *supra* note 33.

142. Unif. Guardianship, Conservatorship, and Other Protective Arrangements Act § 102(7), (8), (15), (16) (Unif. L. Comm'n 2017).

143. *See id.* Art. 5.

144. KAN. STAT. ANN. §§ 59-3075(a)(2), 59-3078(a)(2) (2005 & Supp. 2021).

for the adult.

Statutes requiring a reason why a less restrictive option would not work would help prevent elder abuse. This should be required because guardianships and conservatorships take away many of an adult's individual rights.<sup>145</sup> The taking away of the adult's rights can lead the adult to being isolated by the guardian or conservator which in turn could lead to the guardian or conservator taking advantage of the adult.<sup>146</sup> In the examples listed below, once the adult was placed under a guardianship or conservatorship, they had no more control over their lives, even though some of them still had capacity. An eighty-six-year-old woman was placed under an emergency conservatorship even though the woman had no capacity issues.<sup>147</sup> The woman was able to get out of the conservatorship, but only after two years of enduring multiple competency evaluations to show she had capacity.<sup>148</sup>

In another example, an elderly man was placed under a court-appointed guardianship because he withheld portions of his rent because his landlord was not making necessary repairs.<sup>149</sup> The man, despite being placed under a guardianship, continued to have the capacity to work a full-time job at the postal service.<sup>150</sup> While under the guardianship, the man had to send his entire salary to the guardian who would return a small portion back to the man for him and his wife to live on.<sup>151</sup> In addition, the guardian refused to pay for the man's dental care once it became expensive.<sup>152</sup>

In some situations, without the ability to control their lives, some appointments of a guardian or conservator either led to or sped up the adult's death.<sup>153</sup> The ability of a guardian or conservator to isolate an adult from everything should only be used in extreme cases. To help prevent an

---

145. Elder Justice Initiative, *Guardianship*, *supra* note 8.

146. Elder Justice Initiative, *Mistreatment and Abuse by Guardians and Other Fiduciaries*, DEP'T OF JUST., <https://www.justice.gov/elderjustice/mistreatment-and-abuse-guardians-and-other-fiduciaries> [https://perma.cc/8R9H-Q95G] (last visited Apr. 8, 2022).

147. Rochelle L. Wilcox, Thomas R. Burke & Jeff Glasser, *California Court of Appeal Holds that a Private Conservator Is a Public Official; Finds No Actual Malice Shown in Claim Based on CBS Report About Conservatorships*, LEXOLOGY (Jan. 7, 2013), <https://www.lexology.com/library/detail.aspx?g=2c43ac67-f2fd-445d-b8c1-5d9b3332b4f4> [https://perma.cc/88KX-CG67]; Mary Jane Mann, *supra* note 11.

148. Mary Jane Mann, *supra* note 11.

149. Murray Feingold, NAT'L ASS'N TO STOP GUARDIAN ABUSE, <https://stopguardianabuse.org/victim-profiles/murray-feingold-ny/> [https://perma.cc/55KA-XXZL] (last visited Apr. 8, 2022).

150. *Id.*

151. *Id.*

152. *Id.*

153. *See infra* notes 175–78 and accompanying text.

2022

FREE BRITNEY

811

unwarranted intrusion into an adult's life, Kansas should consider allowing guardianships or conservatorships only when there are no feasible, less restrictive alternatives for an adult in need of a guardian or conservator. Kansas can emphasize this in their statutes by adopting the UGCOPAA. Additionally, Kansas could also expand their notice requirement to better help prevent elder abuse.

## 2. Kansas Should Expand Notice of Guardianship and Conservatorship Proceedings

The UGCOPAA provides a more expansive notice requirement than current Kansas law. Expanding notice to an elderly person's family could possibly prevent the elderly person from being put into a guardianship or conservatorship by someone who is unknown to the elderly person. In a recent Netflix movie called "I Care a Lot," a professional court-appointed guardian is able to ensnare an elderly woman, who has no capacity issues, into a guardianship by colluding with the woman's doctor to inform the court that the woman is in medical need of a guardianship.<sup>154</sup> The guardian and woman's doctor were able to have an emergency hearing to place the woman into a guardianship without informing the woman about the proceedings.<sup>155</sup> The elderly woman was placed under a guardianship without her knowledge and was removed from her home and put into a nursing home where she quickly deteriorated.<sup>156</sup> She was heavily medicated on drugs that she did not need, and she lost all contact with the outside world, including with her son.<sup>157</sup> Although at the time of the guardianship hearing the professional guardian believed that the woman had no relatives,<sup>158</sup> having an expanded notice requirement would have helped to prevent the woman's abuse.

As it currently stands, the UGCOPAA provides that notice of a hearing on a guardianship or conservatorship must be "served personally on the respondent."<sup>159</sup> The notice must also be given to the adult in need of a

---

154. I CARE A LOT (Black Bear Pictures, Crimple Beck & STX Films 2020); *The Film 'I Care a Lot' Highlights Vulnerabilities in the Guardianship System*, ELDER L. ANSWERS (Aug. 4, 2021), <https://www.elderlawanswers.com/the-film-i-care-a-lot-highlights-vulnerabilities-in-the-guardianship-system-18206> [<https://perma.cc/E38W-DL77>].

155. I CARE A LOT (Black Bear Pictures, Crimple Beck & STX Films 2020).

156. *Id.*

157. *Id.*

158. *Id.*

159. Unif. Guardianship, Conservatorship, and Other Protective Arrangements Act §§ 303(b), 403(b) (Unif. L. Comm'n 2017).

guardian or conservator's spouse, adult children, stepchildren, and attorney, among others.<sup>160</sup> The UGCOPAA allows for an emergency guardian or conservator, but it automatically appoints an attorney for the adult and requires that notice be given to the adult unless the adult's health, safety, or financial interests will be substantially harmed before a hearing.<sup>161</sup>

These safeguards are not found in current Kansas laws. First, the UGCOPAA provides stronger language than current Kansas law that the notice *must* be given to the adult, the adult's family members, and the adult's attorney. Kansas only provides that the notice *shall* be served on the adult as soon as possible.<sup>162</sup> While Kansas statutes state that the notice shall be served on the adult and the adult's attorney, they only state that the court *may* order a copy served on others.<sup>163</sup> This distinction in language can exclude the family of the adult from the entire process. Hypothetically, if a career guardian or conservator was not ordered by a judge to serve notice on the family of the adult, the family might not know about the proceedings until it is too late to help their family member. Allowing this to happen would be an abuse to the adult subject to the guardianship or conservatorship, because although they would have an attorney appointed for them, their family normally would be the ones who know them the best and know what they want. If the family is cut out of this process, then the adult could be put in a situation they do not want or need to be in.

However, there may be instances where the elderly person does not want their family members to receive notice because they are the ones abusing the elderly person. In six out of ten cases, family members are known to commit elder abuse.<sup>164</sup> Although this is the case, it is common for a judge to appoint a family member to serve as a guardian or conservator for the elderly person.<sup>165</sup> So although an elderly person may not want to have family receive notice of a potential guardianship or conservatorship hearing, they may already be receiving the notice because

---

160. *Id.* §§ 302(b), 303(c), 402(b), 403(c).

161. *Id.* §§ 312, 413.

162. KAN. STAT. ANN. § 59-3066(c) (2005) (emphasis added).

163. *Id.* § 59-3066(c)(3) (emphasis added).

164. *What Percentage of Elder Abuse is Done by Family Members?*, NURSING HOME ABUSE JUST. (Nov. 23, 2021), <https://www.nursinghomeabuse.org/articles/percent-family-members-abuse/> [<https://perma.cc/CT4Z-FCK3>].

165. Kenneth Miller, *What Happens When a Guardianship Gets Contentious*, AARP (Oct. 4, 2018), <https://www.aarp.org/caregiving/financial-legal/info-2018/court-ordered-guardianship-separates-family.html> [<https://perma.cc/5V3V-DENU>].

they are the one petitioning to become the elderly person's guardian or conservator.

As for the emergency guardianships and conservatorships, Kansas law only mentions that the adult, the adult's attorney, and the spouse of the adult get notice after the court has already entered an order appointing a temporary guardian or conservator for the adult.<sup>166</sup> The statute does not explicitly mention any type of notice requirement for the appointment of a temporary guardian or conservator.<sup>167</sup> It states that the petition for temporary appointment can be filed either in addition to the original petition or as a part of it, but it does not discuss the notice requirement.<sup>168</sup>

Considering what happened to the woman in "I Care a Lot," not giving notice of an emergency petition for guardianship or conservatorship can lead to extreme elder abuse with the elderly person losing all of their rights. With the UGCOPAA's requirement that the adult, the adult's attorney, and the adult's family receive notice of the filings for guardianship or conservatorship, it expands the notice and the ability for families to help protect their loved ones from abuse. In addition, for adults who are subject to a guardianship or conservatorship that do not have families that would be able to help protect them from abuse, the UGCOPAA provides that the appointment of an emergency guardian or conservator must be reviewed within five days after the appointment to determine if the court was appropriate in its appointment.<sup>169</sup> This allows the adult that has no family to better protect themselves if they do not believe they are in need of a guardian or conservator and puts a solid deadline on the court to listen to the adult and reconsider the appointment. In addition to the expanded notice, UGCOPAA requires the guardian and conservator to put a plan in place.

### 3. Kansas Should Require Guardians and Conservators to File a Plan

Requiring a guardian or conservator to file a plan with the court would ensure that there is oversight over the guardian or conservator to make sure that they are not abusing their elderly ward or conservatee, respectively. The UGCOPAA provides that a plan about the adult and what steps are going to be taken must be filed with the court within sixty days, and

---

166. KAN. STAT. ANN. § 59-3073(b)(4) (2005 & Supp. 2021).

167. *Id.* § 59-3073(a).

168. *Id.*

169. Unif. Guardianship, Conservatorship, and Other Protective Arrangements Act § 312(d)(2) (Unif. L. Comm'n 2017).

annually thereafter, or if a significant change is made.<sup>170</sup> This contrasts with current Kansas law which does not require a plan to be filed unless the court orders one.<sup>171</sup> Rather, Kansas statutes only require an annual report or accounting be filed.<sup>172</sup> The plan is an important document because it lays out how the guardian or conservator plans to meet the adult's needs.<sup>173</sup> Without setting out in advance what will be expected of the guardian or conservator, they would have nothing to follow and would only be limited by the powers and duties granted to them.

A duty of a guardian or conservator is that they should work with the ward or conservatee, respectively, to help make decisions for themselves.<sup>174</sup> Requiring a guardian or conservator to put a plan in place would be an extension of this duty. The ward or conservatee would be able to make decisions for themselves about the type of care they wanted to receive, and all this information would be present in the plan. With a plan in place, it would provide a structure to what the guardian and conservator should follow to provide the best care for the elderly person. This structure would help the court keep the guardian or conservator in line, and make sure the elder adult is not being abused.

There are many examples of instances where having a plan in place could have prevented an elderly person from being abused. For example, an elderly woman signed a power of attorney placing her husband's accountant in charge of her care who made it impossible for the woman's family to step in to help improve her condition when it began to deteriorate.<sup>175</sup> The guardian stated that "there was no money for doctors" in response to the woman's son's inquiry into wanting to hire more doctors to help "improve his mother's medical care."<sup>176</sup> In another example, a woman was placed under a court-appointed guardianship after a judge did not allow her daughter to be her guardian.<sup>177</sup> The judge in the woman's case affirmed everything the guardian brought forth for the woman, even though none of it was what the woman wanted, because the judge believed the guardian over the woman and her daughter.<sup>178</sup>

---

170. *Id.* §§ 316, 419.

171. KAN. STAT. ANN. §§ 59-3076(a), 59-3079(a) (2005).

172. *Id.* § 59-3083 (2005 & Supp. 2021).

173. *How the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act Combats Elder Abuse*, *supra* note 33.

174. Unif. Guardianship, Conservatorship, and Other Protective Arrangements Act § 418(b) (Unif. L. Comm'n 2017); Kan. Stat. Ann. §§ 59-3075(a)(2), 59-3078(a)(2) (2005 & Supp. 2021).

175. Marcelle Halpern, *supra* note 11.

176. *Id.*

177. Dorothy Wilson, *supra* note 11.

178. *Id.*



Both of the elderly women in these examples would have benefited from having a plan in place that they had participated in constructing. If each of these women had a plan where they participated in the decision-making process, a judge reviewing the plan would be able to see whether a guardian or conservator was following the stated plan. However, in both instances, neither woman had a plan, so neither were able to convey how they wanted to be cared for and the court was not able to see that the guardian for each woman was not following the wishes each woman had. Thus, the requirement to file a plan with the court will keep the court apprised of how the guardianship or conservatorship should be running and will provide a better way for courts to determine if there is any elder abuse. Kansas can effect these needed changes by adopting the UGCOPAA.

These reasons, along with all of the provisions in the UGCOPAA, show why Kansas should update its outdated laws to better prevent elder abuse. Kansas laws have not been fully updated since 2002 and contain language that is derogatory as to the current times. The definitions and language used in the UGCOPAA are more inclusive and less derogatory,<sup>179</sup> especially in defining an adult in need of a guardianship or conservatorship.<sup>180</sup> Also, with repealing and replacing the entirety of K.S.A. Ch. 59, Art. 30, the statute will provide more consistency across all of its provisions rather than having sporadic updates of various provisions that may or may not align with the other provisions. Thus, Kansas should repeal K.S.A. Ch. 59, Art. 30 and replace it with the UGCOPAA. In lieu of this, there are certain measures that Kansas can implement in its statutes that would better protect elders from abuse.

#### *B. Implementing Measures to Reduce Chances of Elder Abuse*

Even if current Kansas law is not wholly repealed, there are other measures that Kansas can put into place or keep in place to better help the elderly and keep them from being abused. Section III.B.1. of this Comment discusses enacting fee limits for guardians and conservators. In Section III.B.2., this Comment discusses allowing wards and conservatees to hire their own attorney or have one appointed for them that represents their best interests. Implementing these measures will help provide more safeguards, in addition to ones currently in place, to allow elders under

---

179. *Guardianship, Conservatorship, and Other Protective Arrangements Act*, *supra* note 14 (discussed in the summary section of the webpage).

180. Kansas defines an adult in need of a guardianship or conservatorship as an adult with an impairment in need of a guardianship or conservatorship. *See* KAN. STAT. ANN. § 59-3073 (2010).

guardianships and conservatorships to have a way to defend themselves from abuse.

### 1. Fee Limits

Putting in place fee limits will help ensure that a ward or conservatee is not extorted by their guardian or conservator, respectively. Like any job, a guardian or conservator is paid for the services they render on behalf of the adult subject to a guardianship or conservatorship. However, when it comes to these fees collected by a guardian or a conservator, Kansas should put in place a fee structure to prevent a ward or conservatee's estate from being charged excessive amounts.

Current Kansas law allows for "a reasonable fee" to be paid by the proposed ward or conservatee or their estate.<sup>181</sup> But what constitutes "a reasonable fee"? The Model Rules of Professional Conduct lay out factors that should be considered when determining if an attorney's fee is reasonable.<sup>182</sup> These factors include "the time and labor required," "the fee customarily charged in the locality for similar legal services[,] "the time limitations," and "the experience . . . of the lawyer."<sup>183</sup> The Kansas Court of Appeals in *In re Marriage of Bergmann* found the district court's use of the eight factors from the Kansas Rules of Professional Conduct Rule 1.5 to determine if the guardian ad litem's fees were reasonable was proper.<sup>184</sup> Thus, one source Kansas courts have looked at to determine what is a reasonable fee is the Rules of Professional Conduct. However, the American Bar Association's Model Rules of Professional Conduct allow for too much variance in determining what should be a reasonable fee and could lead to a horizontal equity problem.

Various courts could use the Rule 1.5 factors and determine what is a reasonable fee differently. This would potentially allow some guardians or conservators to earn more from their ward or conservatee's estate than they likely should be earning. Because guardianship and conservatorship laws are non-uniform state laws, it allows for differences between two wards where one may be paying their guardian (or, in the instance of a conservatee, their conservator) more than the other, even though the two

---

181. KAN. STAT. ANN. § 59-3094 (2005 & Supp. 2021).

182. MODEL RULES OF PRO. CONDUCT 1.5(a) (Am. Bar Ass'n 2020); *see also* KAN. R. PROF'L CONDUCT 1.5(a).

183. MODEL RULES OF PRO. CONDUCT 1.5(a)(1), (3), (5), (7) (AM. BAR ASS'N 2020); *see also* KAN. R. PROF'L CONDUCT 1.5(a)(1), (3), (5), (7).

184. *In re Marriage of Bergmann*, 305 P.3d 664, 666, 669 (Kan. Ct. App. 2013).

wards on paper are the same. This introduces a horizontal equity issue between the two wards (or conservatees). Horizontal equity dictates that “people in the same circumstances should be treated in the same way.”<sup>185</sup> Although normally brought up in the realm of tax law, this idea is relevant in the realm of guardianships and conservatorships.<sup>186</sup>

Horizontal equity is relevant to guardianships and conservatorships because wards and conservatees who are similarly situated should be paying their guardians and conservators, respectively, the same. In the realm of employment, those who are similarly situated to an individual are those who have “similar qualifications, experience, and tenure with the company.”<sup>187</sup> Thus a ward or conservatee would be similarly situated with another who has a similar background or income to that of the ward or conservatee. Although one of the factors that the Kansas Rules of Professional Conduct considers is “the amount involved,” some of the other factors could be used by a guardian or conservator to show why they should receive more even though they are doing the same amount of work.<sup>188</sup> This brings about a problem that has been associated with guardianships and conservatorships—abuse of authority.<sup>189</sup>

A ward or conservatee’s life is basically in the hands of a guardian or conservator after the ward or conservatee is found incapacitated and a guardian or conservator, respectively, has been appointed for them. Thus, it is easy for a guardian or conservator to utilize the eight factors listed in the Kansas Rules of Professional Conduct Rule 1.5(a) to show why the fee they are charging to a certain ward or conservatee is reasonable even when in reality it may not be. An example of this would be that a guardian would be able to show that their fee of \$500/hour is reasonable because that is the customary rate in the area, even though the adult may not need that much assistance. This could be an abuse of authority over the ward or conservatee because they would have no say in how much they believe the guardian or conservator should be paid. And as the closest ones to the situation who are not receiving payment but rather paying for someone to

---

185. *Horizontal Equity vs. Vertical Equity*, GOCARDLESS, <https://gocardless.com/en-us/guides/posts/horizontal-equity-vs-vertical-equity/> [<https://perma.cc/NK98-6T2F>] (last visited Apr. 8, 2022).

186. *Horizontal Equity*, CORP. FIN. INST. <https://corporatefinanceinstitute.com/resources/knowledge/finance/horizontal-equity/#:~:text=What%20is%20Horizontal%20Equity%3F,the%20tax%20system%20in%20place> [<https://perma.cc/N6RH-G8KN>] (last visited Apr. 8, 2022).

187. *Similarly Situated*, CORNELL L. SCH., [https://www.law.cornell.edu/wex/similarly\\_situated](https://www.law.cornell.edu/wex/similarly_situated) [<https://perma.cc/T4J6-UHHQ>] (last visited Apr. 8, 2022).

188. KAN. R. PROF’L CONDUCT 1.5(a)(4).

189. Dayton & Wood, *supra* note 10.

help them, the laws should be better written to protect the wards' or conservatees' interests.

Thus, Kansas statutes should implement a fee system where fees received by a guardian or conservator are based on a ward's or conservatee's income. Basing fees on income rather than the eight factors from the Kansas Rules of Professional Conduct would take the guess work out of what a guardian or conservator is owed and would allow for more consistency across the board. It would also help curb one of the major problems in guardianships and conservatorships in limiting the abuse of authority by a guardian or conservator. Having a set amount that a guardian or conservator can receive will allow that person to know up front what they will be receiving and will also make sure a guardian or conservator cannot assert any influence they may have to get a judge to approve an outrageous fee. That is why Kansas should adopt fee limits for guardians and conservators.

## 2. Hiring or Appointing Attorneys

In addition to setting fee limits on guardians and conservators, Kansas should allow wards or conservatees and proposed wards or proposed conservatees to hire their own attorney, or at least verify that the court-appointed attorney is representing their individual interests. Currently, K.S.A. § 59-3063 allows the court to appoint an attorney to represent the proposed ward or conservatee.<sup>190</sup> The statute, in addition to allowing the proposed ward or conservatee to be appointed an attorney, also gives the proposed ward or conservatee preference in deciding who their attorney will be.<sup>191</sup> Thus, rather than allowing a court to make the sole decision as to who will be representing the proposed ward or conservatee, that person instead has the ability to determine who will represent them and their best interests. As shown in the Britney Spears' conservatorship drama, this can be a big deal.<sup>192</sup>

Since 2008, Britney has been represented by a court-appointed attorney.<sup>193</sup> In June 2021, Spears asked the court if she could choose her

---

190. KAN. STAT. ANN. § 59-3063(a)(3) (2005).

191. *Id.*

192. Alicia Victoria Lozano & Doha Madani, *Britney Spears Granted Right to Hire Own Lawyer, Accuses Father of 'Conservatorship Abuse'*, NBC NEWS (July 14, 2021, 5:00 AM), <https://www.nbcnews.com/pop-culture/pop-culture-news/britney-spears-wants-choose-her-own-attorney-she-may-find-n1273876> [<https://perma.cc/M63T-W4F8>].

193. Ronan Farrow & Jia Tolentino, *Britney Spears's Conservatorship Nightmare*, NEW YORKER (July 3, 2021), <https://www.newyorker.com/news/american-chronicles/britney-spears-conserv>

own counsel, because she felt “silenced” by her current court-appointed attorney.<sup>194</sup> After thirteen years of having the same court-appointed attorney and not being able to choose her own attorney, Spears was finally able to choose her own attorney in July 2021.<sup>195</sup> Since selecting a new attorney, Spears’ new attorney filed a petition for removal of Spears’ father as conservator as Spears’ father, Jamie Spears, was one of Britney’s biggest complaints about the conservatorship.<sup>196</sup> As it appears, Spears’ new attorney was able to do more for her in two months than her previous court-appointed attorney managed to do for her in thirteen years.<sup>197</sup> Although Spears had informed her former court-appointed attorney on multiple occasions that she wanted her father to no longer be the conservator of her estate, it was not until Spears selected her new attorney that anything was filed to remove Jamie Spears as conservator.<sup>198</sup> This example conflicts with an attorney’s duties to their client under the Model Rules of Professional Conduct.

Under the American Bar Association’s Model Rules of Professional Conduct, a lawyer who represents a client with diminished capacity when taking protective action should utilize the least restrictive means possible and allow the client to make their own decisions.<sup>199</sup> And, if the client cannot make their own decisions, the lawyer should consider the client’s best interests and their wishes and values.<sup>200</sup> The attorney for someone who has diminished capacity shall “maintain a normal client-lawyer relationship with the client.”<sup>201</sup> However, there is debate about the role an attorney should take when dealing with an incapacitated person, such as a

---

atorship-nightmare [<https://perma.cc/KL6R-MK5B>].

194. Lozano & Madani, *supra* note 192.

195. Emily Kirkpatrick, *Britney Spears’s New Lawyer Says He’s “Moving Aggressively and Expeditiously” to Have Her Father Removed as Conservator*, VANITY FAIR (July 20, 2021), <https://www.vanityfair.com/style/2021/07/britney-spears-lawyer-mathew-rosengart-moving-aggressively-to-remove-jamie-spears-conservatorship> [<https://perma.cc/N6V7-UM92>].

196. Dominic Patten, *Britney Spears’ New Lawyer Officially Files to Remove Singer’s Father from Controversial Conservatorship, Name CPA as Overseer – Update*, DEADLINE (July 26, 2021, 2:30 PM), <https://deadline.com/2021/07/britney-spears-conservatorship-new-lawyer-mathew-rosengart-court-hearing-1234793152/> [<https://perma.cc/Q3UG-PAJG>].

197. Abby Gardner, *The Britney Spears Conservatorship Situation, Fully Explained*, GLAMOUR (Sept. 30, 2021), <https://www.glamour.com/story/the-britney-spears-conservatorship-situation-fully-explained> [<https://perma.cc/6L6J-AWYM>].

198. *Id.*

199. MODEL RULES OF PRO. CONDUCT 1.14, cmt. 5 (Am. Bar Ass’n 2020); *see also* KAN. R. PROF’L CONDUCT 1.14, cmt. 5.

200. MODEL RULES OF PRO. CONDUCT 1.14, cmt. 5 (Am. Bar Ass’n 2020); *see also* KAN. R. PROF’L CONDUCT 1.14, cmt. 5.

201. MODEL RULES OF PRO. CONDUCT 1.14(a) (Am. Bar Ass’n 2020); *see also* KAN. R. PROF’L CONDUCT 1.14(a).

ward.<sup>202</sup> Although there is debate, under the current Model Rules, Britney's court-appointed attorney likely would have been in violation of Rule 1.14. Britney's court-appointed attorney rarely met with her, and those close to the situation stated that they "felt that [Britney's lawyer] was loyal to the conservatorship and to Jamie, despite nominally representing Spears."<sup>203</sup> Because Britney's court-appointed attorney ignored her well-expressed wishes, especially relating to the removal of her father as a conservator, Britney's lawyer was intruding into her decision-making autonomy. The attorney did not maintain a normal client-lawyer relationship with Britney, which led to her continued abuse while under the conservatorship.

Just like Britney, many people currently under a guardianship or conservatorship are not able to hire their own attorney. Kansas only allows an incapacitated person to give the court a preference in who they would prefer to see as their court-appointed attorney.<sup>204</sup> How Kansas statutes are set up now could lead to experiences similar to Britney's. Only allowing an incapacitated person to provide a preference leaves these individuals vulnerable if the lawyer they have is not fighting for their interests and the individual is unable to hire their own advocate. Thus, this dilemma is a double-edged sword for courts. In these cases, courts must consider how, when, and who would be an appropriate attorney for an adult in need or subject to a guardianship or conservatorship. Although this is the case, judges should err on the side of the ward or conservatee who wants to ensure their interests are being represented the way they want them to be to better protect elders from abuse.

Thus, Kansas should amend current K.S.A. § 59-3063 to not only allow the court to appoint an attorney for a ward or conservatee, or a proposed ward or proposed conservatee, but to also allow a proposed ward or proposed conservatee or a ward or conservatee to choose and hire their own attorney. Just like it made a difference for Britney, changing current Kansas statutes to reflect a ward's or conservatee's ability to hire their own attorney—and not just have the ability to have an attorney appointed for them—would allow for the ward or conservatee to have more say over who represents them and their interests. This could possibly lead to the hired attorney doing more for the ward or conservatee than what the current court-appointed attorney would do.

---

202. Joan L. O'Sullivan, *Role of the Attorney for the Alleged Incapacitated Person*, 31 STETSON L. REV. 687, 697 (2002).

203. Farrow & Tolentino, *supra* note 193.

204. KAN. STAT. ANN. § 59-3063(a)(3) (2005).

2022

FREE BRITNEY

821

#### IV. CONCLUSION

Although the UGCOPAA has only been adopted by two states,<sup>205</sup> Kansas should be on the forefront of providing for and protecting its elder citizens by adopting the UGCOPAA to update their laws to modern times. From the analysis, it can be shown that current Kansas law is not up to modern standards regarding guardianships and conservatorships and should be changed to keep up with new issues. Current Kansas statutes should require a reason why a less restrictive option is not feasible, require expanded notice, and require a plan to be filed. Because guardianships and conservatorships severely limit the rights of adults who are subject to them, the antiquated laws of the past should be repealed so new law can help those who need the change. Short of this, Kansas should, at the very least, impose fee limits for guardians and conservators, and allow an elderly person subject to a guardianship or conservatorship to hire their own attorney or verify their court-appointed attorney is representing their best interests. Allowing these new laws to take effect will reduce the inequities that have come to light from the Britney Spears case and would allow those subject to these laws to fight to get their own lives back.

---

205. *Guardianship, Conservatorship, and Other Protective Arrangements Act*, *supra* note 14.