

SUMMARY

Article 5 changes

LD 123 was carried over to the Second Regular Session to allow the Probate and Trust Law Advisory Commission (PATLAC), with the assistance of the Family Law Advisory Commission (FLAC), to review the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act, approved by the Uniform Law Commission in July 2017. This amendment is based on the recommendations of PATLAC for Article 5, Parts 1 (general provisions), 3 (adult guardianship), 4 (conservatorship) and 5 (other protective arrangements), and FLAC for Parts 1 and 2 (minor guardianship).

The following is from the Uniform Law Commission’s Prefatory Note for the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act.

The Act has three overarching aims.

First, it aims to reflect the person-centered philosophy endorsed by the [Third National Guardian Summit] NGS. The person-centered approach is evidenced in the Act’s updated terminology. The terms “ward” and “incapacitated person,” which were rejected by the NGS as demeaning and even offensive, are eliminated and the more precise terms “adult subject to guardianship,” “minor subject to guardianship,” and “individual subject to conservatorship” are used instead. The person-centered approach is also evident in new provisions requiring that individuals subject to guardianship or conservatorship be given meaningful notice of their rights and how to assert them; provisions that require involving individuals subject to guardianship and conservatorship in decisions about their lives; requirements that guardians and conservators create person-centered plans; and provisions to facilitate court monitoring of compliance with those plans.

Second, the Act aims to create legal rules that advance key objectives embraced by the NGS, including respecting and protecting the rights and interests of both individuals alleged to need a guardian or conservator and individuals subject to guardianship or conservatorship. These include provisions designed to ensure that the least restrictive means are used to protect an individual alleged to need a guardianship or conservatorship, to provide better guidance to guardians and conservators, and to help courts monitor guardians and conservators.

Third, the Act aims to advance rules and systems that make it easier for all persons involved in the process – whether they be petitioners, individuals subject to guardianship or conservatorship, guardians or conservators, or judges – to achieve these objectives. It does this in a number of ways. These include creating new petition requirements to ensure that judges have the information needed to make appropriate decisions; creating an option for courts to enter orders instead of guardianship or conservatorship where such less restrictive alternatives would meet a respondent’s need; and offering model forms to make it easier for petitioners to seek limited appointments instead of full ones.

With these overarching objectives in mind, a number of more specific changes are likely to be particularly noteworthy to those considering the Act.

First, the Act includes clearer guidance to guardians and conservators, many of whom are lay people. Specifically, the Act clarifies how appointees are to make decisions, including decisions about particularly fraught issues such as medical treatment and residential placement. These clarifications are consistent with the person-centered approach embraced by the Act in that appointees are given specific guidance on involving the individual in decisions.

Second, the Act recognizes the role of, and encourages the use of, less restrictive alternatives, including supported decision-making and single-issue court orders instead of guardianship and conservatorship. To this end, the Act provides that neither guardianship nor conservatorship is appropriate where an adult's needs can be met with technological assistance or supported decision-making. It also provides for protective arrangements instead of guardianship or conservatorship; the 1997 version, by contrast, only provided for such an arrangement as an alternative to conservatorship. These alternative arrangements have the potential to reduce the extent to which individuals in need of protection are deprived of liberties. They can also reduce the time and cost associated with meeting individuals' needs. Unlike a guardianship or conservatorship, long-term monitoring and reporting will generally be unnecessary.

Third, the Act expands the procedural rights for respondents with the aim of ensuring that respondents' rights are fully respected and that guardianships and conservatorships are only imposed when less restrictive alternatives are not feasible. In expanding these protections, the Act strikes a balance between the need to provide meaningful procedural rights for individuals alleged to need a guardian or conservator, and the need to avoid making the appointment process overly complex or expensive. Key revisions include narrowing the exception to the general rule that the respondent must be present at the hearing, a requirement that explicit findings be made before certain fundamental rights are removed, and the elimination of provisions that would have allowed appointment of a guardian for an adult by will or other writing without prior judicial approval.

Fourth, the Act provides for enhanced monitoring of guardians and conservators to ensure that such appointees are complying with their fiduciary duties and that individuals subject to guardianship and conservatorship are protected against exploitation. One innovation in the Act is to allow the court to identify people who are to be given notice of certain key changes or suspect actions, and who can therefore serve as an extra set of eyes and ears for the court. Other revisions include a provision that makes bond a default option for conservators and the addition of provisions that clarify factors relevant in determining the reasonableness of fees for guardians and conservators.

Fifth, the Act provides enhanced procedural rights for individuals subject to guardianship and conservatorship. Key changes from the 1997 Act include a provision that the court provide such individuals with plain-language notice of key rights, the addition of provisions for attorney representation of individuals subject to guardianship and conservatorship, greater scrutiny of the guardian or conservator's ability to charge fees to oppose the individual's efforts to alter the appointment, and additional triggers for reconsideration of an appointment.

Sixth, recognizing that individuals subject to guardianship and conservatorship benefit from visitation and communication with third parties, the Act sets forth specific rights to such interactions. In recent years, some family members of individuals subject to guardianship have raised concerns that guardians have unreasonably restricted the ability of individuals subject to guardianship to receive visitors and communicate with others, and family advocates have encouraged legislative responses to address this concern. The Act includes a variety of provisions addressing this concern. These include a limitation on a guardian's ability to curtail communications, visits, or interactions between an adult subject to guardianship and third parties and a requirement that a guardian prioritize residential settings that allow the individual subject to guardianship to interact with those important to the individual. In a similar vein, it establishes a default that the adult children and spouse of an adult subject to guardianship or conservatorship are entitled to notice of key events, including a change in the adult's primary residence, the adult's death, or a significant change in the adult's condition.

Seventh, the Act creates a new mechanism for protecting individuals from exploitation. Section 503 of the Act allows a court, without imposing a guardianship or conservatorship or ruling on the individual's abilities, to restrict access to the respondent or the respondent's property by a specified person that the court finds by clear-and-convincing evidence: (1) through fraud, coercion, duress, or the use of deception and control, caused, or attempted to cause, an action that would have resulted in financial harm to the respondent or the respondent's property; and (2) poses a serious risk of substantial financial harm to the respondent or the respondent's property. This allows courts to create tailored orders to protect vulnerable individuals at risk of substantial exploitation even though

the individual might not have the level of limitation in abilities necessary to impose a conservatorship or guardianship. At the same time, it discourages courts from imposing a guardianship or conservatorship if a limited order would meet an individual's needs.

Eighth, the Act contains a variety of provisions designed to improve compliance with the Act's prohibition on courts establishing a full guardianship or conservatorship if a limited guardianship or conservatorship would meet the respondent's needs. The [Uniform Law Commission] Drafting Committee recognized that, despite the best efforts of previous Committees, there is a lack of compliance with the prohibition even though it was included in the 1997 Act. In order to facilitate compliance, the Act includes a sample petition which makes it easier for a petitioner to seek a limited order. [This amendment does not include the forms proposed by the ULC.] In addition, the Act requires petitioners seeking a full guardianship or conservatorship to do more to justify that approach, and courts imposing a full guardianship to provide findings to support that imposition.

Ninth, the Act modernizes and clarifies provisions related to minors subject to guardianship. [Note that this amendment does not adopt Part 2 of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act, which pertains to minors. It instead includes the recommendations that both PATLAC and FLAC reported to the Judiciary Committee in January 2017, with some updated provisions.]

Tenth, the Act contains updated provisions to govern property management for individuals subject to conservatorship. In updating property management protections, the Drafting Committee looked to the Uniform Prudent Investor Act and the Uniform Trust Code, among other sources of guidance.

Finally, the Act has been reorganized with the aim of making it easier to understand. Ease of use is important as many of those who need to comply with its directives are not attorneys, but are family members or friends responding to urgent or unstable circumstances, or are individuals with limited resources and significant functional challenges.

Article 5, Part 1: General Provisions

This amendment strikes Article 5, Part 1 of the bill, adopts the UGCOPAA Article 1 with the following changes.

This amendment includes two additional definitions. "Best interest of the minor" cross-references the meaning of best interest as defined in Title 19-A, section 1653, subsection 3. The other additional definition is "suitable" to provide what are appropriate qualifications for the person to be appointed as a guardian for a minor.

This amendment addresses concerns raised about whether a guardian or conservator can waive any required notice on behalf of the individual subject to guardianship or conservatorship. This amendment provides that an appointed guardian or an appointed conservator may not waive the right to notice on behalf of a person subsection to guardianship or conservatorship. (5-114)

This amendment makes clear that the role of a guardian ad litem is to identify and represent the individual's best interests or perform other duties the court directs. It provides that the same guardian ad litem may be appointed to represent more than one individual as long as no conflict of interest or potential conflict of interest exists. (5-115)

This amendment requires additional notice be given when a person interested in the welfare of a respondent but not otherwise entitled to notice requests to receive notice

of proceedings. Notice of the request must be given to the guardian or conservator, as well as the individual subject to the guardianship or conservatorship, and they are provided a 60-day window during which to object to giving notice to the person requesting notice. If there is an objection, the court must hold a hearing on the request and make a decision on whether to grant the request after the hearing. (5-116)

This amendment requires the person petitioning to be appointed the guardian or conservator to disclose bankruptcy and criminal background information. In addition, a guardian or conservator is prohibited from engaging an agent who the guardian or conservator knows has been convicted of certain series crimes without the approval of the court. (5-117)

This amendment provides that the court, after notice to all interested persons, on the petition of an interested person, may review the propriety of the employment of any person by the guardian or conservator, as well as the reasonableness of compensation. The court may order anyone who has received excessive compensation to make appropriate refunds. (5-119)

This amendment requires the guardian or conservator to report to the court any person who refuses to recognize the authority of the guardian or conservator, as authorized by the proposed law, when the person believes the guardian's or conservator's proposed action would be inconsistent with the statute, or that the person believes the person subject to guardianship or conservatorship is subjected to abuse, neglect, exploitation or abandonment by the guardian or conservator or someone acting for or with the guardian or conservator. (5-123/5-122)

This amendment establishes a fee for registering guardianship or conservatorship appointment order from another jurisdiction. (related to 5-126/5-125 – 1-602, sub-§12)

This amend clarifies that an individual subject to guardianship or conservatorship, or a person interested in the individual's welfare, can report an grievance to the court in writing or another record. The report is not required to be formally filed. (5-127/5-126)

Article 5, Part 2: Minor Guardianship

This amendment amends Article 5, Part 2 of the bill (not adopting the UGCOPAA) as follows.

(Legislative findings – not adopted)

(5-203) This amendment provides that when the court is appointing a guardian of a minor as requested by a parent, the minor, if at least 14 years old, the other parent or other person who has care or custody of the minor may object or terminate the appointment. The objection does not preclude the court from appointing the guardian if all other requirements for appointment, including appointment over the objection of a

parent, are met. The court may treat the filing of an objection as a petition for the appointment of an emergency or an interim guardian and proceed accordingly.

(5-204) This amendment establishes grounds for appointment of a suitable guardian based on the Maine Supreme Judicial Court’s rulings pertaining to the fundamental rights of parents. It requires that, before a guardian may be appointed for a minor, the court must find that the parents consent, all parental rights have been terminated or by clear and convincing evidence the parents are unwilling or unable to exercise their parental rights. Such evidence includes, but is not limited to, that the parent is currently unwilling or unable to meet the child’s needs and that will have a substantial adverse effect on the child’s well-being if the child lives with the parent, or that the parent has failed, without good cause, to maintain a parental relationship with the child including, but not limited to, regular contact with the child for contact with the child for a length of time that evidences an intent to abandon the child.

This amendment replaces the temporary guardian provisions with the authorization to appoint a guardian on an emergency basis. The duration of the guardian’s authority may not exceed 90 days and the guardian may exercise only those powers specified in the order. Reasonable notice of the time and place of the hearing on the petition for appointment must be given unless it could result in substantial harm to the minor. If the guardian is appointed without notice, notice of the appointment must be given within 48 hours, and the court shall schedule a hearing within 14 day (21 days?) but not less than 7 days after the issuance of the order. Counsel for a parent may request that the hearing take place sooner. The petitioner for the emergency appointment bears the burden of proof on the appropriateness of the appointment.

The court’s order must indicate whether there are any child support orders currently in effect and the effect of the guardianship order on the child support orders. The court shall consider whether a parent is to pay child support to the guardian, and shall treat the guardian as a “caretaker relative” for computation of a parental support obligation under Title 19-A, section 2006, subsection 4.

(5-205) This amendment authorizes the court to direct an employee of the Department of Health and Human Services to provide information relevant to a guardianship proceeding. The court shall protect the confidentiality of information.

(Notice to parent excused – not adopted)

The court shall appoint a person or persons who nominated by the minor, if at least 14 years old, in accordance with the other appointment requirements. A nonconsenting parent whose parental rights have not been terminated is entitled to court-appointed counsel if indigent. The court may also appoint counsel for any indigent guardian or petitioner if the parent has counsel.

A minor who is 14 years of age or older must receive notice of proceedings subsequent to the appointment of a guardian. A minor may appear with or through

counsel, but the court may still require the minor to be present for some or all of a hearing or other proceeding.

(Informed consent of parent – not adopted)

The court may specify the duration of the appointment, and the term may be extended or otherwise modified.

The court may enter an interim order appointing a guardian for a period of time of up to 6 months or pending the court's order if necessary to provide for the minor's housing, health, education, medical or other essential needs prior to the hearing. The interim order must meet all the other requirements, including notice, and may be extended or modified.

The court may refer the parties to mediation if mediation services are available at reasonable or no cost.

If a party alleges in an affidavit or a pleading under oath that the health, safety or liberty of a party or the minor would be jeopardized by disclosure of identifying information, the information must be sealed and not disclosed unless ordered by the court after notice and hearing.

(5-206) This amendment specifies the terms that must be included in the order appointing a guardian for a minor. If any orders concerning custody or other parental rights of the minor are in effect at the time of the appointment of the guardian, the order must refer to such orders and indicate the effect of the appointment on the rights and responsibilities set forth in the other order.

An order appointing a guardian must specify the rights and responsibilities the minor's parent retains. A parent may co-petition and be appointed as a co-guardian of the minor if the court determines the joint appointment with a non-parent is in the minor's best interest and is made with the parent's consent.

(5-207) The court may require the guardian to submit regular status reports about the minor, to be submitted under oath or affirmation to the court and served on the parent on an annual basis or under other conditions set by the court. The contents of status reports are confidential and may not be released to a nonparty except by order of the court. A parent or other person interested in the minor's welfare may petition the court to seek a status report when one is not required or based upon specific concerns about the minor's care. If there is an active guardian ad litem, the guardian ad litem may also receive the report. The court shall accept any information submitted by a minor 14 years of age or older regarding the guardianship.

(5-210) A guardian, parent of the minor, a person interested in the welfare of the minor or the minor, if 14 years of age or older, may file a motion asking the court to modify the terms of the order or take other action in the best interest of the minor. The court may identify certain requirements that must be met before making modifications.

This amendment provides for the termination of the appointment of a guardian or conservator. A minor, if age 14 or older, a parent or a person interested in the welfare of the minor may petition for removal of a guardian on the ground the removal would be in the best interest of the minor or for other good cause. A guardian may petition to resign. The court may appoint an additional or successor guardian.

Except upon a petition to terminate the guardianship filed by the parent, the court may not terminate the guardianship without the consent of the guardian unless the court finds by a preponderance of the evidence that the termination is in the best interest of the minor. If a parent petitions for the termination of the guardianship, the party opposing the parent's termination bears the burden of proving by a preponderance of the evidence that the parent seeking to terminate the guardianship is currently unfit to regain custody of the minor. If the party fails to prove the parent is unfit the court shall terminate the guardianship and make any further order that may be appropriate.

(5-211) In determining the best interest of the minor in ordering transitional arrangements, the court may consider the minor's relationship with the guardians and the need for stability.

(5-212) In any guardianship proceeding, the court may appoint a guardian ad litem for the minor.

Article 5, Part 2: Adult Guardianship

This amendment strikes Article 5, Part 3 of the bill, adopts the UGCOPAA Article 3 with the following changes.

(5-304) This amendment requires the visitor appointed by the court to include in the report whether or not the respondent wishes to contest any aspect of the proceedings or to seek any limitation on the proposed guardian's powers. This is in addition to a recommendation whether an attorney should be appointed to represent the respondent and several other items that must be included in the report. The visitor must also include whether a further professional evaluation of the respondent is recommended.

The UGCOPAA does not require an initial professional evaluation; this amendment requires a professional evaluation in every adult guardianship. This amendment revises which professionals are appropriate for conducting an evaluation:
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(5-305) This amendment provides that the court is required to appoint an attorney for the respondent, in addition to the 3 fact situations presented in UGCOPAA, when it

comes to the court's attention that the respondent wishes to contest any aspect of the proceeding or to seek any limitation on the proposed guardian's powers. The other fact situations in which appointment of an attorney is mandatory are: when requested by the respondent, when recommended by the visitor and when the court determines the respondent needs representation.

(5-309) This amendment recognizes that an agent appointed by the respondent in an advance health care directive is, if otherwise qualified, eligible for appointment as the guardian at the 4th level of priority.

This amendment continues the disqualification for appointment as a guardian an owner, operator or employee of a long-term care institution in which the respondent is receiving care, unless the owner, operator or employee is related to the respondent.

(5-311) Consistent with the UGCOPAA, this amendment provides for specific notice requirements for numerous interested parties (5-310), but reduces the notice requirements for notice of the appointment from what is required under UGCOPAA. This amendment retains required notice by the appointed guardian to the adult subject to guardianship and all other persons required to receive notice under §5-303, rather than duplicating the notice requirements under §5-310.

(5-312) With regard to the appointment of an emergency guardian, this amendment provides that the initial appointment may not exceed 60 days, but that the emergency appointment may be extended by up to 120 days. This amendment adopts the notice requirements for filing a petition for an emergency guardian that are in the bill, that is that the petition must notify, orally or in writing, the respondent as well as the respondent's family and any person who is serving as the guardian or conservator or who has care and custody of the respondent. If the petitioner believes giving prior notice would put the respondent at substantial risk of abuse, neglect or exploitation, the petitioner must so state in an affidavit.

If the court appoints the emergency guardian without notice and hearing, notice of the emergency appointment must be provided within 48 hours of the appointment. This amendment provides that if any person objects to the appointment of the emergency guardian, the court must hold a hearing within 14 days after the appointment.

(5-313) This amendment modifies the duties of a guardian to include the authority to administer assets of a value of \$5,000 or less.

(5-316) This amendment differs from the UGCOPAA by requiring the person seeking appointment as guardian to file the plan for the care of the adult with the petition for appointment. When there is a subsequent change in circumstances or the guardian seeks to deviate significantly from the plan, the guardian shall file with the court a revised plan for the care of the adult. The plan must contain specific elements. The persons required to receive notice of the petition must also receive a copy of the plan and any revised plan. The court is required to review the plan and any revised plan, and

consider objections. The court may schedule a hearing on any revised plan and may not approve the revised plan until 30 days after filing.

(5-317) This amendment provides that the guardian must file a report with the court at least annually.

Take out guardian's petition for approval of guardian's report? Judge Morton is asking PATLAC.

Article 5, Part 4: Conservatorship

This amendment strikes Article 5, Part 4 of the bill, adopts the UGCOPAA Article 4 with the following changes.

Throughout Part 4, this amendment establishes that the court is required to consider the wishes of a minor who is at least 14 years of age, rather than 12 years of age as provided in in the UGCOPAA.

(5-402) This amendment provides that a petition for conservatorship must include, along with other specifically identified information, the name and contact information for an agent designated by the respondent in an advance health care directive.

(5-404) This amendment does not include the provisions of the UGCOPAA pertaining to property while a petition for conservatorship is pending, but instead includes the provisions of current law Title 18-A, section 404 authorizing a person to petition for the appointment of a conservator or for any other appropriate protective order (*this should be "arrangement"?*) when the person is any of the following: the person to be protected; any person who is interested in the estate, affairs or welfare of the person to be protected; and any person who would be adversely affected by lack of effective management of the property and affairs of the person to be protected. (*Update language "person to be protected"?*)

(5-403) This amendment provides that the petition for conservatorship must be personally served on the respondent at least 14 days prior to the hearing on the petition. Notice must also be provided 14 days before the hearing to all the other persons required to receive notice.

(5-405) This amendment requires the court to appoint a visitor when the respondent is an adult, unless the adult is represented by an attorney.

The visitor must file a report at least 10 days before any hearing on the petition. The report must include whether or not the respondent wants to challenge any aspect of the proceeding or to seek any limitation on the conservator's powers. The report must also contain a recommendation whether a further professional evaluation is necessary.

(5-406) This amendment requires the court to appoint an attorney, in addition to the circumstances provided in the UGCOPAA, when it comes to the court's attention that

the respondent wishes to contest any aspect of the proceeding or to seek any limitation on the proposed conservator's powers.

This amendment deviates from the UGCOPAA by not requiring but authorizing the court to appoint an attorney to represent the parent of a minor who is the subject of a conservatorship proceeding. (*Ask FLAC?*)

(5-407) The UGCOPAA does not require an initial professional evaluation; this amendment requires a professional evaluation in every adult conservatorship. This amendment revises which professionals are appropriate for conducting an evaluation: *Need to resolve and insert here – 5-407*

The individual conducting the professional evaluation shall file the report with the court at least 10 days before any hearing on the petition.

(5-410) This amendment continues the disqualification for appointment as a conservator an owner, operator or employee of a long-term care institution in which the respondent is receiving care, unless the owner, operator or employee is related to the respondent.

(5-412) Consistent with the UGCOPAA, this amendment provides for specific notice requirements for numerous interested parties (5-411), but reduces the notice requirements for notice of the appointment from what is required under UGCOPAA. This amendment retains required notice by the appointed guardian to the adult subject to guardianship and all other persons required to receive notice under §5-403, rather than duplicating the notice requirements under §5-411.

(5-413) With regard to the appointment of an emergency conservator, this amendment provides that the initial appointment may not exceed 60 days, but that the emergency appointment may be extended by up to 120 days. This amendment adopts the notice requirements for filing a petition for an emergency guardian that are in the bill, that is that the petition must notify, orally or in writing, the respondent as well as the respondent's family and any person who is serving as the guardian or conservator or who has care and custody of the respondent. If the petitioner believes giving prior notice would put the respondent at substantial risk of abuse, neglect or exploitation, the petitioner must so state in an affidavit.

If the court appoints the emergency conservator without notice and hearing, notice of the emergency appointment must be provided within 48 hours of the appointment. This amendment provides that if any person objects to the appointment of the emergency conservator, the court must hold a hearing within 14 days after the appointment.

(5-419) This amendment differs from the UGCOPAA by requiring the person seeking appointment as conservator to file the plan for protecting, managing, expending and distributing assets of the conservatorship estate with the petition for appointment. When there is a subsequent change in circumstances or the conservator seeks to deviate

significantly from the plan, the guardian shall file with the court a revised plan for protecting, managing, expending and distributing assets of the conservatorship estate. The plan must contain specific elements. The persons required to receive notice of the petition must also receive a copy of the plan and any revised plan. The court is required to review the plan and any revised plan, and consider objections. The court may schedule a hearing on any revised plan and may not approve the revised plan until 30 days after filing.

(5-423) This amendment requires the conservator to include a credit report of the person subject to conservatorship in the report and accounting submitted to the court. The credit report must be kept confidential.

The conservator may petition the court for approval of the report or accounting filed with the court. An order, after notice and hearing, approving a final report discharges the conservator from all liabilities, claims and causes of action by a person given notice of the report and the hearing as to a matter adequately disclosed in the report.

(Note: this leaves out approval of accounting – is that correct?)

(5-427) This amendment provides that when the person subject to conservatorship dies, and no personal representative has been appointed for 40 days, the conservator may apply to the court to exercise the powers of a personal representative. The conservator must give notice to any person nominated as personal representative in the will of which the conservator is aware, all of the decedent's heirs and all devisees of the will. This is an expansion from UGCOPAA.

(5-430) This amendment provides that if the person who is subject to conservatorship seeks to remove the conservator the court shall appoint an attorney if not already represented by one.

(5-431) This amendment provides that if the person who is subject to conservatorship seeks to terminate or modify the terms of the conservatorship, the court shall appoint an attorney if not already represented by one.

Article 5, Part 5: Other Protective Arrangements

This amendment adopts Article 5 of the UGCOPAA as Part 5 of Article 5, with the following changes.

This amendment clarifies that one or more protective arrangements may be appropriate in any given circumstance.

(5-504) This amendment provides that a petition for one or more protective arrangements must include the name and address of the respondent's spouse or domestic partner, if the respondent has one.

(5-509) The UGCOPAA provides that a hearing may proceed without the respondent in attendance only if the court finds by clear and convincing evidence at least one of several circumstances exist. This amendment adds two additional circumstances: If the respondent is represented by an attorney and the attorney represents that the respondent does not want to attend the hearing; and if the visitor has confirmed with the respondent that the respondent has no objection to the protective arrangements and that the respondent does not wish to attend the hearing.

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