

Commission to Create a Plan to Incorporate the Probate Courts into the Judicial Branch

Statutes¹ Governing Appointment and Payment of Attorneys, Guardians *ad Litem* and Visitors in Title 18-C Proceedings

A. Court-appointed attorneys

- Respondent in guardianship, conservatorship and other protective proceedings:
 - An attorney **shall** be appointed for a *minor* respondent in a *guardianship* proceeding in the circumstances stated in [§5-205\(5\)](#); for an *adult* respondent in a *guardianship* proceeding in the circumstances stated in [§5-305\(1\)](#); for an *any* respondent in a *conservatorship* proceeding in the circumstances stated in [§5-406\(1\)](#); and for *any* respondent in a proceeding involving *other protective arrangements* in the circumstances stated in [§5-507\(1\)](#). If the adult or minor is found to be indigent, [§5-119](#)² suggests but does not expressly state that counsel **shall** be appointed at no cost to the respondent; otherwise, the attorney is entitled to compensation from the property of the respondent.
- Other appointments in minor guardianship proceedings:
 - In minor guardianship proceedings, a non-consenting parent whose parental rights have not been terminated is **entitled** to court-appointed legal counsel if indigent, [§5-205\(4\)](#). The court **may** appoint counsel for an indigent guardian or a petitioner seeking to become a guardian when a parent or legal custodian has counsel, [§5-205\(4\)](#).
 - The court **may** appoint counsel for the minor or any indigent guardian or parent when parent brings a petition to terminate the guardianship of a minor, [§5-210\(7\)](#).
- Adoptions:
 - In a hearing under Article 9 (adoptions), including parentage and termination of parental rights hearings, the court **shall, upon request**, appoint an attorney for an indigent parent or indigent putative parent, [§9-106\(1\)](#). The court **shall pay** the reasonable costs and expenses of the attorney. *Id.*
 - Even absent a request, the court **shall** appoint an attorney for an indigent minor parent unless it finds representation is unnecessary or the indigent minor parent refuses representation, [§9-106\(2\)](#). (Presumably, the court shall pay the reasonable costs and expenses of the attorney for an indigent minor parent under §9-106(1), cited above.)
 - If a petition is brought to annul the adoption decree of a minor, the court **may** appoint counsel for the minor adoptee or a party to the annulment proceedings. [§9-315\(1\)](#).

B. Guardians ad litem

- For minors, generally:
 - When a court appoints a guardian ad litem for a minor under Title 18-C, the court shall specify the fee arrangements, [§1-111\(1\)](#). See also [4 M.R.S. §1555](#) (court may appoint such a guardian ad litem “when the court has reason for special concern as to the welfare

¹ This document outlines the statutes governing appointment and payment of attorneys, guardians *ad litem* and visitors under Title 18-C of the Maine Revised Statutes but does not address potential constitutional appointment requirements.

² See also [§5-119\(4\)](#) (court may order the petitioner to pay respondent’s attorney’s fees if the petition for guardianship, conservatorship or for other protective arrangements was brought in bad faith).

Commission to Create a Plan to Incorporate the Probate Courts into the Judicial Branch

of the child”; the appointment order “**must** specify that payment for the services of the guardian ad litem is the responsibility of the parties, with the terms of payment specified in the order”).

- Guardianship, conservatorship and other protective proceedings:
 - The court **may appoint** a guardian ad litem for an individual³ in a guardianship, conservatorship or other protective proceeding if “the court determines the individual’s interest otherwise would not be adequately represented” and shall state on the record who is responsible for payment of the guardian ad litem fees, [§5-115](#); *see also* [§5-212](#) (court may appoint a guardian ad litem in any minor guardianship proceeding); [4 M.R.S. §1555](#) (order must specify parties pay for a guardian ad litem for a minor in a Title 18-C case).
 - Pursuant to [§5-712](#), the Department of Health and Human Services **may** be ordered to pay the costs of a guardian ad litem in certain circumstances if the respondent has been a client of DHHS or has received services from DHHS within 3 months before the filing of a petition for appointment of a public guardian or conservator and the respondent is indigent.
- Adoption proceedings:
 - In most adoption proceedings, the court **may appoint** a guardian ad litem, [§9-304\(6\)](#). *See also* [4 M.R.S. §1555](#) (court may appoint guardian ad litem for a minor in a Title 18-C case “when the court has reason for special concern as to the welfare of the child”; the appointment order “**must** specify that payment for the services of the guardian ad litem is the responsibility of the parties, with the terms of payment specified in the order”).
 - The court also **may appoint** a guardian ad litem for the child when a petition for termination of parental rights is brought as part of an adoption proceeding. Although the appointment decision is discretionary, the **court shall pay** the cost of any guardian ad litem it appoints in these proceedings, [§9-204\(4\)](#).
 - By contrast, if a petition for annulment of the adoption decree of a minor is filed, the court **shall appoint** a guardian ad litem for the minor adoptee and **may** allocate the costs to one or more of the parties. [§9-315\(1\)\(A\)](#); *see also* [4 M.R.S. §1555](#) (cited above).

C. Visitors

- Minor guardianships, conservatorships and other protective arrangements:
 - There is **no provision** for appointment of a visitor in a *minor guardianship* proceeding. However, on receipt of a petition for *one or more protective arrangements instead of a guardianship*, the court **shall appoint** a visitor who has “training or experience in the type of abilities, limitations and needs alleged in the petition,” [§5-506\(1\)](#). The statutory language of 5-506(1) is not limited to cases involving adult respondents.

³ While [§5-115](#) permits the appointment of a guardian ad litem for an adult respondent, the Comment to this section of the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act observes that, due “appointment of a guardian ad litem for an adult respondent is . . . not typical and is not required for any proceeding under the act”). *See* <https://www.uniformlaws.org/viewdocument/final-act-with-comments-127?CommunityKey=2eba8654-8871-4905-ad38-aabbd573911c&tab=librarydocuments>.

Commission to Create a Plan to Incorporate the Probate Courts into the Judicial Branch

- The court **may appoint** a visitor in a *minor conservatorship* proceeding or upon receipt of a petition for a *protective order instead of a conservatorship* of a minor “to investigate a matter related to the petition or to inform the minor or a parent of the minor about the petition or a related matter,” [§5-405\(1\)](#) (conservatorship); [§5-506\(2\)](#) (other protective arrangement instead of a conservatorship).
- Adult guardianships, conservatorships and other protective arrangements:
 - The court **shall appoint** a visitor in an *adult guardianship* proceeding or on receipt of a petition for *one or more protective arrangements instead of guardianship*; the visitor must have “training or experience in the type of abilities, limitations and needs alleged in the petition,” [§5-304\(1\)](#) (guardianship); [§5-506\(1\)](#) (one or more protective arrangements instead of guardianship).
 - The court **shall appoint** a visitor in an *adult conservatorship* proceeding **unless** the respondent is represented by an attorney; the visitor must have “training or experience in the type of abilities, limitations and needs alleged in the petition,” [§5-405\(2\)](#). The court also **shall appoint** a visitor upon receipt of a petition for a *protective order instead of conservatorship* for an adult **unless** the respondent is represented by an attorney; however, no language regarding the visitor’s special qualifications is set forth in the statute, [§5-506\(3\)](#).
- When does the court pay for a visitor?
 - Although the visitor statutes do not indicate whether or when a court pays the expenses of the appointed visitor, the mandatory visitor appointment statutes generally require an appointed visitor to inform the respondent that “all costs and expenses of the proceeding . . . **may** be paid from the respondent’s assets.” Use of the word “may” suggests that the court, rather than the respondent, may be required to pay the costs of the visitor if the respondent is indigent. See [§5-304\(2\)\(D\)](#) (visitor for adult respondent in guardianship proceeding); [§5-405\(3\)\(D\)](#) (visitor for adult respondent in conservatorship proceeding); [§5-506\(4\)\(D\)](#) (visitor for adult respondent if petition is filed for a protective order instead of a conservatorship or for any respondent if petition is filed for one or more protective arrangements instead of guardianship).