

Representation and Investigation in Guardianship Proceedings
(as of statutory revisions December 31, 2008)

<u>State</u>	<u>Right to Counsel</u>	<u>Counsel Role</u>	<u>Guardian Ad Litem</u>	<u>Visitor</u>	<u>Medical Documentation/ Evaluation</u>
UGPPA	305(b), 406(b) Alt 1: If requested by respondent, recommended by visitor, or court determines need for representation Alt. 2: Shall appoint		115 If representation is otherwise inadequate	305(a), 406(a) Shall appoint a visitor , training and experience in alleged incapacity 305(c), 406(e) Visit, interview in person; explain petition, proceeding, rights, powers of guardian, determine views, inform of right to counsel, cost paid from estate; visit dwelling; obtain info from physician; investigate; file a report to court	306 May order professional evaluation and shall if respondent demands; must be examine by physician, psychologist or other qualified person, file written report
Alabama: Code	26-2A-135(b) shall appoint attorney	26-2A-135(b), 26-2A-102(b) may be GAL	26-2A-52 26-2A-102(b) court representative	26-2A-102(b) court representative interviews ward and petitioner, visits present and proposed abode	26-2A-102(b) must be examined by a physician or other qualified person and submit a written report
Alaska: Statute	13.26.106(b) entitled, shall appoint Office of Public Advocacy if no funds	13.26.111 represent zealously, determine interest, personally interview, explain rights	13.26.112 upon request, may appoint GAL	13.26.106(c) visitor arranges evaluations, interviews respondent & proposed guardian 13.26.108 visitor's report includes affidavit on process	13.26.106(c) expert has expertise in alleged incapacity
Arizona: Rev. Stat. Ann.	14-5303(C) Shall appoint. May discharge after guardian appointed if no longer necessary based on specific findings	<i>Not stated</i>	14-5303(C) investigator	14-5303 investigator interviews respondent, proposed guardian, visits present, proposed residence, caregiver	14-5303(C) functional assessment by physician, psychologist or RN

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Arkansas: Code Ann.	28-65-213(a)(1) entitled	<i>Not stated</i>	28-65-207(c)(3) GAL not necessary in each case	<i>Not stated</i>	28-65-211(b)(1) sworn statement by 1 or more qualified medical witnesses with expertise in alleged incapacity 28-65-212 professional evaluation
California: Prob. Code	1823(b)(6) entitled; right to	<i>Not stated</i>	1833 1826 court investigator	1826 interview respondent, inform of rights; determine attendance at hearing, if contests or objects, wants counsel; review allegations in petition	1801(e) medical evidence & specific impairments
Colorado: Rev. Stat. Ann.	15-14-305(2) appoint if request 15-14-305(3)(c) Right to lawyer; right to request court-appointed lawyer	<i>Not stated</i>	15-14-115	15-14-305 (1) & (3) meet respondent, explain rights, interview proposed guardian, visit new/old abode, interview dr. or care provider	15-14-306 Court may order evaluation by physician, psychologist, other qualified individual
Connecticut: Gen. Stat. Ann.	45a-649a(a) Right to be represented 45a-649a(b) if indigent shall appoint	45a-649a(c) Represent, consult on bringing appeal, not obligated to represent on appeal 45a-649a(f) not accept appointment as guardian ad litem or conservator	<i>Not stated</i>	<i>Not stated</i>	45a-650(c) statement by 1 or more physicians who have examined respondent; may also consider summary of functioning, availability of support services, evaluations from other professionals
Delaware: Code Ann. tit. 12	12 3901(c) entitled to representation	<i>Not stated</i>	<i>Not stated</i>	<i>Not stated</i>	<i>Not stated</i>

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District of Columbia: Code Ann.	21-2041(h) shall appoint	21-2033(b) Zealously represent interests of individual	21-2033(a) May appoint to assist respondent in determining interest. Not fact finder, investigator or ombudsman	21-2033(c) before hearing	21-2041(d)
Florida: Stat. Ann.	744.331(2)(a), 744.3215(1) shall appoint	<i>Not stated</i>	<i>Not stated</i>	<i>Not stated</i>	744.331(3)(a) 3-member examining committee; attending dr. may not be member, each shall examine
Georgia: Code Ann.	29-4-11(c) right to court appointment unless retained	<i>Not stated</i>	29-4-11 upon motion by any interested party or court's own motion	<i>Not stated</i>	29-4-11(d) physician, psychologist or licensed clinical social worker
Hawaii: Rev. Stat.	560:5-305(b) if request, recommended by kokua kanawai, or court determines is needed	<i>Not stated</i>	560:5-115 at any stage if interests inadequately represented	560:5-102, -305(c), -406(c) may appoint kokua kanawai officer to explain, determine views, costs, interview petitioner and proposed guardian, visit dwelling, get information from physician	560:5-306, -406 may request by physician, psychologist & other qualified, shall if demanded by respondent
Idaho: Code	15-5-303(b) shall appoint attorney	15-5-303(b) attorney with GAL duties	15-5-315 GAL conducts independent investigation, reports results, makes recommendation, acts as advocate, general representation of ward, negotiates, monitors 15-5-308(3) GAL and visitor must be separate and independent	15-5-303(b) visitor shall interview petitioner, respondent, proposed guardian, visit both abodes	15-5-303(b) physician & visitor, mental health professional

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Illinois: 75/5 Ill. Comp Stat.	5/11a-10(b) appointed if requested or respondent adverse to GAL 5/11a-11(a) entitled to representation	<i>Not stated</i>	5/11a-10(a) shall appoint, report on best interests, observe, inform of rights		5/11a-11(c) 1 or more independent experts
Indiana: Code Ann.	29-3-5-1(c) may appoint	<i>Not stated</i>	29-3-2-3(a) shall appoint if not represented	<i>Not stated</i>	<i>Not stated</i>
Iowa: Code Ann.	633.561(1)(a); 633.575(1)(a) court shall appoint attorney	<i>Not stated</i>	Iowa R. Civ. Pro. 14	<i>Not stated</i>	<i>Not stated</i>
Kansas: Rev. Stat. Ann.	59-3063(3) shall appoint	<i>Not stated</i>	<i>Not stated</i>	59-3065 may order investigation and report on family relationships, past conduct, nature & extent of property or income, if likely to injure self or others, other matters	59-3064 shall order exam and evaluation at hospital, psychiatric hospital, community mental health, community DD, private physician, psychiatrist, psychologist, other qualified professional
Kentucky: Rev. Stat. Ann.	387.560(1) shall appoint	<i>Not stated</i>	<i>Not stated</i>	<i>Not stated</i>	387.540(1) interdisciplinary evaluation by physician, psychologist & social worker
Louisiana Civ. Code Ann.; Code of Civ. Pro.; Rev. Stat. Ann.	CCP Art. 4544 shall appoint	CCP 4544(B) Personally visit respondent; discuss allegations, relevant facts, law, rights & options	<i>Not stated</i>	<i>Not stated</i>	CCP 4545 may appoint examiner with training & experience in type of infirmity alleged

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Maine: Me. Rev. Stat. Ann. tit. 18	18-A 5-303(b) shall appoint 1 or more: attorney, GAL or visitor; must appoint attorney if respondent wishes to object	<i>Not stated</i>	18-A 5-303(b) appointment when necessary	18-A 5-303(b) shall interview respondent, proposed guardian; explain petition/proceeding, indicate need for counsel	18-A 5-303(b) physician or licensed psychologist
Maryland: Code Ann., Est. & Trusts; MD Rules	13-705(d) shall appoint	MD Rules Attorney is advocate	<i>Not stated</i>	MD Rules Independent investigator, not an attorney, may be appointed if necessary	R73(b)(1) 2 physicians, or physician and psychologist
Massachusetts: Gen. Laws ch.	<i>Not stated</i>	<i>Not stated</i>	201 34	<i>Not stated</i>	201 6 physician, psychologist , certified psychiatric nurse clinical specialist
Michigan: Comp. Laws Ann.	700.5304(5) entitled to counsel 700.5305(3) & (4) shall appoint if contests petition or proposed guardian, seeks limits on order; or if guardian ad litem recommends	<i>Not stated</i>	700.5303(2) 700.5305 shall appoint	<i>Not stated</i>	700.5304(1) physician or mental health professional
Minnesota: Stat. Ann.	524.5-304(b) & 406(b) shall appoint immediately if not provided unless respondent waives right via visitor	524.5-304(b) & 406(b) consult; have time to prepare; representation continues until appeal expires	524.5-115 may appoint at any stage if other representation inadequate	524.5-304(a) & 406(a) may appoint; 404(c) & 406(c) personally serve notice; offer to read petition; interview in person; explain substance, rights; obtain view on guardian, duties, scope; explain right to attorney & that costs come from estate	524.5-304(f) co. social service agency may create screening committee to determine if less restrictive alternative
Mississippi: Code Ann.	<i>Not stated</i>	<i>Not stated</i>	93-13-255 may appoint, shall be present, present interest of respondent	93-13-255 before hearing	93-13-255 2 physicians, personal exam

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Missouri: Ann. Stat.	475.075(3) court shall appoint	475.075(3)	<i>Not stated</i>	<i>Not stated</i>	475.075(4) court may direct that respondent be examined
Montana: Code Ann.	72-5-315(2) may have counsel of own choice or appointed counsel; or court may order Public Defender to assign counsel	72-5-315(2) has duties of GAL	72-5-314(2) representation by GAL not necessary	72-5-315(3) special court appointee shall interview respondent, petitioner, proposed guardian, visit present and proposed abode	72-5-315(3) shall be examined by court appointed physician
Nebraska: Rev. Stat.	30-2619(b) court may appoint if person indicates a desire for an attorney	<i>Not stated</i>	30-2619(b) court may appoint, advocates for best interest	30-2619.01 visitor evaluates incapacity, shall interview proposed guardian, service agencies, respondent, visit present and proposed abode	30-2619(c) may be examined by court appointed physician
Nevada: Rev. Stat.	159.0485 court shall appoint legal aid or private attorney if unable to retain & requests	<i>Not stated</i>	159.0455 may appoint, order sets duties	159.046 may appoint investigator to locate needed services & resources available, competing interests, allegations or claims	159.044(2)(j) certificate by physician
New Hampshire: Rev. Stat. Ann.	464-A:6 absolute, unconditional right	<i>Not stated</i>	464-A:41 may appoint if rights are not fully represented; shall appoint if requested	<i>Not stated</i>	<i>Not stated</i>
New Jersey: Stat. Ann.	3B:12-24.1(c)(5) attorney appointed by court for temporary guardianship	<i>Not stated</i>	<i>Not stated</i>	<i>Not stated</i>	3B:12-24.1(d) Physicians & psychologists
New Mexico: Stat. Ann.	45-5-303(C) 45-5-309(c) court shall appoint if not represented	<i>Not stated</i>	45-5-303.1 shall interview respondents; review medical and visitor reports	45-5-303(E) shall appoint a visitor to interview respondent, proposed guardian, present and proposed abode, evaluate needs	45-5-303(D) shall be examined by qualified health care professional appointed by the court

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New York: Mental Hyg. Law	81.10 shall have right to chose counsel if choice is freely and independently made; court appoints counsel if requested, contested, need major medical decision, temporary power requested, conflict of interest, if helpful	<i>Not stated</i>	<i>Not stated</i>	81.09 shall appoint court evaluator, interview respondent & petitioner, explain rights, proceeding, evaluate need for counsel, if understands English	81.09 court evaluator, including mental hygiene legal service in the judicial department where the person resides, a not-for- profit corporation, an attorney-at-law, physician, psychologist, accountant, social worker, or nurse
North Carolina: Gen. Stat.	35A-1107 entitled to counsel of own choice; an attorney shall be appointed unless respondent retains own counsel	35A-1107 has duties of GAL	35A-1107 shall personally visit, make every reasonable effort to determine respondent's wishes; present respondent's express wishes; may make recommendations as to best interest if differ from express wishes; shall consider limited guardianship; shall recommend rights, powers, privileges to be retained	<i>Not stated</i>	35A-1111 multi-disciplinary evaluation
North Dakota: Cent. Code	30.1-28-03 shall appoint attorney to act as GAL	30.1-28-03 Act as guardian ad litem, interview, explain rights and proceeding.	<i>Not stated</i>	30.1-28-03(3) shall appoint, Interview proposed guardian and ward, ascertain views, visit present abode, prepare alternative resource plan	30.1-28-03(3) ct appointed physicians or psychologist

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Ohio: Rev. Code Ann.	2111.02(C)(7)(a) right to be represented by counsel of choice 2111.02(C)(7)(d) right to have counsel appointed at court expense if indigent	<i>Not stated</i>	<i>Not stated</i>	2111.041 shall require a probate court investigator; investigate circumstances of alleged incapacity, communicate with alleged incapacitated	2111.031 physicians or other qualified persons
Oklahoma: Stat. Ann. tit. 30	30-3-107 court may appoint attorney; may be public defender; if respondent present & after explanation requests attorney or if court determines in best interest, court shall appoint attorney	<i>Not stated</i>	30- 1-117(B) any person or court on own may file for appointment of GAL 30 3-106.1 ct. may appoint volunteer advocate or GAL who advocates objectively for best interest	<i>Not stated</i>	30 3-108 Court on its own motion or at request of any party where capacity of person is material issue. Physician, psychologist, or social worker.
Oregon: Rev. Stat.	125.070(2)(e)(A) right to be represented by attorney	<i>Not stated</i>	<i>Not stated</i>	125.150 court shall appoint officer of court or special appointee; shall exercise powers of guardian; shall interview proposed guardian, respondent where located; may interview caregiver, physician; must be present at hearing	<i>Not stated</i>
Pennsylvania: Cons. Stat. Ann.	20-5511(a) shall be appointed in appropriate cases	<i>Not stated</i>	20-5511(a)(2) shall not be necessary	20-5511(d) shall on good cause shown have independent evaluation	20-5518 individuals qualified by training & experience in evaluating incapacity

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Rhode Island: Gen. Laws	33-15-7(d), (e) Court shall appoint if wishes to contest, limit powers, object to person nominated as guardian, if requests, if GAL determines in best interest	<i>Not stated</i>	33-15-7(c) shall be appointed, personally visit, explain purpose and effect, explain procedure and rights, name of petitioner, review decision making assessment tool, petition and notice; interview proposed guardian; make determinations on wishes as to presence, object, limits, and counsel.	<i>Not stated</i>	33-15-4 physician must complete decision making assessment tool found in 33-15-47
South Carolina: Code Ann.	62-5-303(6) court shall appoint unless has own counsel	62-5-303(b) has duties of guardian ad litem	<i>Not stated</i>	62-5-303(b) court shall send visitor to observe conditions 62-5-308	62-5-303(b) shall be examined by 2 examiners; one of which shall be a physician
South Dakota: Codified Laws Ann.	29A-5-309 court shall appoint if requested, contested, needed	<i>Not stated</i>	<i>Not stated</i>	29A-5-309 If no counsel, shall appoint court representative to investigate and make recommendation on or order person to attend. 29A-5-310 shall interview petitioner, proposed guardian, respondent; explain notice and make report to court on need for protection	29A-5-306 evaluation of mental and physical condition

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Tennessee: Code Ann.	34-1-125 shall appoint attorney ad litem on recommendation of GAL, or if necessary to protect rights or interests 34-3-106 right to have attorney ad litem appointed	34-1-125 advocate in resisting requested relief	34-1-107 court shall appoint unless represented by adversary counsel, waive if best interest, verify notice, consult in person, explain rights, determine if proposed guardian is appropriate, investigate capability, if property guardianship investigate nature of property, fiduciary, and management plan	<i>Not stated</i>	34-1-105 physician or psychologist
Texas: Prob. Code Ann.	646 shall appoint attorney ad litem	647 interview proposed ward, discuss laws and options	645 may be appointed by judge	648 shall operate visitor program	686 medical, psychological, intellectual records 687 physician; if mental retardation, physician or psychologist
Utah: Code Ann.	75-5-303(4) court shall appoint if none	75-5-303(4) has powers of GAL	<i>Not stated</i>	75-5-303(3) may appoint, may be GAL; visit current and proposed residence; interview petitioner and incapacitated person	75-5-303(3) may be examined by court doctor

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Vermont: Stat. Ann. tit. 14	14-3065(a) shall appoint; may appoint in any subsequent proceeding	14-3065(b) consult and explain meaning of proceeding; act as advocate; may not substitute own judgment for that of respondent; distinct from role of GAL; endeavor that wishes of respondent are heard; show that no least restrictive alternative; make sure proper due process is followed, no rights waived without consent	14-3066 on motion by counsel or court may on its own motion	<i>Not stated</i>	14-3067(b) Shall order assessment by person with specific training and demonstrated competence 14-3067(c) Specific content of assessment
Virginia: Code Ann.	37.2-1006 right to representation, may appoint on request of GAL, respondent or if court determines is needed	<i>Not stated</i>	37.2-1003 shall appoint, personally visit, advise of rights, investigate petition	<i>Not stated</i>	37.2-1005 physician or psychologist; professionals skilled in assessment & treatment of alleged conditions
Washington: Rev. Code Ann.	11.88.045(1)(a) right to be represented by willing counsel of choice, shall appoint when cannot afford	11.88.045(1)(b) advocate; shall act of distinct from GAL	11.88.090(2) expected to promote best interests	<i>Not stated</i>	11.88.045(4) physician or psychologist
West Virginia: Code	44A-2-7(a) shall appoint	44A-2-7(b) extensive list of duties	<i>Not stated</i>	<i>Not stated</i>	44A-2-3 Physician or psychologist

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Wisconsin: Stat. Ann.	54.42(1)(c) Shall appoint if proposed ward requests, ward opposes petition or court determines required	54.42(1)(b) advocate for expressed wishes of proposed ward	54.40(i) court shall appoint GAL	<i>Not stated</i>	54.36 licensed physician or psychologist
Wyoming: Stat.	3-1-205(a)(iv) if ordered by court	<i>Not stated</i>	3-1-205(a)(iv) right to GAL	<i>Not stated</i>	<i>Not stated</i>

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