

Representation and Investigation in Guardianship Proceedings
(as of statutory revisions December 31, 2016)

<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; if established relationship, court may appoint that professional

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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 and shall if respondent demands; report contains specific cognitive & functional limitations, evaluation of mental & physical condition, prognosis, recommend treatment plan
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

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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>
District of Columbia: Code Ann.	21-2041(h) shall appoint	21-2033(b)(1) Zealously represent individual's expressed wishes. If unconscious or wholly incapable of expressing wishes, shall advocate zealously for least restrictive option.	21-2033(a) May appoint to prosecute or defend best interests if court determines representation otherwise inadequate.	21-2033(c) Shall interview individual, petitioner and person nominated; present place of abode and place proposed. Shall submit written report to court before hearing and shall investigate whether conflict or potential conflict should preclude appointment. If no person nominated, visitor shall make nomination.	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

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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
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

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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
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

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Massachusetts: Gen. Laws ch. 190B	5-106(a) court shall appoint at any time if requested or determines is inadequately represented	<i>Not stated</i>	5-106(b) may appoint to investigate condition and report to court	<i>Not stated</i>	5-303(b)(11) medical certificate signed no more than 30 days prior or why impossible to obtain 5-404(11)(A) For conservatorship, clinical exam must be no more than 180 prior 5-303(c) Physician or psychologist, certified psychiatric nurse or nurse practitioner; if mental retardation by clinical team Contains specific cognitive and functional limitations, evaluation of condition, identification of potential, prognosis, and improvement. 5-303(e) Court can require respondent to submit and require others to submit evidence
Michigan: Comp. Laws Ann.	700.5304(5) entitled to counsel 700.5305(3) &(4) shall appoint if requested, petition contested or proposed guardian, seeks limits on order; or if guardian ad litem recommends	700.5304 Shall present evidence and cross-examine	700.5305(1) Shall be appointed and explain procedure and rights	<i>Not stated</i>	700.5304(1) physician or mental health professional

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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
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

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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 30-4201 through 4210 -be attorney -complete training -consult, investigate, assess condition, advocate for best interest -be present at all hearings -inquire of others directly involved -defend social, economic and safety interest -make recommendations to court	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, or letter by any govt. agency that does investigations and any other person ct. finds qualified; court form with need for guardian, danger to self or others, if attendance at hearing be detrimental, if able to comprehend or contribute to proceedings, if capable to live independently, limitations and how limitations affect abilities

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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
New York: Mental Hyg. Law	81.10 shall have right to choose 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

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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(4)(b) Right to retain counsel.	<i>Not stated</i>	30.1-28-03(4) Personally interview proposed subject; explain proceeding in language, mode & terms most likely to understand; explain nature & consequences, rights, legal options, right to retain counsel. Advocate for best interests; submit written report.	30.1-28-03(6) Shall appoint, interview proposed guardian and individual, ascertain views, visit present abode, prepare alternative resource plan.	30.1-28-03(5) Court appointed physician or clinical psychologist shall examine and submit written report. Report includes description of current incapacity or disability; medical prognosis or psychological evaluation; how condition affects ability to provide for needs; whether medication affects demeanor.
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

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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.	34-3-106 Right to have attorney ad litem appointed	34-1-101 Attorney ad litem acts as counsel	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, financial capacity of proposed fiduciary, credit report, fiduciary, and management plan 34-1-101 Investigate and report	<i>Not stated</i>	34-3-105 Physician, psychologist or senior psychological examiner who examined 90 days before filing; if not examined, can't get out, or refuses, ct. shall order to submit; examiners report is prima facie evidence of disability and need for appointment

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Texas: Estate Code Ann.	1054.001 shall appoint attorney ad litem to represent the interests of the respondent, may appoint in other context 1054.006 Respondent may retain an attorney if have capacity to contract and court may remove attorney ad litem	1054.004 interview proposed ward, discuss laws and legal options, review application, certificates, and medical records	1054.051 may be appointed by judge to represent interests of incapacitated person and protect the best interest of the person; is officer of the court; same person may be attorney ad litem and guardian ad litem	1054.102 Each statutory court shall operate court visitor program; use volunteers to greatest extent possible 1054.151 Court may appoint court investigator to investigate circumstances to determine if least restrictive alternative is appropriate, investigate complaints and report to court	1101.053 medical, psychological, intellectual test records; are not binding buy may be sufficient 1101.103; 1101.104 Physician (physician or psychologist if intellectual disability) who has examined within 120 days prior. Certificate includes nature, degree and severity of condition; functional deficits; ability to handle business, manage financial affairs, operate car; make decision on placement, voting, marriage; consent to medical treatment; if medications affect demeanor; how benefit from supports and services
Utah: Code Ann.	75-5-7(3) Not required to appoint if uncontested and incapacity not at issues	75-5-303(4) has powers of GAL	<i>Not stated</i>	75-5-303(4) may appoint, may be GAL; visit current and proposed residence; interview petitioner and incapacitated person; not required if 4 th stage Alzheimer's or IQ under 20-25	75-5-303(3) may be examined by physician

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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.	64.2-2006 right to representation, may appoint on request of GAL, respondent or if court determines is needed	64.2-2006 Protect respondent's interest	64.2-2003(B) shall appoint, personally visit, advise of rights, investigate petition	<i>Not stated</i>	64.2-2005 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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