

524.5-406 ORIGINAL PETITION: PERSONS UNDER DISABILITY; PRELIMINARIES TO HEARING.

(a) Upon the filing of a petition for a conservatorship or other protective order for a respondent for reasons other than being a minor, the court shall set a date for hearing and the court may appoint a visitor. The duties and reporting requirements of the visitor are limited to the relief requested in the petition.

(b) A respondent has the right to be represented by counsel at any proceeding under this article. The court shall appoint counsel to represent the respondent for the initial proceeding held pursuant to section 524.5-408 if neither the respondent nor others provide counsel, unless in a meeting with a visitor, the proposed respondent makes an informed decision in writing to specifically waive the right to counsel. Before appointment, and at any time during the course of the representation when a risk of a conflict of interest may arise, the proposed or appointed counsel shall disclose to the court, the proposed person subject to conservatorship or person subject to conservatorship, and interested persons whether there are concurrent proceedings in which the counsel is the attorney for the proposed conservator or conservator and whether there is a risk of a conflict of interest under Rule 1.7 of the Rules of Professional Conduct so that the representation of the proposed person subject to conservatorship or person subject to conservatorship will be materially limited by counsel's concurrent responsibilities to the proposed conservator or conservator. If there is a risk of a conflict of interest, the counsel must not be appointed, unless:

(1) the court determines that the proposed person subject to conservatorship or person subject to conservatorship is able to give informed consent to the representation and, if the proposed person subject to conservatorship or person subject to conservatorship consents, the consent is confirmed in writing pursuant to Rule 1.7; or

(2) the court determines that there is not a risk of a conflict of interest under Rule 1.7 requiring the appointment of different counsel.

(c) Counsel must be appointed immediately after any petition under this part is served pursuant to section 524.5-404. Counsel has the full right of subpoena. In all proceedings under this part, counsel shall:

(1) consult with the respondent before any hearing;

(2) be given adequate time to prepare for all hearings; and

(3) continue to represent the respondent throughout any proceedings under section 524.5-408, provided that such appointment shall expire upon the expiration of the appeal time for the order appointing conservator or the order dismissing a petition, or upon such other time or event as the court may direct.

The court need not appoint counsel to represent the respondent on a voluntary petition, and the court may remove a court-appointed attorney at any time if the court finds that the respondent has made a knowing and intelligent waiver of the right to counsel or has obtained private counsel.

(d) The visitor shall personally serve the notice and petition upon the respondent and shall offer to read the notice and petition to the respondent, and if so requested, the visitor shall read the notice and petition to such person. The visitor shall also interview the respondent in person, and to the extent that the respondent is able to understand:

(1) explain to the respondent the substance of the petition and the nature, purpose, and effect of the proceeding;

(2) if the appointment of a conservator is requested, inform the respondent of the general powers and duties of a conservator and determine the respondent's views regarding the proposed conservator, the proposed conservator's powers and duties, and the scope and duration of the proposed conservatorship;

(3) inform the respondent of the respondent's rights, including the right to employ and consult with a lawyer at the respondent's own expense, and the right to request a court-appointed lawyer; and

(4) inform the respondent that all costs and expenses of the proceeding, including respondent's attorney fees, will be paid from the respondent's estate.

(e) In addition to the duties set out in paragraph (d), the visitor shall make any other investigations the court directs.

(f) The visitor shall promptly file, as a confidential document consistent with the bill of particulars under section 524.5-121, a report with the court which must include:

(1) recommendations regarding the appropriateness of a conservatorship, including whether less restrictive means of intervention are available, the type of conservatorship, and, if a limited conservatorship, the powers and duties to be granted the limited conservator, and the assets over which the conservator should be granted authority;

(2) a statement as to whether the respondent approves or disapproves of the proposed conservator, and the powers and duties proposed or the scope of the conservatorship; and

(3) any other matters the court directs.

(g) While a petition to establish a conservatorship or for another protective order is pending, after preliminary hearing and without notice to others, the court may make orders to preserve and apply the property of the respondent as may be required for the support of the respondent or individuals who are in fact dependent upon the respondent, and may appoint an agent to assist in that task.

History: 2003 c 12 art 1 s 46; 2004 c 146 art 2 s 5; 2009 c 150 s 12; 2010 c 254 s 10; 2020 c 86 art 1 s 26