

TITLE 15. PROBATE, TRUSTS, AND FIDUCIARIES
COLORADO PROBATE CODE
ARTICLE 14. PERSONS UNDER DISABILITY - PROTECTION
PART 3. GUARDIANSHIP OF INCAPACITATED PERSON

15-14-301. Appointment and status of guardian

A person becomes a guardian of an incapacitated person upon appointment by the court. The guardianship continues until terminated, without regard to the location of the guardian or ward.

15-14-302. Reserved

15-14-303. Reserved

15-14-304. Judicial appointment of guardian - petition

(1) An individual or a person interested in the individual's welfare may petition for a determination of incapacity, in whole or in part, and for the appointment of a limited or unlimited guardian for the individual.

(2) The petition must set forth the petitioner's name, residence, current address if different, relationship to the respondent, and interest in the appointment and, to the extent known, state or contain the following with respect to the respondent and the relief requested:

(a) The respondent's name, age, principal residence, current street address, and, if different, the address of the dwelling in which it is proposed that the respondent will reside if the appointment is made;

(b)

(I) The name and address of the respondent's:

(A) Spouse or partner in a civil union or, if the respondent has none, an adult with whom the respondent has resided for more than six months within one year before the filing of the petition; and

(B) Adult children and parents; or

(II) If the respondent has neither spouse, partner in a civil union, adult child, nor parent, at least one of the adults nearest in kinship to the respondent who can be found with reasonable efforts;

(c) The name and address of each person responsible for care or custody of the respondent, including the respondent's treating physician;

(d) The name and address of each legal representative of the respondent;

- (e) The name and address of each person nominated as guardian by the respondent;
- (f) The name and address of each proposed guardian and the reason why the proposed guardian should be selected;
- (g) The reason why guardianship is necessary, including a brief description of the nature and extent of the respondent's alleged incapacity;
- (h) If an unlimited guardianship is requested, the reason why limited guardianship is inappropriate and, if a limited guardianship is requested, the powers to be granted to the limited guardian; and
- (i) A general statement of the respondent's property with an estimate of its value, including any insurance or pension, and the source and amount of any other anticipated income or receipts.

15-14-305. Preliminaries to hearing

(1) Upon receipt of a petition to establish a guardianship, the court shall set a date and time for hearing the petition and appoint a visitor. The duties and reporting requirements of the visitor are limited to the relief requested in the petition. The visitor must be a person who has such training as the court deems appropriate.

(2) The court shall appoint a lawyer to represent the respondent in the proceeding if:

- (a) Requested by the respondent;
- (b) Recommended by the visitor; or
- (c) The court determines that the respondent needs representation.

(3) The visitor shall interview the respondent in person and, to the extent that the respondent is able to understand:

- (a) Explain to the respondent the substance of the petition, the nature, purpose, and effect of the proceeding, the respondent's rights at the hearing, and the general powers and duties of a guardian;
- (b) Determine the respondent's views about the proposed guardian, the proposed guardian's powers and duties, and the scope and duration of the proposed guardianship;
- (c) Inform the respondent of 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

(d) Inform the respondent that all costs and expenses of the proceeding, including respondent's attorney fees, will be paid from the respondent's estate unless the court directs otherwise.

(4) In addition to the duties imposed by subsection (3) of this section, the visitor shall:

(a) Interview the petitioner and the proposed guardian;

(b) Visit the respondent's present dwelling and any dwelling in which the respondent will live, if known, if the appointment is made;

(c) Obtain information from any physician or other person who is known to have treated, advised, or assessed the respondent's relevant physical or mental condition; and

(d) Make any other investigation the court directs.

(5) The visitor shall promptly file a report in writing with the court, which must include:

(a) A recommendation as to whether a lawyer should be appointed to represent the respondent and whether a guardian ad litem should be appointed to represent the respondent's best interest;

(b) A summary of daily functions the respondent can manage without assistance, could manage with the assistance of supportive services or benefits, including use of appropriate technological assistance, and cannot manage;

(c) Recommendations regarding the appropriateness of guardianship, including whether less restrictive means of intervention are available, the type of guardianship, and, if a limited guardianship, the powers to be granted to the limited guardian;

(d) A statement of the qualifications of the proposed guardian, together with a statement as to whether the respondent approves or disapproves of:

(I) The proposed guardian;

(II) The powers and duties proposed; and

(III) The scope of the guardianship;

(e) A statement as to whether the proposed dwelling meets the respondent's individual needs;

(f) A recommendation as to whether a professional evaluation or further evaluation is necessary; and

(g) Any other matters the court directs.

15-14-306. Professional evaluation

(1) At or before a hearing under this part 3, the court may order a professional evaluation of the respondent and shall order the evaluation if the respondent so demands. If the court orders the evaluation, the respondent must be examined by a physician, psychologist, or other individual appointed by the court who is qualified to evaluate the respondent's alleged impairment. The examiner shall promptly file a written report with the court. Unless otherwise directed by the court, the report must contain:

(a) A description of the nature, type, and extent of the respondent's specific cognitive and functional limitations, if any;

(b) An evaluation of the respondent's mental and physical condition and, if appropriate, educational potential, adaptive behavior, and social skills;

(c) A prognosis for improvement and a recommendation as to the appropriate treatment or habilitation plan; and

(d) The date of any assessment or examination upon which the report is based.

15-14-307. Reserved

15-14-308. Presence and rights at hearing

(1) Unless excused by the court for good cause, the proposed guardian shall attend the hearing. The respondent shall attend the hearing, unless excused by the court for good cause. The respondent may present evidence and subpoena witnesses and documents; examine witnesses, including any court-appointed physician, psychologist, or other individual qualified to evaluate the alleged impairment, and the visitor; and otherwise participate in the hearing. The hearing may be held in a manner that reasonably accommodates the respondent and may be closed upon the request of the respondent or upon a showing of good cause, except that the hearing may not be closed over the objection of the respondent.

(2) Any person may request permission to participate in the proceeding. The court may grant the request, with or without hearing, upon determining that the best interest of the respondent will be served. The court may attach appropriate conditions to the participation.

(3) The petitioner shall make every reasonable effort to secure the respondent's attendance at the hearing.

15-14-309. Notice

(1) A copy of a petition for guardianship and notice of the hearing on the petition must be served personally on the respondent. The notice must include a statement that the respondent must be physically present unless excused by the court, inform the respondent of the respondent's rights at the hearing, and include a description of the nature, purpose, and consequences of an appointment. A failure to serve the respondent with a notice substantially complying with this subsection (1) is jurisdictional and thus precludes the court from granting the petition.

(2) In a proceeding to establish a guardianship, a copy of the petition for guardianship and notice of the hearing meeting the requirements of subsection (1) of this section must be given to the persons listed in the petition. Failure to give notice under this subsection (2) is not jurisdictional and thus does not preclude the appointment of a guardian or the making of a protective order.

(3) Notice of the hearing on a petition for an order after appointment of a guardian, together with a copy of the petition, must be given to the ward, the guardian, and any other person the court directs.

(4) A guardian shall give notice of the filing of the guardian's report, together with a copy of the report, to the ward and any other person the court directs. The notice must be delivered or sent within ten days after the filing of the report.

15-14-310. Who may be guardian - priorities - prohibition of dual roles

(1) Subject to subsection (4) of this section, the court in appointing a guardian shall consider persons otherwise qualified in the following order of priority:

(a) A guardian, other than a temporary or emergency guardian, currently acting for the respondent in this state or elsewhere;

(b) A person nominated as guardian by the respondent, including the respondent's specific nomination of a guardian made in a durable power of attorney or given priority to be a guardian in a designated beneficiary agreement made pursuant to article 22 of this title;

(c) An agent appointed by the respondent under a medical durable power of attorney pursuant to section 15-14-506;

(d) An agent appointed by the respondent under a general durable power of attorney;

(e) The spouse of the respondent or a person nominated by will or other signed writing of a deceased spouse;

(e.5) The partner in a civil union of the respondent or a person nominated by will or other signed writing of a deceased partner in a civil union;

(f) An adult child of the respondent;

(g) A parent of the respondent or an individual nominated by will or other signed writing of a deceased parent; and

(h) An adult with whom the respondent has resided for more than six months immediately before the filing of the petition.

(2) A respondent's nomination or appointment of a guardian shall create priority for the nominee or appointee only if, at the time of nomination or appointment, the respondent had sufficient capacity to express a preference.

(3) With respect to persons having equal priority, the court shall select the one it considers best qualified. The court, for good cause shown, may decline to appoint a person having priority and appoint a person having a lower priority or no priority.

(4) An owner, operator, or employee of a long-term-care provider from which the respondent is receiving care may not be appointed as guardian unless related to the respondent by blood, marriage, or adoption.

(5) (a) Unless the court makes specific findings for good cause shown or the person is a family caregiver as defined in section 25.5-10-202, C.R.S., or the person is a caregiver to an eligible person pursuant to section 25.5-6-1101 (4), C.R.S., the same professional may not act as an incapacitated person's or a protected person's:

(I) Guardian and conservator; or

(II) Guardian and direct service provider; or

(III) Conservator and direct service provider.

(b) In addition, a guardian or conservator may not employ the same person to act as both care manager and direct service provider for the incapacitated person or protected person unless the person is a family caregiver as defined in section 25.5-10-202, C.R.S.

COMMENT [from statute annotation]

This section gives top priority for appointment as guardian to existing guardians appointed elsewhere, to the respondent's nominee for the position, and to the respondent's agent, in that order. Existing guardians are granted a first priority for two reasons. First, many of these cases will involve transfers of a guardianship from another state. To assure a smooth transition, the currently appointed guardian, whether appointed in this state or another, should have the right to the appointment at the new location. Second, other cases will involve situations where a guardianship appointment is sought despite the appointment in another place. Granting the existing guardian

priority will deter such forum shopping. If the existing guardian is inappropriate for some reason, subsection (b) permits the Court to pass over the existing guardian and appoint another with or without priority. While an existing guardian is generally granted a first priority for appointment, a temporary substitute and an emergency guardian are excluded from priority because of the short-term nature of their involvement.

A guardian or individual nominated by the respondent or the agent named in the respondent's health care power of attorney has priority for appointment over the respondent's relatives. The nomination may include anyone nominated orally at the hearing, if the respondent has sufficient capacity at the time to express a preference. The nomination may also be made by a separate document. While it is generally good practice for an individual to nominate as the guardian the agent named in a durable power of attorney, the section grants such an agent a preference even in the absence of a specific nomination. The agent is granted a preference on the theory that the agent is the person the respondent would most likely prefer to act. The nomination of the agent will also make it more difficult for someone to use a guardianship to thwart the authority of the agent. To assure that the agent will be in a position to assert this priority, Sections 5-304(b)(4) and 5-309(b) require that the agent receive notice of the proceeding. Also, until the Court has acted to approve the revocation of that authority, Section 5-316(c) provides that the authority of an agent for health-care decisions takes precedence over that of the guardian.

Subsection (a)(7) gives a seventh-level preference to a domestic partner or companion or an individual who has a close, personal relationship with the respondent. Note that there is no requirement that the respondent had resided with the adult for more than six months immediately prior to the filing of the petition, just that the requisite residency have occurred at some point in time before the petition is filed. Courts should use a reasonableness standard in applying this subsection so that priority is given to someone with whom the respondent has had a close, enduring relationship. For factors to consider in making this determination, see the comment to Section 5-304, which discusses the interpretation of the phrase "an adult with whom the respondent has resided for more than six months before the filing of the petition" within the context of the persons required to be listed in the petition for appointment. Note that although the phrase can be interpreted quite broadly, it is intended to be descriptive of those individuals who have had an enduring relationship with the respondent for at least a six month period and who, because of this relationship, should be given a priority for consideration as guardian.

Subsection (c) prohibits anyone affiliated with a long-term care institution at which the respondent is receiving care from being appointed as guardian absent a blood, marital or adoptive relationship. Strict application of this subsection is crucial to avoid a conflict of interest and to protect the ward. Each state enacting Parts 1-4 of this article needs to insert the particular term or terms used in the state for those facilities considered to be long-term care institutions.

A professional guardian, including a public agency or nonprofit corporation, was specifically not given priority for appointment as guardian because those given priority are limited to individuals with whom the ward has a close relationship. The committee which drafted the 1997 revision of the Uniform Guardianship and Protective Proceedings Act (Parts 1-4 of this article) recognized the valuable service that a professional guardian, a public agency or nonprofit corporation provides. A professional guardian can still be appointed guardian if no one with priority is available and willing to serve or if the Court, acting in the respondent's best interest, declines to appoint a person having priority. A public agency or nonprofit corporation is eligible to be appointed guardian as long as it can provide an active and suitable guardianship program and is not otherwise providing substantial services or assistance to the respondent, but is not entitled to statutory priority in appointment as guardian.

This section is based on UGPPA (1982) Section 2-205 (UPC Section 5-305 (1982)).

15-14-311. Findings - order of appointment

(1) The court may:

(a) Appoint a limited or unlimited guardian for a respondent only if it finds by clear and convincing evidence that:

(I) The respondent is an incapacitated person; and

(II) The respondent's identified needs cannot be met by less restrictive means, including use of appropriate and reasonably available technological assistance; or

(b) With appropriate findings, treat the petition as one for a protective order under section 15-14-401, enter any other appropriate order, or dismiss the proceeding.

(2) The court, whenever feasible, shall grant to a guardian only those powers necessitated by the ward's limitations and demonstrated needs and make appointive and other orders that will encourage the development of the ward's maximum self-reliance and independence.

(3) Within thirty days after an appointment, a guardian shall send or deliver to the ward and to all other persons given notice of the hearing on the petition a copy of the order of appointment, together with a notice of the right to request termination or modification.

15-14-312. Emergency guardian

(1) If the court finds that compliance with the procedures of this part 3 will likely result in substantial harm to the respondent's health, safety, or welfare, and that no other person appears to have authority and willingness to act in the circumstances, the court, on petition by a person interested in the respondent's welfare, may appoint an emergency guardian whose authority may not exceed sixty days and who may exercise only the powers specified in the order. Immediately upon appointment of an emergency guardian, the court shall appoint a lawyer to represent the respondent throughout the emergency guardianship. Except as otherwise provided in subsection (2) of this section, reasonable notice of the time and place of a hearing on the petition must be given to the respondent and any other persons as the court directs.

(2) An emergency guardian may be appointed without notice to the respondent and the respondent's lawyer only if the court finds from testimony that the respondent will be substantially harmed if the appointment is delayed. If not present at the hearing, the respondent must be given notice of the appointment within forty-eight hours after the appointment. The court shall hold a hearing on the appropriateness of the appointment within fourteen days after the court's receipt of such a request.

(3) Appointment of an emergency guardian, with or without notice, is not a determination of the respondent's incapacity.

(4) The court may remove an emergency guardian or modify the powers granted at any time. An emergency guardian shall make any report the court requires. In other respects, the provisions of parts 1 to 4 of this article concerning guardians apply to an emergency guardian.

15-14-313. Temporary substitute guardian

(1) If the court finds that a guardian is not effectively performing the guardian's duties and that the welfare of the ward requires immediate action, it may appoint a temporary substitute guardian for the ward for a specified period not exceeding six months. Except as otherwise ordered by the court, a temporary substitute guardian so appointed has the powers set forth in the previous order of appointment. The authority of any unlimited or limited guardian previously appointed by the court is suspended as long as a temporary substitute guardian has authority. If an appointment is made without previous notice to the ward, the affected guardian, and other interested persons, the temporary substitute guardian, within five days after the appointment, shall inform them of the appointment.

(2) The court may remove a temporary substitute guardian or modify the powers granted at any time. A temporary substitute guardian shall make any report the court requires. In other respects, the provisions of parts 1 to 4 of this article concerning guardians apply to a temporary substitute guardian.

15-14-314. Duties of guardian

(1) Except as otherwise limited by the court, a guardian shall make decisions regarding the ward's support, care, education, health, and welfare. A guardian shall exercise authority only as necessitated by the ward's limitations and, to the extent possible, shall encourage the ward to participate in decisions, act on the ward's own behalf, and develop or regain the capacity to manage the ward's personal affairs. A guardian, in making decisions, shall consider the expressed desires and personal values of the ward to the extent known to the guardian. A guardian, at all times, shall act in the ward's best interest and exercise reasonable care, diligence, and prudence.

(2) A guardian shall:

(a) Become or remain personally acquainted with the ward and maintain sufficient contact with the ward to know of the ward's capacities, limitations, needs, opportunities, and physical and mental health;

(b) Take reasonable care of the ward's personal effects and bring protective proceedings if necessary to protect the property of the ward;

- (c) Expend money of the ward that has been received by the guardian for the ward's current needs for support, care, education, health, and welfare;
- (d) Conserve any excess money of the ward for the ward's future needs, but if a conservator has been appointed for the estate of the ward, the guardian shall pay the money to the conservator, at least quarterly, to be conserved for the ward's future needs;
- (e) Immediately notify the court if the ward's condition has changed so that the ward is capable of exercising rights previously removed;
- (f) Inform the court of any change in the ward's custodial dwelling or address; and
- (g) Immediately notify the court in writing of the ward's death.

15-14-315. Powers of guardian

(1) Subject to the limitations set forth in section 15-14-316 and except as otherwise limited by the court, a guardian may:

- (a) Apply for and receive money payable to the ward or the ward's guardian or custodian for the support of the ward under the terms of any statutory system of benefits or insurance or any private contract, devise, trust, conservatorship, or custodianship;
- (b) If otherwise consistent with the terms of any order by a court of competent jurisdiction relating to custody of the ward, take custody of the ward and establish the ward's place of custodial dwelling, but may only establish or move the ward's place of dwelling outside this state upon express authorization of the court;
- (c) If a conservator for the estate of the ward has not been appointed with existing authority, commence a proceeding, including an administrative proceeding, or take other appropriate action to compel a person to support the ward or to pay money for the benefit of the ward;
- (d) Consent to medical or other care, treatment, or service for the ward; and
- (e) If reasonable under all of the circumstances, delegate to the ward certain responsibilities for decisions affecting the ward's well-being.

(2) The court may specifically authorize or direct the guardian to consent to the adoption or marriage of the ward.

15-14-315.5. Dissolution of marriage and legal separation

(1) The guardian may petition the court for authority to commence and maintain an action for dissolution of marriage or legal separation on behalf of the ward. The court may grant such authority only if satisfied, after notice and hearing, that:

(a) It is in the best interest of the ward based on evidence of abandonment, abuse, exploitation, or other compelling circumstances, and the ward either is incapable of consenting; or

(b) The ward has consented to the proposed dissolution of marriage or legal separation.

(2) Nothing in this section shall be construed as modifying the statutory grounds for dissolution of marriage and legal separation as set forth in section 14-10-106, C.R.S.

15-14-316. Rights and immunities of guardian - limitations

(1) A guardian is entitled to reasonable compensation for services as guardian and to reimbursement for room and board provided by the guardian or one who is affiliated with the guardian, but only as approved by order of the court. If a conservator, other than the guardian or one who is affiliated with the guardian, has been appointed for the estate of the ward, reasonable compensation and reimbursement to the guardian may be approved and paid by the conservator without order of the court.

(2) A guardian need not use the guardian's personal funds for the ward's expenses. A guardian is not liable to a third person for acts of the ward solely by reason of the relationship. A guardian who exercises reasonable care in choosing a third person providing medical or other care, treatment, or service for the ward is not liable for injury to the ward resulting from the negligent or wrongful conduct of the third party.

(3) A guardian, without authorization of the court, may not revoke a medical durable power of attorney made pursuant to section 15-14-506 of which the ward is the principal. If a medical durable power of attorney made pursuant to section 15-14-506 is in effect, absent an order of the court to the contrary, a health-care decision of the agent takes precedence over that of a guardian.

(4) A guardian may not initiate the commitment of a ward to a mental health care institution or facility except in accordance with the state's procedure for involuntary civil commitment. To obtain hospital or institutional care and treatment for mental illness of a ward, a guardian shall proceed as provided under article 65 of title 27, C.R.S. To obtain services and supports from an approved service agency as defined in section 25.5-10-202, C.R.S., for a ward with intellectual and developmental disabilities, a guardian shall proceed under article 10 of title 25.5, C.R.S. To obtain care and treatment for alcoholism or substance abuse, a guardian shall proceed as

provided under article 80 of title 27, C.R.S. No guardian shall have the authority to consent to any such care or treatment against the will of the ward.

15-14-317. Reports - monitoring of guardianship - court access to records

(1) Within sixty days after appointment or as otherwise directed by the court, a guardian shall report to the court in writing on the condition of the ward, the guardian's personal care plan for the ward, and account for money and other assets in the guardian's possession or subject to the guardian's control. A guardian shall report at least annually thereafter and whenever ordered by the court. The annual report must state or contain:

- (a) The current mental, physical, and social condition of the ward;
- (b) The living arrangements for all addresses of the ward during the reporting period;
- (c) The medical, educational, vocational, and other services provided to the ward and the guardian's opinion as to the adequacy of the ward's care;
- (d) A summary of the guardian's visits with the ward and activities on the ward's behalf and the extent to which the ward has participated in decision-making;
- (e) Whether the guardian considers the current plan for care, treatment, or habilitation to be in the ward's best interest;
- (f) Plans for future care; and
- (g) A recommendation as to the need for continued guardianship and any recommended changes in the scope of the guardianship.

(2) The court may appoint a visitor or other suitable person to review a report, interview the ward or guardian, and make any other investigation the court directs.

(3) The court shall establish a system for monitoring guardianships, including the filing and review of annual reports.

(4) (a) Whenever a guardian fails to file a report or fails to respond to an order of the court to show cause why the guardian should not be held in contempt of court, the clerk of the court or his or her designee may research the whereabouts and contact information of the guardian and the ward. To facilitate this research, the clerk of the court or his or her designee shall have access to data maintained by other state agencies, including but not limited to vital statistics information maintained by the department of public health and environment, wage and employment data maintained by the department of labor and employment, lists of licensed drivers and income tax data maintained by the department of revenue and provided pursuant to section 13-71-107, C.R.S., and voter registration

information obtained annually by the state court administrator pursuant to section 13-71-107, C.R.S. The court may access the data only to obtain contact information for the guardian or the ward. Notwithstanding any provision of law to the contrary, the judicial department and the other state agencies listed in this paragraph (a) may enter into agreements for the sharing of this data. The judicial department and the courts shall not access data maintained pursuant to the "Address Confidentiality Program Act", part 21 of article 30 of title 24, C.R.S.

(b) The court shall preserve the confidentiality of the data obtained from other state agencies and use the data only for the purposes set forth in this subsection (4). Notwithstanding the provisions of article 72 of title 24, C.R.S., documents and information obtained by the court pursuant to this subsection (4) are not public records and shall be open to public inspection only upon an order of the court based on a finding of good cause, except to the extent they would otherwise be open to inspection from the providing state agency.

(c) For purposes of this subsection (4), "contact information" means name, residential address, business address, date of birth, date of death, phone number, e-mail address, or other identifying information as directed by the court.

15-14-318. Termination or modification of guardianship - resignation or removal of guardian

(1) A guardianship terminates upon the death of the ward or upon order of the court.

(2) On petition of a ward, a guardian, or another person interested in the ward's welfare, the court shall terminate a guardianship if the ward no longer meets the standard for establishing the guardianship. The court may modify the type of appointment or powers granted to the guardian if the extent of protection or assistance previously granted is currently excessive or insufficient or the ward's capacity to provide for support, care, education, health, and welfare has so changed as to warrant that action.

(3) Except as otherwise ordered by the court for good cause, the court, before terminating a guardianship, shall follow the same procedures to safeguard the rights of the ward as apply to a petition for guardianship.

(3.5) The following provisions apply in a termination proceeding that is initiated by the ward:

(a) The guardian may file a written report to the court regarding any matter relevant to the termination proceeding, and the guardian may file a motion for instructions regarding any relevant matter including, but not limited to, the following:

(l) Whether an attorney, guardian ad litem, or visitor should be appointed for the ward;

(II) Whether any further investigation or professional evaluation of the ward should be conducted, the scope of the investigation or professional evaluation, and when the investigation or professional evaluation should be completed; and

(III) Whether the guardian is to be involved in the termination proceedings and, if so, to what extent.

(b) If the guardian elects to file a written report or a motion for instructions, the guardian shall file such initial pleadings within twenty-one days after the petition to terminate has been filed. Any interested person shall then have fourteen days to file a response. If a response is filed, the guardian shall have seven days to file a reply. If a motion for instructions is filed by the guardian as his or her initial pleading, the court shall rule on the motion before the petition for termination of the guardianship is set for hearing. Unless a hearing on the motion for instructions is requested by the court, the court may rule on the pleadings without a hearing after the time period for the filing of the last responsive pleading has expired. After the filing of the guardian's initial motion for instructions, the guardian may file subsequent motions for instruction as appropriate.

(c) Except for the actions authorized in paragraphs (a), (b), and (e) of this subsection (3.5), or as otherwise ordered by the court, the guardian may not take any action to oppose or interfere in the termination proceeding. The filing of the initial or subsequent motion for instructions by the guardian shall not, in and of itself, be deemed opposition or interference.

(d) Unless ordered by the court, the guardian shall have no duty to participate in the termination proceeding, and the guardian shall incur no liability for filing the report or motion for instruction or for failing to participate in the proceeding.

(e) Nothing in this subsection (3.5) shall prevent:

(I) The court, on its own motion and regardless of whether the guardian has filed a report or request for instructions, from ordering the guardian to take any action that the court deems appropriate or from appointing an attorney, guardian ad litem, visitor, or professional evaluator;

(II) The court from ordering the guardian to appear at the termination proceeding and give testimony; or

(III) Any interested person from calling the guardian as a witness in the termination proceeding.

(f) Any individual who has been appointed as a guardian, and is an interested person in his or her individual capacity, and wants to participate in the termination proceeding in his or her individual capacity and not in his or her fiduciary capacity may do so without

restriction or limitation. The payment of any fees and costs to that individual, related to his or her decision to participate in the termination proceeding, shall be governed by section 15-10-602 (7) and not by section 15-10-602 (1).

(4) The court may remove a guardian pursuant to section 15-10-503 or permit the guardian to resign as set forth in section 15-14-112.

(5) Issues of liability as between an estate and the estate's guardian individually may be determined:

(a) In a proceeding pursuant to section 15-10-504;

(b) In a proceeding for accounting, surcharge, indemnification, sanctions, or removal; or

(c) In other appropriate proceedings.

(6) When a ward dies, all fees, costs, and expenses of the administration of the guardianship, including any unpaid guardian fees and costs and those of his or her counsel, may be submitted to the court for court approval in conjunction with the termination of the guardianship. Thereafter, all court-approved fees, costs, and expenses of administration arising from the guardianship shall be paid as court-approved claims for costs and expenses of administration in the decedent's estate. In the event that there are insufficient moneys to pay all claims in the decedent's estate in full, the fees, costs, and expenses of administration arising from the guardianship shall retain their classification as "costs and expenses of administration" in the decedent's estate and shall be paid pursuant to section 15-12-805.

15-14-319. Right to a lawyer post-adjudication

(1) An adult ward has the right post-adjudication to be represented by a lawyer of the ward's choosing at the expense of the ward's estate unless the court finds by clear and convincing evidence that the ward lacks sufficient capacity to provide informed consent for representation by a lawyer. Upon such a finding, the court shall appoint a guardian ad litem, and the adult ward retains the right to a lawyer of the adult ward's choosing for the limited purpose of interlocutory appeal of the court's decision as to the right to a lawyer.

(2) The right to a lawyer described in subsection (1) of this section applies to a ward participating in proceedings or seeking any remedy under parts 1 to 4 of this article, including change or termination of a guardianship, judicial review of fiduciary conduct, appellate relief, and any other petition for relief from the court.

(3) Subject to subsection (1) of this section, the court shall appoint a lawyer to represent any adult ward in any proceedings pursuant to parts 1 to 4 of this article if the ward is not represented by a lawyer and the court determines the ward needs such representation.

(4) A lawyer for the ward, on presentation of proof of representation, must be given access to all information pertinent to proceedings under this title, including immediate access to medical records and information.