

Committee: JUD
LA: MJR
LR # and item number: 0286(02)
New Title?: YES
Add Emergency?: no
Date: 3/8/20
File Name: G:\COMMITTEES\JUD\BILL AMENDMENTS\129th 2nd\028602.docx (3/17/2020 01:20:00 PM)

Tabled
Need to vote

COMMITTEE AMENDMENT “.” To LD 531, An Act To Provide Counsel for a Person Who Is the Subject of an Adult Guardianship, Conservatorship or Other Protective Arrangement Proceeding

Amend the title to read:

An Act To Establish a Presumption of Counsel for a Person Who Is the Subject of an Adult Guardianship, Conservatorship or Other Protective Arrangement Proceeding

Amend the bill by striking out everything after the enacting clause and inserting in its place the following:

Sec. 1. 18-C MRSA §5-305, sub-§1 is amended to read:

1. Appointment of attorney required. There is a presumption that every respondent and adult subject to guardianship is entitled to legal representation. The In any proceeding under section 5-302, the court shall appoint an attorney to represent the for any unrepresented respondent or adult subject to guardianship in a proceeding on a petition under section 5-302 if: This presumption may be rebutted if the court finds by clear and convincing evidence that the respondent or adult subject to guardianship knowingly and voluntarily refuses such representation and does not wish to contest any aspect of the proceeding or to seek any limitation on the guardian’s powers.

~~A. Requested by the respondent;~~

~~B. Recommended by the visitor;~~

~~C. The court determines that the respondent needs representation; or~~

~~D. It comes to the court's attention that the respondent wishes to contest any aspect of the proceeding or to seek any limitation on the proposed guardian's powers.~~

Sec. 2. 18-C MRSA §5-406, sub-§1 is amended to read:

1. Attorney for respondent Appointment of attorney required. ~~The~~ There is a presumption that every respondent and adult subject to conservatorship is entitled to legal representation. In any proceeding under section 5-402, the court shall appoint an attorney to represent a for any unrepresented respondent or adult subject to conservatorship in a proceeding on a petition under section 5-402 if. This presumption may be rebutted if the court finds by clear and convincing evidence that the respondent or adult subject to conservatorship knowingly and voluntarily refuses such representation and does not wish to contest any aspect of the proceeding or to seek any limitation on the conservator's powers.

- ~~A. Requested by the respondent;~~
- ~~B. Recommended by the visitor;~~
- ~~C. The court determines that the respondent needs representation; or~~
- ~~D. It comes to the court's attention that the respondent wishes to contest any aspect of the proceeding or to seek any limitation on the proposed conservator's powers.~~

Sec. 3. 18-C MRSA §5-507, sub-§1 is amended to read:

1. Appointment of attorney required. ~~The~~ There is a presumption that every respondent and adult subject to a protective arrangement is entitled to legal representation. The court shall appoint an attorney to represent the for an unrepresented respondent or adult subject to a protective arrangement in a proceeding under this Part if. This presumption may be rebutted if the court finds by clear and convincing evidence that the respondent or adult subject to a protective arrangement knowingly and voluntarily refuses such representation and does not wish to contest any aspect of the proceeding or to seek any limitation to the protective arrangement.

- ~~A. Requested by the respondent;~~
- ~~B. Recommended by the visitor;~~
- ~~C. The court determines that the respondent needs representation; or~~
- ~~D. It comes to the court's attention that the respondent wishes to contest any aspect of the proceeding or to seek any limitations on the protective arrangement.~~

SUMMARY

This amendment replaces the bill. The bill requires the Probate Court to appoint an attorney in all adult guardianship, conservatorship and other protective proceedings if the adult is not already represented by an attorney.

This amendment establishes a presumption that an attorney be appointed for every adult in a guardianship, conservatorship or other protective proceeding when not already represented, except that the presumption may be rebutted if the court finds by clear and convincing evidence that the adult knowingly and voluntarily refuses such representation and does not wish to contest any aspect of the proceeding or powers of the guardian or conservator.



129th MAINE LEGISLATURE

LD 531

LR 286(02)

**An Act To Provide Counsel for a Person Who Is the Subject of an Adult Guardianship,
Conservatorship or Other Protective Arrangement Proceeding**

Fiscal Note for Bill as Amended by Committee Amendment " "

Committee: Judiciary

Fiscal Note Required: No

Fiscal Note

No fiscal impact

Reinsch, Margaret

From: Judge Libby Mitchell <judgelibbymitchell@gmail.com>
Sent: Thursday, March 12, 2020 11:20 AM
To: Reinsch, Margaret
Cc: probatecourt@kennebeccounty.org
Subject: Fwd: LD 531 - draft amendment

This message originates from outside the Maine Legislature.

Sent from my iPhone

Begin forwarded message:

From: Joly Law Office <wiltonlaw@beeline-online.net>
Date: March 10, 2020 at 10:58:21 PM EDT
To: Judge Libby Mitchell <judgelibbymitchell@gmail.com>, Judge Washburn <stamps@beeline-online.net>, Judge Emery <carol@cremerylaw.com>, Scott Houde <gradmanmaine@yahoo.com>, Lyman Holmes <lholmes1948@yahoo.com>, Jarrod Crockett <jarrodsclawme.com>, William Avantaggio <will@avantaggio.com>, Judge Paul Aranson <housolaw@gmail.com>, Judge John Voorhees <john@voorheeslaw.com>, Mike Dubois <mike@mikedubois.com>, Amy Faircloth <amyfaircloth1@gmail.com>, Judge Jim Dunleavy <dunleavy@maine.rr.com>, Judge Jim Austin <jimaustinesq@gmail.com>, Sean Ociepka <sean@belfastbaylaw.com>, Judge Blaisdell <wbbiv@myfairpoint.net>
Subject: RE: LD 531 - draft amendment

The amendments do not address whether or not we should inquire whether the Respondent has funds to pay for an attorney, and if we are to so inquire, how do we do that. Do we request that the Petitioner supply an affidavit of the Respondent's finances?

Margot

From: Judge Libby Mitchell [mailto:judgelibbymitchell@gmail.com]
Sent: Tuesday, March 10, 2020 4:42 PM
To: Judge Washburn <stamps@beeline-online.net>; Judge Emery <carol@cremerylaw.com>; Scott Houde <gradmanmaine@yahoo.com>; Lyman Holmes <lholmes1948@yahoo.com>; Jarrod Crockett <jarrodsclawme.com>; William Avantaggio <will@avantaggio.com>; Judge Margot Joly <wiltonlaw@beeline-online.net>; Judge Paul Aranson <housolaw@gmail.com>; Judge John Voorhees <john@voorheeslaw.com>; Mike Dubois <mike@mikedubois.com>; Amy Faircloth <amyfaircloth1@gmail.com>; Judge Jim Dunleavy <dunleavy@maine.rr.com>; Judge Jim Austin <jimaustinesq@gmail.com>; Sean Ociepka <sean@belfastbaylaw.com>; Judge Blaisdell <wbbiv@myfairpoint.net>
Subject: Fwd: LD 531 - draft amendment

The Judiciary committee has requested our opinion. Again, time sensitive.
Thanks. Libby

Sent from my iPhone

5

Begin forwarded message:

From: "Reinsch, Margaret" <margaret.reinsch@legislature.maine.gov>
Date: March 10, 2020 at 11:40:16 AM EDT
To: Judge Libby Mitchell <judgelibbymitchell@gmail.com>, Kennebec County Probate Court <probatecourt@kennebeccounty.org>
Subject: LD 531 - draft amendment

Hi, Judge Mitchell and Register Ayers –

The Judiciary Committee talked about LD 531 and tabled it for me to draft something that establishes a presumption in favor of appointing an attorney in adult guardianship, conservatorship and protective proceedings.

I am attaching the draft amendment. Would you please share this with the Probate Judges and Probate Registers? We are very interested in thoughts and comments and suggestions. Anything you want to share by Monday would be great.

Thanks so much!
Peggy

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(207) 287-1275 (fax)
margaret.reinsch@legislature.maine.gov

Reinsch, Margaret

From: Judge Libby Mitchell <judgelibbymitchell@gmail.com>
Sent: Thursday, March 12, 2020 11:22 AM
To: Reinsch, Margaret
Cc: probatecourt@kennebeccounty.org
Subject: Fwd: LD 531 - draft amendment

This message originates from outside the Maine Legislature.

Sent from my iPhone

Begin forwarded message:

From: Jarrod Crockett <jarro@sclawme.com>
Date: March 11, 2020 at 3:08:27 PM EDT
To: Carol Emery <carol@cremerylaw.com>, Amy Faircloth <amyfaircloth1@gmail.com>, Paul Aranson <housolaw@gmail.com>
Cc: "stamps@beeline-online.net" <stamps@beeline-online.net>, Lyman Holmes <lholmes1948@yahoo.com>, Scott Houde <gradmanmaine@yahoo.com>, William Avantaggio <will@avantaggio.com>, Judge Margot Joly <wiltonlaw@beeline-online.net>, Judge John Voorhees <john@voorheeslaw.com>, Mike Dubois <mike@mikedubois.com>, Judge Jim Dunleavy <dunleavy@maine.rr.com>, Judge Jim Austin <jimaustinesq@gmail.com>, Sean Ociepka <sean@belfastbaylaw.com>, Judge Blaisdell <wbbiv@myfairpoint.net>, Judge Libby Mitchell <judgelibbymitchell@gmail.com>
Subject: Re: LD 531 - draft amendment

I agree with all the comments below and feel the legislature should review this "Attorney Employment Act" with hesitation.

1. The Respondent will often be paying for an attorney they may not ultimately need/want based on the clear and convincing standard applied. Imagine a petitioner represented by an attorney bringing this action and a respondent trying to argue they do not need counsel.
2. Its an unfunded mandate that applies to probate courts almost exclusively because the state does not have nearly as many of the adult guardianships.
3. Solution looking for a problem. We already appoint an attorney if there is any question and always appoint a visitor.

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From: Carol Emery <carol@cremerylaw.com>
Sent: Wednesday, March 11, 2020 6:55 AM
To: Amy Faircloth <amyfaircloth1@gmail.com>; Paul Aranson <housolaw@gmail.com>
Cc: stamps@beeline-online.net <stamps@beeline-online.net>; Lyman Holmes <llholmes1948@yahoo.com>; Scott Houde <gradmanmaine@yahoo.com>; Jarrod Crockett <jarrod@sclawme.com>; William Avantaggio <will@avantaggio.com>; Judge Margot Joly <wiltonlaw@beeline-online.net>; Judge John Voorhees <john@voorheeslaw.com>; Mike Dubois <Mike@mikedubois.com>; Judge Jim Dunleavy <dunleavy@maine.rr.com>; Judge Jim Austin <jimaustinesq@gmail.com>; Sean Ociepka <sean@belfastbaylaw.com>; Judge Blaisdell <wbbiv@myfairpoint.net>; Judge Libby Mitchell <judgelibbymitchell@gmail.com>
Subject: RE: LD 531 - draft amendment

Libby, I concur with the comments already stated by Lyman and Margot.
(and agreed to by the other judges who have weighed in).
Carol Emery

From: Amy Faircloth [mailto:amyfaircloth1@gmail.com]
Sent: Wednesday, March 11, 2020 6:50 AM
To: Paul Aranson
Cc: stamps@beeline-online.net; Lyman Holmes; Judge Emery; Scott Houde; Jarrod Crockett; William Avantaggio; Judge Margot Joly; Judge John Voorhees; Mike Dubois; Judge Jim Dunleavy; Judge Jim Austin; Sean Ociepka; Judge Blaisdell; Judge Libby Mitchell
Subject: Re: LD 531 - draft amendment

I agree with Lyman and others as well. I think it is important to note that in Penobscot County we have a hard time finding attorneys to serve. If we are using them for all adult guardianships we won't have them for other cases, for example, representing parents in minor guardianship.

Amy

Sent from my iPhone

On Mar 11, 2020, at 6:32 AM, Paul Aranson <housolaw@gmail.com> wrote:

All of the comments are spot on. The visitor reports the situation with Respondent and we judges respond responsibly. Another unfounded mandate.
PA



Sent from my iPhone

On Mar 11, 2020, at 1:38 AM, stamps@beeline-online.net wrote:

As usual, I totally agree with Lyman's well-stated thoughts. This is another unfunded mandate, mostly unnecessary. Now if the State agrees to pay for all those attorneys, I might be OK with it even though I'm not convinced that it is totally necessary.

Rob

On 2020-03-10 21:53, Lyman Holmes wrote:

Hi Libby,

I will share a few thoughts on this.

I think the Visitors used our courts are very conscientious in recommending the appointment of an attorney when they sense that one is needed. We already have a standard practice of appointing an attorney if there is any indication that the Respondent is opposed to the guardianship or the proposed plan in any way. The Probate Courts are also sensitive to the issue at the hearing and if there is any indication that the Respondent objects or needs an attorney, I don't think any of us would hesitate in continuing the hearing until the Respondent has counsel.

It seems to me that our adult guardianships tend to fall into two categories. The first category seems to be young adults who have mental health illnesses or intellectual disabilities. In many of these cases an attorney can be of great assistance and I think we appoint them when needed.

The second category tends to be older adults with dementia. By the time a petition is filed with the Probate Court, the dementia is often severe. These unfortunate people often cannot state their date of birth or the names of their parents or children. They have no idea what medication they are on. Unless there is suspicion of abuse by a family member or caregiver I don't find that any attorney can provide much assistance to these people.

There is also the question of the effect of this bill on the county budgets in providing counsel for indigent respondents.

In addition in the rural counties such as Washington County, we would have difficulty finding attorneys in many cases because the number of attorneys is limited and is not improving. This could result in delays which could be harmful to respondents who may be in dire need of a guardianship.

Please let me know if you have any questions or need any further information.

Lyman

On Tuesday, March 10, 2020, 04:41:53 PM EDT, Judge Libby Mitchell <judgelibbymitchell@gmail.com> wrote:

The Judiciary committee has requested our opinion. Again, time sensitive.
Thanks. Libby

Sent from my iPhone

Begin forwarded message:

From: "Reinsch, Margaret" <margaret.reinsch@legislature.maine.gov>
Date: March 10, 2020 at 11:40:16 AM EDT
To: Judge Libby Mitchell <judgelibbymitchell@gmail.com>, Kennebec County Probate Court <probatecourt@kennebeccounty.org>
Subject: LD 531 - draft amendment

Hi, Judge Mitchell and Register Ayers –

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I am attaching the draft amendment. Would you please share this with the Probate Judges and Probate Registrars? We are very interested in thoughts and comments and suggestions. Anything you want to share by Monday would be great.

Thanks so much!