

A Framework for a Court Rule on the Appointment of Counsel in Probate Conservatorship Proceedings

1. When a conservatee or proposed conservatee is not represented by an attorney of his or her choice in a probate conservatorship proceeding, an attorney shall be provided in all initial proceedings and in those post-adjudication proceedings that may affect the conservatee's rights.

2. Public Defender

(a) The public defender shall be appointed for conservatees and proposed conservatees who are indigent.

(b) The public defender shall adopt quality assurance controls, including performance standards, training programs, monitoring mechanisms, and complaint procedures to ensure that assigned attorneys provide effective representation as zealous advocates in compliance with the requirements of due process of law, state statutes, the Rules of Professional Conduct, and the Americans with Disabilities Act. Complaints regarding the performance of a public defender may also be made to the court.

3. Assigned Counsel

(a) A provider of legal services approved by the court shall assign an attorney to represent conservatees and proposed conservatees who have not retained counsel of his or her choice and who are not represented by the public defender. The provider shall assign counsel to cases on a rotational basis consistent with the complexity of the case.

(b) The provider shall maintain a list of attorneys who it deems are qualified to represent clients in probate conservatorship proceedings. Attorneys who apply to be on the list and who are approved by the provider shall pay the provider an administrative fee for supervision by the provider. The fee shall be established by a Memorandum of Understanding between the provider and the court.

(c) The provider shall adopt quality assurance controls, including performance standards, training programs, monitoring mechanisms, and complaint procedures to ensure that assigned attorneys provide effective representation as zealous advocates in compliance with the requirements of due process of law, state statutes, the Rules of Professional Conduct, and the Americans with Disabilities Act. Complaints regarding the performance of appointed counsel may also be made to the court.

(d) Assigned counsel shall receive compensation for services and reimbursement for costs as specified in a fee schedule approved by the court.

(e) Every three years, the court shall select a provider of legal services to perform these functions pursuant to a procurement process that includes open bidding. The court and the provider shall enter into a Memorandum of Understanding that delineates the terms and conditions of the services to be performed by the provider.