# STATE OF NEW HAMPSHIRE

# PROBATE COURT

#### **PROCEDURE BULLETIN 2**

RELATIVE TO: Court-Appointed Counsel and Guardians ad Litem; Motions to Exceed the Maximum Fee or Cap and Expenditure Guidelines

This procedure bulletin is prepared for informational purposes in processing case files. It is not intended to provide parties with legal advice.

## **Motions to Exceed the Maximum Fee or Cap**

Court-appointed counsel and guardians ad litem will file a Motion to Exceed the Maximum Fee or Cap prior to actually exceeding the original cap; the Motion will include a monetary amount for the proposed revised cap. Court-appointed counsel and guardians ad litem will not exceed a court-approved revised cap unless a new Motion to Exceed, with a new revised cap, has been approved by the court. No probate court will forward billing exceeding the original or revised cap without attaching a copy of the court order authorizing the same.

For the purposes of Supreme Court Rules 48 and 48-A, once a probate court has issued an order and the appeal period has passed, there is finality to the issue addressed by that order. Accordingly, whenever court-appointed counsel is reappointed, the maximum fees or caps detailed in Supreme Court Rules 48 and 48-A apply anew. When court-appointed counsel is reappointed, all probate courts will issue a Reappointment of Attorney, acknowledging that the monetary cap as detailed in Supreme Court Rules 48 and 48-A applies anew.

### **Expenditure Guidelines**

**Termination of Parental Rights under RSA 170-C**. RSA 170-C contains no specific provision for court appointed counsel for petitioners. Accordingly, no probate court should appoint counsel for petitioners. RSA 170-C:10 provides that a parent respondent is entitled to counsel. If the parent respondent is indigent according to the appropriate guidelines, all probate courts may exercise discretion in deciding whether to continue the case in order to allow the parent respondent to reimburse some amount for counsel fees. RSA 170-C:8 provides that the probate court will appoint a guardian ad litem for the child in all termination hearings, and for an alleged incompetent parent in proceedings under RSA 170-C:5, IV. RSA 170-C:13 provides that the petitioner pay all court costs, unless the court suspends payment due to hardship on the petitioner. In those cases, all probate courts will

forward all approved billings for court costs and guardian ad litem fees to the New Hampshire Judicial Council for payment in accordance with Supreme Court Rules 48 and 48-A.

Guardianship of Incapacitated Person under RSA 464-A. RSA 464-A:6 provides that the proposed ward is entitled to counsel. If the proposed ward is indigent according to the appropriate guidelines, all probate courts will forward all approved billings for counsel fees and reimbursable expenses to the New Hampshire Judicial Council for payment in accordance with Supreme Court Rules 48 and 48-A. All probate courts will normally end the role of court-appointed counsel at the inception of the guardianship. Court-appointed counsel will be retained after the inception of the guardianship only upon specific appointment by the probate court, or if an appeal follows pursuant to RSA 567-A:1. Court-appointed counsel will not be involved in annual reports unless specifically ordered by the probate court. RSA 464-A:41 provides that the probate court may, and upon the request of any interested party will, appoint a guardian ad litem for a minor or the proposed ward. If the proposed ward is indigent according to the appropriate guidelines, all probate courts will forward all approved billings for court costs and guardian ad litem fees to the New Hampshire Judicial Council for payment in accordance with Supreme Court Rules 48-A.

**Guardianship of Minor under RSA 463**. RSA 463 contains no specific provision for court-appointed counsel for either the parents or petitioners. Accordingly, no probate court should appoint counsel for parents or petitioners. If a guardian ad litem for the minor is appointed by the court, all probate courts will endeavor to have the parties pay for all guardian ad litem fees and expenses. If the parties are indigent according to the appropriate guidelines, all probate courts will forward all approved billings for guardian ad litem fees and reimbursable expenses to the New Hampshire Judicial Council for payment in accordance with Supreme Court Rule 48-A.

Involuntary Admission under RSA 135-C. RSA 135-C:22 provides that the proposed admittee is entitled to counsel. If the proposed admittee is indigent according to the appropriate guidelines, all probate courts will forward all approved billings for court-appointed counsel fees to the Department of Health and Human Services, Bureau of Behavioral Health, 105 Pleasant Street, Concord, NH 03301 for payment in accordance with Supreme Court Rule 48. All probate courts will forward all approved billings for any psychiatric examination pursuant to RSA 135-C:40 to the Department of Health and Human Services, Bureau of Behavioral Health, 105 Pleasant Street, Concord, NH 03301.

Last Reviewed: August 1, 2007	/s/ David D. King
<del>-</del>	David D. King
	Administrative Judge of Probate Court

History:
Revised August 1, 2007
Effective August 1, 2001
Formerly Procedure Bulletin 1996-13, Issued 9/3/96