

# Guardianship Training for Clerks: Costs, Fees, Appeals

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May 7–9, 2008

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# Costs and Fees

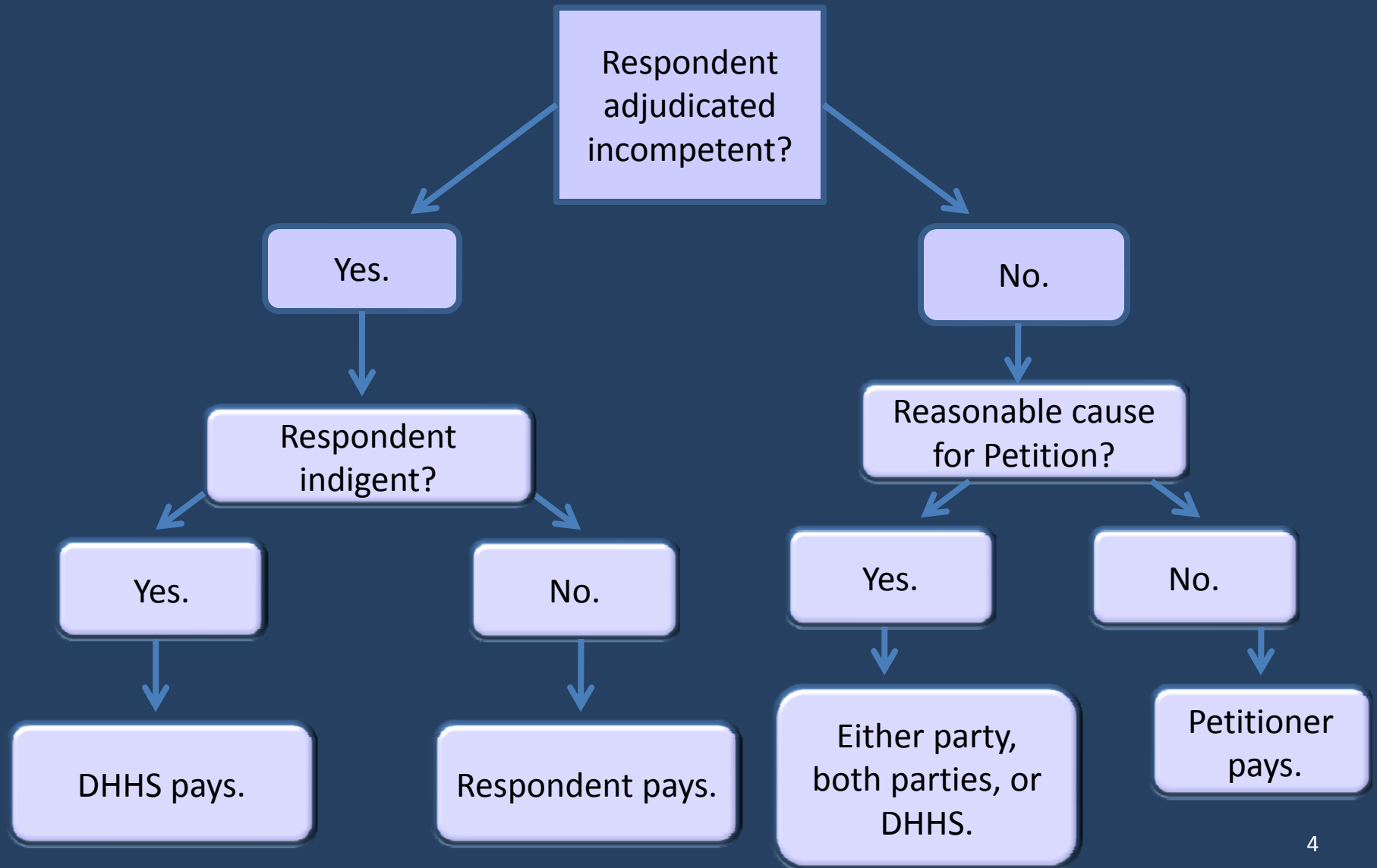
- Governing Statute: § 35A-1116.
- Costs and fees assessed:
  - Cost of MDE
  - Fees of counsel, G.A.L. fees, witness fees
  - Other costs in special proceedings. (7A-306)
    - \$10.00 for use of courtroom
    - \$40.00 General fee
    - Service of Process fees



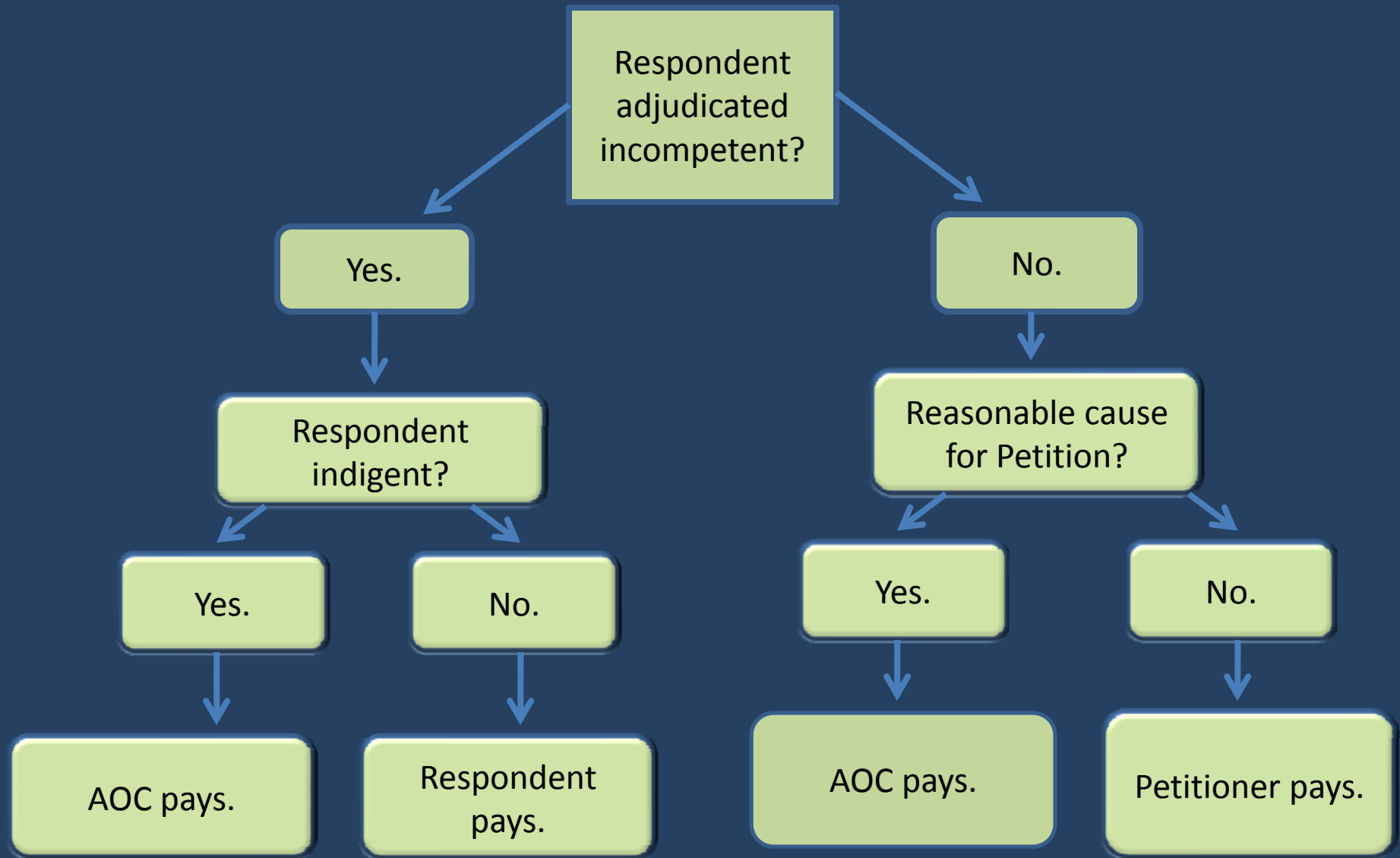
# Costs and Fees

- § 35A-1116 conditions the apportionment of costs and fees on whether
  - Respondent is adjudicated incompetent;
  - Respondent is indigent; and
  - Petitioner had reasonable basis for bringing Petition.
- Clerk will need to make determination of Respondent's indigence and, if case dismissed, Petitioner's good cause to bring Petition.

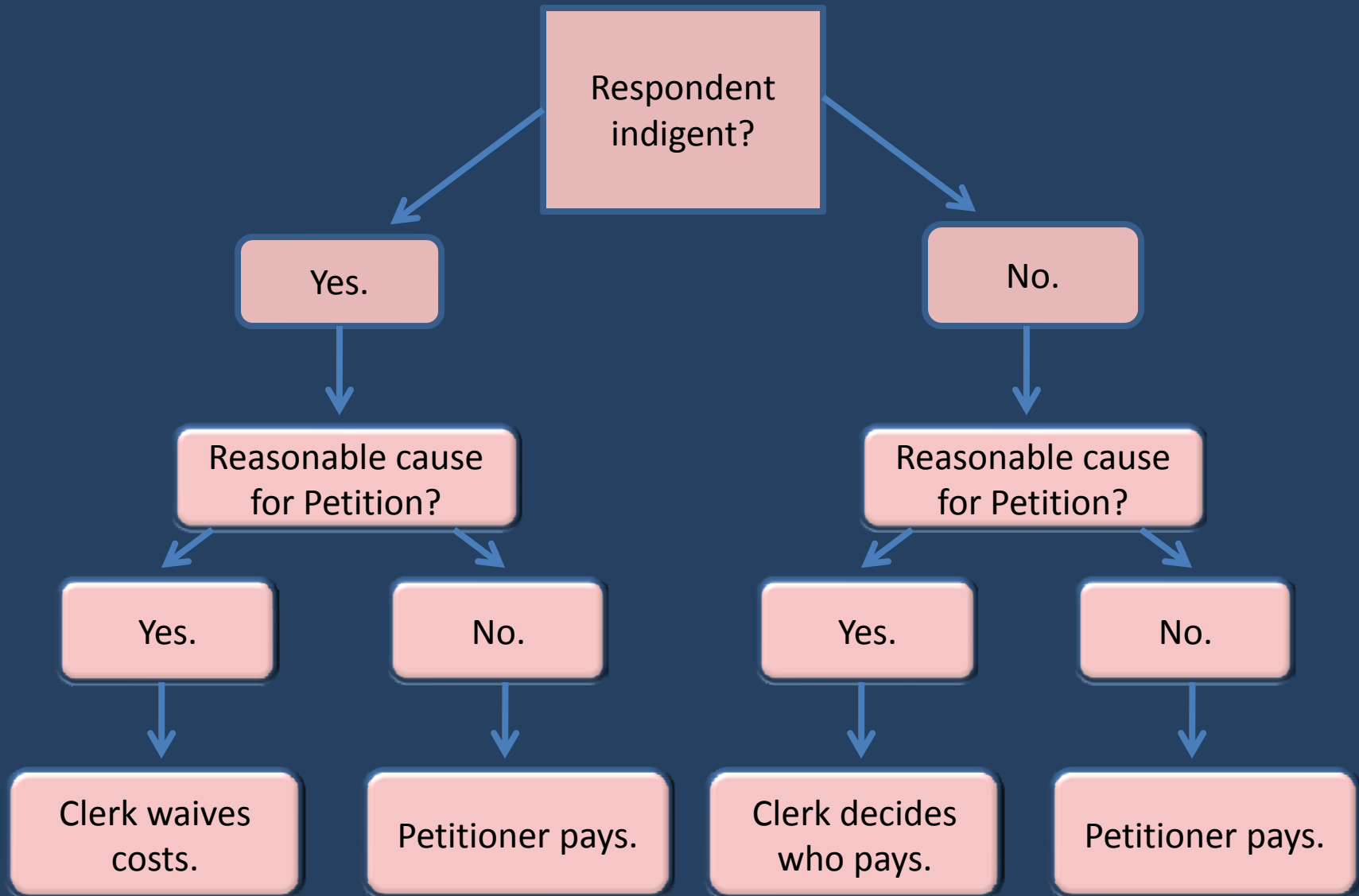
# Cost of MDE



# Appointed Attorney Fees, G.A.L. Fees, Witness Fees



# All Other Costs



# Costs and Fees

Form for Apportionment of Special Proceeding  
Costs and Fees: [AOC-A-84](#).

# Appeals



- Appeal of Clerk's orders in incompetency and guardianship proceedings is to Superior Court
- Governing Statutes: 35A-1115 and 1-301.
- Appellant's notice of appeal must be filed within 10 days of entry of Order.

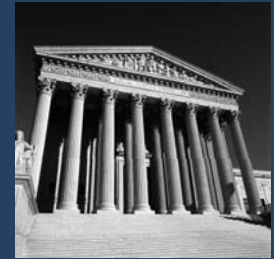


# Appeals



- Appeal of incompetency determination is “de novo”
  - Superior Court holds new hearing similar to clerk’s and enters order of incompetency or dismissal

# Appeals



- Appeal of guardianship determination is “on the record”
  - Superior Court reviews record before the clerk to determine:
    - Whether clerk’s findings of fact are supported by the evidence in the record;
    - Whether the clerk’s conclusions of law are supported by the findings of fact; and
    - Whether the clerk’s order is consistent with conclusions of law and applicable legal standards.

# Appeals



- If Superior Court finds error in guardianship determination, must remand to clerk for further proceedings.
- Superior Court does not decide on appointment of guardian. That issue remains the exclusive jurisdiction of the clerk.

# Appeals



## Preserving the Record:

- Where a hearing is bifurcated, clerk should record the guardianship phase for “on the record” appeal.
- Where a hearing is not bifurcated, clerk should record entire hearing to preserve all portions relevant to guardianship determination.

# Appeals

Clerk of  
Court

- Adjudicates Incompetency
- Appoints Guardian

Superior  
Court

- Reviews Incompetency Order “De Novo”
- Reviews Guardian Appointment “On the Record” and remands to clerk as necessary

Court of  
Appeals

- Reviews Superior Court’s Orders per Chapter 7A and Rules of Appellate Procedure
- Appeal to Supreme Court usually discretionary