

JACKSON COUNTY CIRCUIT COURT
COURT VISITOR INFORMATION & INSTRUCTIONS

You have been selected as a court visitor, thank you for your participation. These instructions are intended to assist you in your role as court visitor. They are not binding but should be used as guidelines. Should you have any problems fulfilling your duties as a court visitor, call the Probate Lead Clerk at 541-776-7171 x 71100 who may be able to provide additional assistance.

Guidelines

1. The court will appoint a visitor upon the filing of a petition in a protective proceeding that seeks the appointment of a guardian.
2. The **attorney or pro se litigant** will notify the court visitor of the appointment once the order has been signed by the court.
3. Upon receipt of appointment, review the attached visitor rules contained in ORS 125.150 through ORS 125.170.
4. The **attorney or pro se litigant** will provide a copy of the petition, any additional filings, instructions to assist the visitor and forms to be filled out by the visitor.
5. The visitor interviews all parties involved; the alleged incapacitated person, the individual(s) petitioning for guardianship, family members and others as directed by the court. You will need to provide your own transportation to these interviews.
6. The visitor will prepare a written report documenting the information obtained from the interviews, list all factual findings and a recommendation as to the appropriateness of the requested guardianship. The written report must be submitted to the court within **fifteen (15) calendar days** after **appointment**.
7. When a visitor is assigned to a **temporary guardianship** case, the report must be submitted to the court within **five (5) calendar days** after **appointment**.
8. The court visitor's report will be provided to the judge to assist the judge with their ruling.

THE VISITOR

As a court appointed visitor, your responsibility is to assist the court in making a determination of whether a guardianship is necessary. If a guardianship is required, the information gathered by the visitor will assist the judge in deciding if the proposed guardian is qualified, suitable and willing to serve.

After receiving a petition requesting the appointment of a guardian, **the attorney or pro se litigant** will call you and, if you are able to take the assignment, will arrange for you to receive the necessary material.

The visitor must carefully read the petition. By law, the petition must allege the proposed protected person's lack of capacity in one or more areas that require the assistance of an appointed guardian. These allegations should be fairly specific and should be followed by factual information on which the allegations are based and names and addresses of persons who have direct knowledge of those allegations. The visitor's responsibility is to verify this information for the court. This does not mean the visitor is expected to determine, for example, that a person is schizophrenic. If, however, schizophrenia is alleged in the petition the visitor must verify that someone with the proper credentials did make the determination of mental illness.

Next, contact the proposed protected person, the proposed guardian, and if applicable, the caretaker of the proposed protected person to arrange interviews.

The visitor report form should be completed and returned to the court as soon as you have conducted the interviews necessary for you to make your recommendations. By statute, this should occur within fifteen (15) calendar days. The court may grant additional time for filing the report if necessary, through a motion and order. If it is an ***emergency temporary guardianship***, it should be filed within five (5) calendar days after the appointment of a temporary guardian.

WHAT IS A GUARDIANSHIP?

A guardianship is a court approved, legal relationship between a competent adult, called the “guardian” and an incapacitated person, called the “protected person” or “ward” which gives the guardian certain duties and rights to make decisions affecting the protected person’s life. Unless the guardianship has been limited in specific ways by the court, the guardian will take over management of all the protected person’s personal affairs including education, food and shelter, medical care, welfare aid, legal assistance, etc. This means the protected person may lose many civil and legal rights, i.e. the right to vote, to make contracts, to choose a place to live, to make decisions regarding medical care, or to make a valid will. Whether the effect of the guardianship is positive or negative depends largely on the performance of the guardian chosen.

PROCEDURE IN APPOINTMENT OF A GUARDIAN

1. A petition is filed.

- The proposed protected person or any interested person can file the petition. Usually an attorney for the proposed guardian files the petition.

2. Content of the petition.

- Name, date of birth, address of the proposed protected person.
- Venue must be established by showing that the proposed ward resides in, or is present in the county where the petition is filed, and/or was placed in an institution by order of the court of the county where the petition is filed.
- Names and addresses of the proposed guardians and family members or interested parties.
- Facts explaining why the proposed guardian is qualified or preferred.
- Whether a conservator has been appointed.
- Specific statements as to why a guardianship is necessary. These are called allegations of incapacity.
- The facts upon which these allegations are based.

3. **Appointment of the Visitor.**

A visitor must be appointed in all adult guardianship proceedings to assist the court in making the following determinations:

- Is the guardianship necessary?
- Is the proposed guardian the best choice?

The visitor is directed to interview the proposed protected person, the proposed guardian, family members and, if applicable, the caretaker, physician, psychiatrist or any other person who might have a bearing on the proceeding.

The visitor must submit a written report to the court. The visitor may be asked to testify if there is a hearing.

4. **The Hearing**

When objections are filed or if the information in the visitor's report warrants a more extensive review, the court will schedule a hearing. At the hearing, evidence is presented to a judge who must determine the capacity of the protected person, the appropriateness of the guardianship, and the appropriateness of the appointment of the proposed guardian.

5. **The Determination**

After determining that conditions for the appointment of a guardian have been established, the court may appoint a guardian as requested if the court determines by clear and convincing evidence that:

- The respondent is incapacitated.
- The appointment is necessary as a means of providing continuing care and supervision of the respondent; and the nominated person is both qualified and suitable and is willing to serve.
- The court shall make a guardianship order that is no more restrictive upon the liberty of the protected person than is reasonably necessary. In making the order the court shall consider the information in the petition, the report of the visitor, the report of any physician or psychologist who has examined the respondent, if there was an examination and the evidence presented at any hearing.