



Linn County Handbook for Court Visitors

October 2020

Linn County Circuit Court

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I. Statutory Definitions and Requirements

All aspects of guardianships and conservatorships are governed by Oregon statutes. These statutes contain requirements designed to protect the constitutional rights of people subject to these proceedings. The court visitor is an important part of this statutory scheme. For court visitors to effectively advise the Court (and support the constitutional protections of respondents), visitors must understand and follow the relevant statutes:

Please familiarize yourself with ORS 125.005 through 125.170. The Oregon Revised Statutes are available online at [Oregon Revised Statutes](#).

II. Knowledge of the law

A visitor must know enough about the law related to protective proceedings to be able to take the following actions:

- Inform respondents and protected persons about the nature and effect of a protective order,
- Inform respondents and protected persons of their rights in the protective proceeding,
- Answer questions by respondents and protected persons, and
- Inform prospective fiduciaries about their powers and duties.

A visitor should only provide information about the law and applicable statutes. A visitor must not give legal advice.

III. Visitor's Role and Mechanics of Appointment

1. Appointment of visitor and role of the attorney.

In Linn County, a visitor is appointed by the judge or designee after the attorney for petitioner files the petition and accompanying requirements. In this handbook, the term "attorney for petitioner" will also refer to and encompass the roles and responsibilities of the pro se petitioner. Whenever an attorney seeks appointment of a guardian or temporary guardian for an adult respondent, appointment of a visitor is required by ORS 125.150(1). The visitor is the Court's visitor and does not work for the attorney or petitioner. The Court maintains a list of approved visitors. Court visitors are appointed based on a rotation and their availability. The Order Appointing Visitor will be signed by the judge or designee and provided to the petitioner's attorney. The court will notify the court visitor of the appointment.

Once the petition is filed, the Court will provide the visitor with a copy of the signed order appointing the visitor, the petition, and any affidavits or exhibits that accompanied the petition. The attorney or petitioner should provide contact information for key people, including the telephone numbers for the respondent or protected person, and the nominated fiduciary.

The Court's practice is that the same visitor stays with a case when possible until the Court takes final action on the petition. In other words, an attorney or party cannot ask for a new visitor just because the attorney or party disagrees with the findings in the visitor's report.

The visitor must be present at the hearing on any objections to the appointment of a fiduciary. The petitioner's attorney should notify the visitor of the proposed hearing date and seek to include the visitor in any scheduling.

2. Costs for the visitor's services.

By deciding to file a petition to appoint a fiduciary, the petitioner becomes primarily liable for the cost for the visitor's services.

In addition to fees for interviews and preparing the report, the visitor is entitled to reasonable compensation for attending any hearing on objections to the appointment of a fiduciary. If the Court does not create a guardianship or conservatorship, the petitioner pays the cost of the visitor's services. The attorney for the petitioner may want the petitioner to provide a retainer that covers this cost.

If a fiduciary is appointed, the cost of the visitor's services may be paid from the protected person's funds. However, payment from the protected person's funds must not occur until after the Court appoints a fiduciary. ORS 125.095(1).

Prior court approval is required before the payment of fees from the funds of a person subject to a protective proceeding when they payment...is for fees incurred for services relating to proceedings arising out of the filing of an objection to a petition or motion. ORS 125.095(2).

3. Role of the visitor.

A visitor must not have any personal interest in the proceedings. The visitor must not have any personal interest in the respondent or protected person or any party involved in the proceeding, or any pecuniary or financial interest in the proceeding, if those interests could compromise or otherwise affect the decisions of the visitor.

If the visitor has any personal interest in the proceeding, the visitor shall not accept the appointment as visitor. If the visitor has any knowledge of the parties or the circumstances surrounding the petition, the visitor should (1) disclose this to the attorney for the petitioner

before accepting the assignment to serve as visitor and (2) disclose this in the visitor's report. If the visitor learns of any potential conflict of interest or discovers the visitor has prior knowledge of the parties or circumstances, the visitor should immediately report that information to the Court and disclose that information in the visitor's report. The visitor should indicate if they believe the prior knowledge will effect their ability to serve as visitor.

The visitor must personally interview the respondent or protected person at the place where the respondent or protected person is located. ORS 125.150(3). It is good practice to interview the respondent or protected person at least once without any other people present to minimize possible undue influence and get an accurate picture of the person's level of functioning. The visitor must personally interview the nominated or appointed fiduciary. ORS 125.150(3).

The visitor may interview the respondent's physician or psychologist, the person (or facility representative) having the care, custody, or control of the respondent, and any other person who may have relevant information.

The following statutes about information from physicians and psychologists are included in ORS 125.150, regarding the appointment of visitors:

(4) Subject to any law relating to confidentiality, the visitor may interview any physician or psychologist who has examined the respondent or protected person ..., the person or officer of the institution having the care, custody or control of the respondent or protected person..., and any other person who may have relevant information.

(5) If requested by a visitor under subsection (4) of this section, a physician or psychologist who has examined the respondent or protected person... may, with patient authorization or in response to a court order in accordance with ORCP 44 or a subpoena under ORCP 55, provide any relevant information the physician or psychologist has regarding the respondent or protected person.

The following statute, ORS 125.300(3), describes the rights of a protected person:

A protected person retains all legal and civil rights provided by law except those that have been expressly limited by court order or specifically granted to the guardian by the court. Rights retained by the person include but are not limited to the right to contact and retain counsel and to have access to personal records.

The visitor functions as the "eyes and ears" of the Court, and paints a picture of the respondent's situation in the visitor's report. In the visitor's report, the visitor needs to describe the following:

- Relevant background information and input from interested parties.
- What has led to the need for the proposed guardianship/conservatorship.
- Current functioning of the respondent according to the visitor's observation, assessment, and interview.

- Assessment of cognitive functioning (through assessment tools that the visitor is properly qualified to use) and ability to manage activities of daily living (ADLs).
- Whether a fiduciary is indicated.

The visitor must be present at the hearing on any objection to the appointment of a fiduciary. The petitioner’s attorney should notify the visitor of the proposed hearing date and seek to include the visitor in any scheduling. The Court will provide the visitor with a formal notice of the hearing. The visitor is entitled to reasonable compensation for attending the hearing.

When accepting the appointment as visitor in a temporary protective proceeding, the visitor must be sensitive to the need to appear at a hearing within a short time of any objection being filed.

The visitor is not expected to function as an attorney, physician, accountant, case manager, or mediator. The visitor’s role is to provide information to the Court. If the visitor thinks information might be useful to the court, but is unsure whether to include it in the report, the visitor most likely should include it in the report.

IV. Proof of Need for a Guardian

For a guardian to be warranted, the Court must find that the following five things are proved by clear and convincing evidence:

- (1) The respondent is incapacitated due to a condition or impairment. ORS 125.305(1)(a), 125.005(5).
- (2) The impairment interferes with the respondent’s ability to make or communicate decisions. ORS 125.305(1)(a), 125.005(5).
- (3) The inability to make or communicate decisions currently prevents the respondent from meeting his or her basic health and safety needs. ORS 125.305(1)(a), 125.005(5).
- (4) This failure to meet health and safety needs means serious physical injury or illness is likely to occur. ORS 125.305(1)(a), 125.005(5).
- (5) The appointment of a guardian is necessary to provide continuing care and supervision of the respondent. ORS 125.305(1)(b).

Each of these five requirements is described below.

1. Condition that creates impairment.

To be legally incapacitated, a person must suffer from a condition that impairs the person’s ability to receive and evaluate information or to communicate decisions. This part of the definition is generally proved through medical evidence. Typical impairing conditions include dementia, developmental disability, mental health problems, and other impairments. However, a medically diagnosed impairment alone is not necessarily “incapacity” as that term is defined by statute.

1.1 Dementia. The most common medical diagnosis for people who are impaired and need guardianship involves some form of dementia (listed below.) (Dementia is characterized by multiple cognitive deficits that include impairment in memory, and frequently include impairment in orientation, insight, judgment, and the ability to reason and solve problems.) This is by far the largest group of impaired persons who are considered for guardianship. Common types of dementia include the following:

- Dementia of the Alzheimer’s Type
- Vascular dementia
- Dementia due to other medical conditions
- Substance-induced persisting dementia
- Dementia due to multiple etiologies

1.2 Intellectual/developmental disabilities. Individuals diagnosed with an intellectual or developmental disability are the second most common group requiring guardianship. People are legally considered to be adults and capable of their own decision-making when they reach age 18. Guardianship for a person with intellectual or developmental disability is typically sought by the person’s parents at the age of 18. Both IQ and adaptive functioning may be relevant here.

1.3 Mental health conditions. Individuals diagnosed with mental health conditions are the smallest group for whom guardianship may be indicated. People with these diagnoses frequently can function and manage adequately when using medication, but sometimes do not want to take medication.

1.4 Other impairments. ORS 125.005(3), which defines “financially incapable,” also lists the following impairments as being relevant to conservatorship: physical illness or disability, chronic use of drugs or controlled substances, chronic intoxication, confinement, detention by a foreign power, or disappearance.

2. Impairment in making and communicating decisions.

For a person to require a guardian, evidence must show that the person’s impairment prevents the person from understanding or rationally processing information or communicating decisions. If a person makes unwise decisions, this is not evidence of impairment as long as the decision-making process is reasonable and the person is able to understand the consequences of those decisions. For example, people have the right to refuse medical treatment, even against physician orders, if they understand the consequences of the refusal.

Consider patterns in the person’s functioning over time. For example, an individual with dementia may be having a “good day” when seen by the visitor but may have a verified history of “bad days,” such as wandering behaviors, pots boiling dry on the stove, inability to take medications, and so on.

A protective proceeding may be initiated due to a person's condition or disease that causes intermittent impairments. The person's inability to make and communicate decisions consistently may be the basis of the impairment. Examples of intermittent impairments may include alcoholism, drug addiction, certain types of dementia, and mental illness.

3. Lack of present ability to meet basic needs.

The impairment must be presently preventing the respondent from being able to provide for the respondent's own basic needs for health and safety. The threat must exist now—guardianship cannot be obtained to prevent future problems that may be foreseen or expected.

That a person requires assistance in meeting basic needs is not evidence of inability to meet those needs, so long as the assistance remains available to the person. For example, a stroke victim may need physical help to get out of a chair, but may still be cognitively able to arrange for caregivers to provide the needed help.

4. Serious physical injury or illness is likely to occur.

Medical information showing mental or cognitive impairment by itself is not sufficient to warrant guardianship—the impairment-caused inability to provide for basic needs must be severe enough that serious harm is likely to result.

In deciding whether serious harm is likely to result, focus on functional assessment. Functional assessments consider activities of daily living (“ADLs”), instrumental activities of daily living (“IADLs”), and mental status evaluation.

4.1 Assessment of activities of daily living. A functional assessment looks at how the person performs various activities of daily living based on observation of and interaction with the person in the person's everyday living situation. ADLs include transfers, ambulation, bathing and grooming, dressing, eating, toileting, and medication management. IADLs include higher-level activities and abilities necessary to function in the community. The visitor is not required to personally conduct an extensive functional assessment of the Respondent, but does need to address the elements of a functional assessment in the visitor's report.

4.2 Mental status evaluation. A functional assessment also includes a mental status evaluation to examine how any cognitive deficits may impact the person's daily functioning and ability to manage his or her ADLs and IADLs. The Folstein Mini-Mental Status Exam (“MMSE”) is one example of an evaluation tool. The MMSE is a brief test of several cognitive functions, including orientation, instantaneous recall, short-term memory, ability to perform serial subtractions or

reverse spelling, constructional capacities, and the use of language. Before using the Folstein Mini-Mental Status Exam, the visitor should be properly trained. The visitor should be prepared to explain that training on the witness stand if asked.

5. Practical necessity of a fiduciary.

Even if the impairment-caused inability to provide for basic needs is severe enough that serious harm is likely to result, there must be some practical necessity for a fiduciary. If a system is in place that adequately meets the care needs of the respondent, then a guardian is likely not warranted, as the Court will conclude that the existing system is the least restrictive alternative to meeting the respondent's needs.

Circumstances can arise that create a need for a guardian or conservator. For example:

5.1 Guardianship may become necessary for a resident in a memory care facility if the person attempts to run away and the facility has no authority to hold the person.

5.2 Practical necessity often demands formal authority. Often third party providers like hospitals will demand that someone have formal authority to act on behalf of the person.

5.3 When considering whether a guardianship is necessary or whether to recommend any limitations to the guardianship, the visitor may need to evaluate whether the goals for the guardianship are realistic.

5.4 Special note regarding conservatorships: Sometimes, even though other measures can be used for day-to-day money management, a conservatorship or special protective order is required to prevent the respondent from being financially exploited or incurring debt, including credit card debt. Only a conservatorship or protective order legally prevents the person from incurring debt or contractual liability, since a protected person cannot enter into legally binding contracts. ORS 125.455(2). If the visitor believes the respondent will be financially exploited or incur debt, the visitor should mention this in the report.

V. Continuum of Care

The visitor should be familiar with the levels of care available in Oregon. The first five levels of care (*) are not appropriate for people who wander or are frequently combative.

1. Individual Home/Residence.* Independent living with minimal supports; if living alone is independent in transfers and ambulation. If living with significant other, that person must be able to handle any needed assistance with transfers and ambulation.

2. Retirement Center.* Independent living in group settings. Meals, housekeeping, and some activities provided. Must be able to get to dining room on own (with or without assistive device.) No assistance provided with bathing and medication management. Usually have call buttons in room for safety.

3. Residential Care Facility (“RCF”).* Individual requires moderate assist with self-care, medication management, and activities of daily living. Meals, housekeeping, and some activities provided. Must be able to get to dining room on own (with or without assistive device.) Ability to provide assistance with transfers and ambulation varies from facility to facility. Does not have RNs routinely available. Care performed by aides (CMAs and CNAs.)

4. Assisted Living Facility (“ALF”).* Individual requires moderate to heavy assist with self-care, medication management, and activities of daily living. Meals, housekeeping, and some activities provided. Ability to provide assistance with transfers and ambulation varies from facility to facility. Does not have RNs routinely available. Care performed by aides (CMAs and CNAs.)

5. Adult Foster Home (“AFH”).* Individual requires moderate to heavy assist with self-care, medication management, and activities of daily living. Amount of assistance with activities of daily living depends on certified level of AFH. Can provide ongoing assistance with transfers and ambulation, but generally can only manage 1-person assists. Generally cannot manage residents who need assistance at night. Does not have RNs routinely available. Care performed by AFH provider.

6. Intermediate Care Facility (“ICF”). Individual requires heavy assist with custodial care, with generally chronic health problems needing ongoing RN services.

7. Skilled Nursing Facility (“SNF”). Individual requires Skilled RN or Skilled Rehab services on a daily basis.

8. Acute In-Patient Rehab Center. Individual requires intensive rehab services.

9. Hospice. Individual has a prognosis of 6 months or less to live. Provides intermittent medical care and emotional support to patients and families in any of the above settings. Does not provide an in-home care-giver to provide continuing care to a patient. (Does provide hospice volunteers who can stay with a patient for 1-3 hours for family respite.)

VII. HIPAA and Physician-Patient Privilege

In many situations requiring a guardian and appointment of a visitor, the respondent suffers from a deteriorating physical or mental condition. Frequently the best way to obtain a complete understanding of the situation is to examine respondent’s medical records and discuss the situation with the respondent's doctor or other health care providers.

Two possible obstacles can prevent the visitor's access to this information: the Health Insurance Portability and Accountability Act ("HIPAA") and the physician-patient privilege.

1. HIPAA and the Visitor.

HIPAA is a regulation designed to protect patient information from disclosure to unauthorized persons. ORS 125.150(4-5) describes the authority of the visitor to interview the respondent's health care providers for information. It does not, however, require that the health care provider answer the questions presented. Some health care providers will decide to err on the side of non-disclosure and refuse to disclose information that the visitor believes is necessary.

If the health care provider refuses to disclose necessary information, the visitor has three options. The first is to proceed without the information. The second is to inform the Court that a health care provider has information that is necessary and request assistance from the Court in obtaining this information, possibly through a subpoena pursuant to Oregon Rule of Civil Procedure ("ORCP") 55, or an order pursuant to ORCP 44. See ORS 125.150(5). Both of these can be somewhat awkward to use and will certainly require additional cost and additional time. If a subpoena is needed, the visitor will need to request an extension for filing the report. A court order is, however, a certain method for obtaining information from the health care provider in that it is specifically allowed by HIPAA. See 45 C.F.R. § 164.512(e).

If the provider's refusal to provide information is based on HIPAA, the visitor has a third option that can satisfy the health care provider's concerns. This option occurs in the federal Code of Federal Regulations ("C.F.R."). Specifically, 45 C.F.R. § 164.510(b)(3) provides the following:

Limited uses and disclosures when the individual is not present. If the individual is not present, or the opportunity to agree or object to the use or disclosure cannot practicably be provided because of the individual's incapacity or an emergency circumstance, the covered entity may, in the exercise of professional judgment, determine whether the disclosure is in the best interests of the individual and, if so, disclose only the protected health information that is directly relevant to the person's involvement with the individual's health care. A covered entity may use professional judgment and its experience with common practice to make reasonable inferences of the individual's best interest in allowing a person to act on behalf of the individual to pick up filled prescriptions, medical supplies, X-rays, or other similar forms of protected health information.

¹ An order pursuant to ORCP 44 is a court order for a person to submit to a physical or mental examination.

In other words, if the respondent patient is incapacitated, HIPAA itself allows a health care provider to release information about the respondent that is directly relevant to the involvement of the person receiving the information. The visitor's "involvement" is to assist a third party (the Court) to determine whether assistance and medical treatment is necessary or warranted because the respondent cannot act independently. In that circumstance disclosure would be permitted.

HIPAA is not a limitation on the visitor's right to ask for information. It is instead a limitation on the health care provider's ability to provide the information. Even though a visitor may be a "covered entity" under HIPAA in a different context, for example the visitor may be a doctor or nurse in addition to a visitor, the limitations presented by HIPAA do not restrict the visitor from disclosing information, unless the visitor is also already the health care provider for the respondent, an unlikely occurrence.

A visitor must not provide advice or direction to a health care provider on the release of information. The visitor may provide the health care provider with a copy of the Court's *Order Appointing Visitor: Authority to Obtain Medical Information*.

2. The Physician-Patient Privilege and the Visitor.

Although HIPAA may not present an obstacle for the visitor's quest for information, the physician-patient privilege certainly can. Generally speaking the privilege (set out in ORS 40.235) prohibits the disclosure of the physician's information regarding the respondent/patient so long as the patient does not wish that information disclosed. The order appointing the visitor does not allow the visitor to avoid the privilege issue and even the visitor's right to ask questions is subject to limitations due to confidentiality. ORS 125.150(4).

This presents a potential problem for the visitor that not only the doctor might elect not to disclose, but if the doctor does disclose, the visitor's report might be vulnerable because the respondent could object to the inclusion of the privileged information and seek to block the visitor's report, either in whole or in part. The solution is much the same as the solution to the HIPAA problem. If the doctor refuses to provide the information and the visitor cannot proceed without the information, inform the Court that additional steps are necessary and the Court may choose to act.

If a doctor or other health care professional subject to the privilege does disclose information to the visitor, the respondent could exercise the privilege and thus prohibit the information from coming into the Court's record. Therefore, a good practice is to place the information from the doctor in a separate portion of the visitor's report so, if necessary, the Court can exclude that portion of the report either permanently or until it becomes appropriate to admit that information. The Court may rule that the respondent has waived the privilege if he or she offers testimony, from any source, on the subject of the privileged information.

3. Medical information in the Visitor's Report.

A visitor's report should be primarily based on the visitor's own observations and interviews. If a visitor is able to obtain useful medical information, it can be included in the report. The best practice is to segregate the medical information and the opinion based on medical information that the visitor receives from health care providers. Medical information from others (non-providers) does not need to be segregated. The purpose of the segregation is to ensure that if the respondent invokes the physician-patient privilege, then the visitor and Court can still rely on the observations and opinion of the visitor not based on evidence that is inadmissible.

VII. Litigation Issues for Court Visitors

1. The adversary system.

The legal system in the United States is known as an adversary system. In this system, lawyers representing each party essentially control the litigation process. The lawyers are responsible for developing and presenting their arguments, gathering and submitting evidence, and calling and questioning witnesses. This work is carried out according to rules of criminal and civil procedure and of evidence. The fact finder, who may be a judge or a jury, is expected to remain neutral throughout the proceeding, dispassionately hearing and weighing the evidence presented by each party. For protective proceedings, including the appointment of a guardian, a judge decides the matter.

The system is based on the belief that each person is entitled to a “day in court,” representation by a zealous advocate, and a hearing before an impartial decision maker. Both sides are given equal opportunity to present their case. Client advocacy requires lawyers to challenge the evidence against their clients, even if that means chipping away at the testimony of purportedly neutral witnesses like court visitors. It is the lawyers’ job to win the suit using every legal and ethical means within their power.

2. Visitor’s role in court.

An Oregon case, *Spady v. Hawkins*, has explained the visitor’s role, noting that “the provisions pertaining to the appointment of visitors are designed to give the Court meaningful information not only about the respondent’s incapacity, but also, and as importantly, about the nominated person’s suitability to act as a permanent guardian.” 155 Or. App. 454, 463, 963 P.2d 125 (1998).

The visitor is both an expert and fact witness, but is not testifying as an advocate for any party to the proceeding. The visitor’s role is to provide information to the Court.

3. Communication with the Court.

The court visitor's report is prepared for and submitted to the Court. The visitor should provide copies to all parties to the proceeding. This means anyone who has filed a petition, objection, or appearance. Copies may be provided as a professional courtesy to the Adult Protective Service worker or professional fiduciary nominated in the proceeding, if applicable.

The Court is not permitted to receive “ex parte communication”—that is, information about the facts of the case that is not shared with all parties. The Court cannot receive this information from any source, including the court visitor. Therefore, the court visitor may communicate directly with the Court only for routine scheduling, such as checking when a hearing is scheduled. Any other communication with the Court (including communication with the judge’s staff) should be made in writing, with copies to all parties who have appeared or to their lawyers.

4. Communication with lawyers.

Linn County courts allow a court visitor to communicate with any or all attorneys during preparation of the visitor’s report and testimony. However, the court visitor is presumed to be a neutral investigator. Therefore, if the visitor communicates with one attorney, the visitor should not refuse to communicate with the other attorney(s), if asked to do so.

VII. Visitor’s Fees

The Linn County Presiding Judge has issued an Order Establishing Qualifications and Standards For Court Visitors (“Order”). The common practice in Linn County is a flat fee per case, with the option to file a Motion requesting additional compensation at an hourly rate for extraordinary or atypical measures if necessary. The Order establishes hourly rates for court appearances.

By deciding to file a petition to appoint a fiduciary, the petitioner becomes primarily liable for the cost for the visitor’s services. If the Court does not create a guardianship or conservatorship, the petitioner pays the cost of the visitor’s services. Therefore, the attorney for the petitioner should prepare the petitioner for the cost of the visitor’s report. The attorney for the petitioner may want the petitioner to provide a retainer that covers this cost. The cost for the visitor's services should be paid directly to the Court either by check, cash, or credit/debit.

If a fiduciary is appointed, the cost of the visitor’s services may be paid from the protected person’s funds. However, payment from the protected person’s funds must not occur until after the Court appoints a fiduciary and approves payment. Payment for the visitor's services should be made directly to the Court.

If an objection to the petition is filed and a hearing is held, the visitor must attend the hearing and is entitled to reasonable compensation. In a contested case, the attorney for the petitioner must obtain Court approval of the court visitor's fees before the bill can be paid from the protected person's income or resources. ORS 125.095(2).

Appendix

- A. Presiding Judge's Order on Court Visitor Qualifications, Standards, and Fee Schedules
- B. Court Visitor Video Links
- C. Visitor's Report Form per UTCR 9.400.1
- D. Hearing Preparation and Materials Suggestions

IN THE CIRCUIT COURT FOR THE STATE OF OREGON
FOR THE TWENTY-THIRD JUDICIAL DISTRICT
LINN COUNTY

IN THE MATTER OF SETTING) Presiding Judge Order
COURT VISITOR QUALIFICATIONS,) 20-011
FEE SCHEDULES, AND STANDARDS)
)
)
)
Pursuant to ORS 125.150 through 125.170,)

It is hereby ordered

- 1) Court visitors shall have the following qualifications:
 - a. A license in good standing in any state as any of the following – licensed professional counselor, licensed marriage and family therapist, licensed clinical social worker, registered nurse, attorney, or
 - b. A post-graduate degree (e.g. MSW, MSN, MSc) or other master’s degree with substantial work in behavioral science and at least two years of relevant experience, a Juris Doctorate, or,
 - c. The presiding Judge or designee may determine whether the proposed visitor’s experience is sufficient, and for good cause may allow appropriate substitutions for the above education and experience requirements.
- 2) Visitors shall have the following training:
 - a. Visitors shall view the “What You Need to Know as a Court Visitor” training video (link available upon request) and read the Linn County Visitor Handbook. After viewing the video and reading the handbook, the visitor shall file a certificate provided by the court certifying the training requirements have been met. This requirement must be completed and approved before the visitor can be appointed to any matter.
- 3) The presiding Judge or designee shall have the sole and absolute discretion to place or remove a person on the approved visitor’s list.
- 4) Visitors shall utilize the following standards and procedures in the performance of

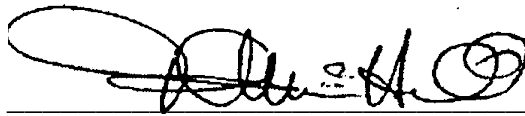
their duties:

- a. Visitors shall visit and interview the protected person within 36 hours of appointment.
 - b. Visitors shall interview persons deemed by the visitor to possess relevant information.
 - c. Visitors shall review available records regarding the respondent and the need for a fiduciary.
 - d. Visitors shall comply with ORS 125.150(3-10).
 - e. The visitor's report shall comply with ORS 125.155 and be in the form prescribed by UTCR 9.400.1.
 - f. The visitor shall be present at any hearing on objections to the appointment of a fiduciary as required by ORS 125.155(5). The visitor's fee for attendance or testimony shall not exceed \$75 per hour.
 - g. The court visitor shall investigate and report to the court, interview persons with significant information about Respondent's functional ability and alleged incapacity including but not limited to, physicians and psychologists who have examined or treated respondent, and provide a written report using the court approved format to the court within 15 calendar days after appointment and five court days for emergency cases.
- 5) For cases filed after April 1, 2016, the visitor fee shall be set at a flat rate of \$350 per case to be tendered by petitioners at the time of filing. Upon petition to the court by the court visitor, further compensation determined to be just and reasonable may be allowed by the court for any extraordinary investigation, attendance at court hearings, and/or atypical amount of time required of the visitor in a case. Additional compensation shall be paid at the rate of \$75 per hour. When petitioning for further compensation, a visitor shall utilize the same procedural process as a petition of attorney fees in cases under ORS Chapter 125.

This order supersedes previous order PJ16-001.

Dated this 14th of October, 2020.

Signed: 10/14/2020 05:11.PM

A handwritten signature in black ink, appearing to read 'T. McHill', written over a horizontal line.

Circuit Court Judge, Thomas A. McHill

Oregon Judicial Department Visitor Training Videos

These videos are available on the Oregon Judicial Department Official YouTube Channel which can be found at: <https://www.youtube.com/user/OregonCourts/featured>

What You Need to Know As a Court Visitor - Required

<https://www.youtube.com/watch?v=RJknTzV9Gzl&feature=youtu.be>

Mental Illness and Functional Capacity - Recommended

<https://www.youtube.com/watch?v=6P9zi0moGtK>

What Court Visitors Need to Know About Dementia and Delirium – Recommended

<https://www.youtube.com/watch?v=AllzyHPpET8>

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR _____ COUNTY
Probate Department

In the matter of the Guardianship of: _____) Case No _____
 _____)
 Respondent.) **COURT VISITOR'S REPORT**
) **ADULT GUARDIANSHIP**

I, _____, have been appointed as court visitor in the above-mentioned proceeding.

I. EXPRESSED WISHES OF RESPONDENT / PROCEDURAL RIGHTS **Yes** **No**

- A. Does the Respondent object to the appointment of a fiduciary?
- B. Is the Respondent willing to attend any hearing that may be scheduled?
- C. Does Respondent prefer that another person act as fiduciary?
 The name, address, telephone number, and proposed role of the person of preference is:

- D. Does the Respondent wish to be represented by counsel?
 If so, comment on whether Respondent has named an attorney or wishes the court to appoint an attorney.

- E. If Respondent objects to the appointment of a fiduciary, does the Respondent understand that a hearing will be held? Not Applicable

- F. If a hearing is scheduled, is the Respondent willing to attend a hearing or to talk to the judge by telephone during the hearing?

- G. Does the Respondent wish for the visitor to interview particular individuals?

If so, please list the individuals' names, whether they were interviewed, and the visitor's reason for not interviewing, if applicable:		
Name & Relationship	Interviewed?	If no, visitor's reason:
	Yes No	
	<input type="checkbox"/> <input type="checkbox"/>	
	<input type="checkbox"/> <input type="checkbox"/>	
	<input type="checkbox"/> <input type="checkbox"/>	

- H. Visitor's comments or any expressed communication of Respondent that related to any of the above questions:

II. CAPACITY

A. Discuss any inability of the Respondent or impairments of the Respondent which might impact their ability to provide for their needs with respect to physical health:

B. Discuss any inability of the Respondent or impairments of the Respondent which might impact their ability to provide for their needs with respect to food/clothing concerns:

C. Discuss any inability of the Respondent or impairments of the Respondent which might impact their ability to provide for their needs with respect to shelter:

D. Please comment if the investigation has determined that the Respondent is unable to resist fraud or undue influence:

E. Are these findings as indicated in "A" and "B" above part of an overall pattern of inability? If YES, please describe: Yes No

III. EVALUATION OF RESIDENCE, HEALTH CARE, AND SOCIAL SERVICES RECEIVED IN PAST YEAR

A. In what type of residence does Respondent live and how long has he / she lived there? Describe:

B. Is the Respondent able to live at this residence while under guardianship?

C. As per the petitioner, what health and social services or alternatives to guardianship have been provided to the Respondent during the year preceding the filing of the petition (if known)?

IV. FINDINGS AND RECOMMENDATIONS

Yes No

- A. Are the facts stated in the petition substantially correct? Yes No
- B. Have alternatives to guardianship/conservatorship been considered? E.g., Advance Directive for Health Care, Revocable Trust, Family Assistance, and/or a Durable Power of Attorney? If YES, please describe:

- C. Is the Respondent so impaired that he/she is unable to make reasoned decisions about his/her safety? Yes No
- D. Is the appointment of a fiduciary necessary? Yes No
- E. Is it appropriate to limit the scope of the fiduciary's appointment? If YES, for what limited purpose(s) is a fiduciary necessary? Not Applicable Yes No

- F. Is the nominated fiduciary(ies)
 - 1. Qualified to serve? Yes No
 - 2. Suitable to serve? Yes No
 - 3. Willing to serve? Yes No

If NO, please describe:

- G. Is there is an objection to the petition from parties other than the Respondent? If yes, please describe the issues? Yes No

- H. If you have identified anyone else you believe is more appropriate for appointment as guardian and/or conservator, please provide the name and reasons for the conclusion:

- I. If the Respondent does not wish to be represented, is counsel recommended to protect Respondent's interests or to help resolve issues in the case? Yes No

If YES, please describe:

J. Should there be any limitations to the scope or duration imposed on the proposed fiduciary(ies)? If YES, please describe: Yes No

K. Additional comments that might assist the court and all persons interested in this matter:

V. All of the people interviewed by the visitor while compiling this report are listed below:

Name	Address & Phone	Relationship	Date Interviewed

I hereby declare that the above statement is true to the best of my knowledge and belief and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

 Court Visitor Name

 Signature of Court Visitor

 Date

Hearing Preparation and Materials

Below are some suggestions for how visitors can prepare for testifying at a hearing and what to take to the hearing.

1. Hearing Preparation (1-2 days prior to the hearing):

- 1.1 Review the Petition (especially the allegations and supporting information).
- 1.2 Read through the visitor's report and highlight relevant parts.
- 1.2 Make an outline of the report (this helps in the review of the report, summarizes the most important info.)
- 1.4 On the Visitor's Report Template Outline, list the corresponding page numbers in the report next to the appropriate Outline section (this makes for easier reference).
- 1.5 Prepare notebook for hearing.

2. Notebook Contents

- 2.1 Copy of highlighted visitor's report.
- 2.2 Outline of visitor's report.
- 2.3 Template Outline with page numbers.
- 2.4 Various statutory definitions (incapacity standard for guardianships, financially incapable standard for conservatorships, statute regarding least restrictive alternative, and statute regarding preference in appointing fiduciaries).
- 2.5 List of dates of training for Folstein Mini-Mental Status Exam (if visitor gave that exam during the investigation).
- 2.6 Copy of visitor's resume.
- 2.7 Copy of professional fiduciary's resume (if visitor recommends appointment of professional fiduciary).