

Court Visitor Tips & Advice

Practical recommendations and suggestions gathered from court visitors, judges, staff, and attorneys who routinely work in guardianship and conservatorship cases throughout Oregon.

NOTE: Every circuit court is different, and what works in one circuit may not apply to every other court. This guide attempts to clarify differences between circuits where possible, but visitors should always contact their local court if questions arise.

I am a court visitor – What do I need to know?

- ✓ [Oregon Revised Statutes](#) (ORS) Chapter 125 – This chapter covers all things protective proceedings.
 - Visitor-specific provisions include ORS 125.150 through ORS 125.170, but many other provisions mention visitors as well.
 - ✓ [Uniform Trial Court Rules](#) (UTCRC) Chapter 9 – This chapter sets out more specific rules that apply to protective proceedings in all circuit courts.
 - ✓ [Supplemental Local Rules](#) (SLRs) – Circuit court rules implemented by individual circuits, specific to *that* court's process or preferences.
 - Some circuits have adopted local forms for the order of appointment and/or the visitor report.
 - ✓ [Judicial Evaluation Tool](#) – A guide developed by the University of Southern California that covers many possible issues that may arise in protective proceedings.
 - ✓ The evaluation tool shows the many issues a court may consider and how that information factors into the judge's decision-making.
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Visitors are neutral and objective experts providing the judge with recommendations based on experience and knowledge, but ultimately, the judge makes the final decision.

Statutes, rules, and local forms set out how protective proceedings work and what the court needs from appointed visitors. Periodically reviewing current law and rules is prudent, as they may change over time.

I have a question – Who do I ask?

“Reach out to your local court! Judges and court staff should be able to answer most questions that come up or at least point you in the right direction.”

Communicating with the court in which you have been appointed is the best way to get answers to any questions that arise. Contact the court to learn who the primary protective proceeding contact person is, what the court expects of you, and to let them know if you will have any issues meeting your report deadline.

Visiting the courthouse and observing hearings is invaluable – the more you familiarize yourself with court staff, judges, and how the court operates, the more comfortable you will be.

Attorneys may also be a valuable resource for further information about your case – ask your court if their rules allow you to speak with attorneys directly.

Find your court [here](#) and check the directory or call to be transferred to the probate department.

I have been appointed to a case... now what?

“Review all available information in the case.”

“Conduct interviews with the goal of providing the court as comprehensive a picture of the respondent’s capabilities and limitations as possible.”

“Interview with the goal of identifying the least restrictive terms of any proposed guardianship – providing the respondent as much independent decision-making authority as possible given their circumstances.”

“Just because a guardianship petition was filed doesn’t mean a guardianship is necessary and appropriate.”

Before conducting interviews, review all the available case information to get a sense of who is who, and what additional information you may need to formulate your recommendations. Be sure to bring your Order of Appointment with you to your interviews.

As you prepare for interviews, keep in mind the statutory requirements to establish a guardianship or conservatorship. Being curious and keeping an open mind allows you to identify issues that may exist beyond what is in the petition or confirm if concerns raised in the petition are valid and accurate.

Who should I speak with before preparing my report?

“The parties – the respondent, petitioner, proposed fiduciary, known objectors.”

“Family members, or anyone with direct knowledge of the respondent’s condition such as neighbors, friends, or colleagues.”

“Caregivers or facility managers – the individuals providing care, including doctors, nurses, or facility staff.”

“Professionals involved in the respondent’s care or welfare, including Adult Protective Services (APS) if applicable.”

Although the respondent *must* be interviewed, it’s important to speak with more than just the parties to the case. The respondent often seems the most logical first interview, but that may not always be practical or productive, if important context may help during the respondent’s visit.

If you have concerns about your safety during interviewing, it may be prudent to contact APS before scheduling. It is also important to be aware of potentially triggering issues. The visitor should not be the first to inform the respondent of the protective proceeding – personal service is required.

LanguageLine access is available if an interpreter is necessary!

What should I keep in mind when conducting my interviews?

“Be cautious of first impressions and try not to form opinions until you have talked with everyone involved or interested.”

“Be aware of your own biases (we all have them) so that they do not affect any recommendations you end up making.”

“If you see things differently from what the petition alleges, it’s your job to call attention to those things. The petitioner may need to clarify or amend their filings, and the visitor’s observations may change perspective on what the respondent actually needs.”

“Be observant of the actions and surroundings of the interviewees. Remain neutral and impartial while gathering the information needed to complete the report.”

Although nobody can be completely impartial, you are relied upon to provide an objective opinion as the “eyes and ears of the court.” The petition is a limited and often one-sided perspective.

By speaking with a wide range of people and forming your recommendations based on your observations and experience, your report will be more thorough and helpful, and the judge will have better information on which to base their decision.

What is the court looking for in my report?

“It is important to be specific concerning your interviews, observations and insights regarding dynamics among the relevant people involved.”

“Make sure the report maintains a tone of objectivity and does not blur into advocacy for a particular outcome.”

“Information about the retained abilities of the respondent – in other words – what things can they still do, and what do they still care a lot about?”

“Information about what ‘less restrictive alternatives’ to full guardianship/conservatorship might work for the respondent, and what strategies caregivers have already tried.”

A clear, detailed, but concise report helps ensure the most important information reaches the reader (whether judge or party). If there is information you felt was important but could not obtain, or if you cannot make a recommendation for some reason, including context in the report is essential.

Remember that a particular condition or diagnosis does not presumptively equate to incapacity. A factual connection between a condition or diagnosis, to capacity, is required.

If you later learn new information or circumstances change, filing an amended or supplemental report may be necessary.

How can I prepare for a court hearing?

“Review your interview notes and report before the hearing to refresh your memory so you’re prepared to talk about the case.”

“You’re allowed to bring copies of any documents you reviewed or referenced in your report.”

“Most judges don’t want you talking about specifics of the case with either side before the hearing in case they are trying to influence your testimony.”

An objection hearing must be set if any party disagrees with the terms of the protective proceeding or the proposed fiduciary. At these hearings you may be called as a witness by the judge or one of the parties to speak about your report and the reasons for your recommendations. Check in with your court regarding payment for the hearing time.

Reviewing your notes, updating information as necessary, and being familiar with the court’s hearing process will help ensure you are prepared. Be aware that any notes you physically reference during your testimony may be viewed by all parties. If you are qualified as an expert witness the parties could request to view your entire case file.

Many judges will allow the visitor to be the first witness and the release them, so that the visitor doesn’t have to idle in court the whole time.

What should I expect if I am called to the witness stand?

“Know that as an expert, your testimony and recommendations are important, but it is still the judge who must make the ultimate decision whether the petitioner has met their burden of proof. It’s not your job to convince anyone, just report what you think.”

“The visitor should anticipate cross-examination by parties who disagree with the visitor’s recommendations. They will try to challenge the basis of your findings and conclusions, and it may feel like a personal attack. Try to maintain calm and collected responses. ”

Either the judge or a party may call you as a witness, at which time you take the witness stand and are sworn to testify under oath. You are then asked questions about your report and recommendations. It can be highly stressful to be the center of attention in court.

The side that agrees with your report will try to show why your recommendations should be followed, while the side that disagrees will try to show flaws in your methodology or reasoning.

Try to answer all questions objectively, based on your knowledge and experience and know that ultimately, it’s up to the judge to decide.

What types of questions could I be asked in court?

The petitioning party is required to meet the burden of proof, so they get to ask questions first (direct examination). Then the objecting party gets to cross examine a witness. Sometimes the petitioner gets to re-examine the witness after cross-examination.

The questions will likely be very fact-specific to the respondent and your recommendations and report. Below are common questions for both direct and cross examination.

Direct

- Please state your qualifications/education/training and how long you have been a court visitor.
- How did you prepare your report in this matter?
- What information did you rely on in preparing the report?
- How did the respondent present during your interactions?
- What are respondent's diagnoses/medical status/care prognosis?
- Does the respondent have good insight into their deficits and care needs?
- What are your opinions about the respondent's needs with respect to physical health and safety, and why?
- What are your opinions about the respondent's risk of self-neglect and/or exploitation, and why?
- What is your opinion of the proposed guardian's appropriateness?

Cross

- Why didn't you talk to [*person*] or consider [*specific fact*] in your report?
- Hasn't the respondent generally been fine without a guardian?
- Do you disagree with the respondent's life choices?
- Are you licensed to be diagnosing [*specific condition*]?
- Aren't you being paid to submit this report?

How do I answer questions asked of me by a judge or by attorneys?

“Take a moment to think before responding. Don’t take questions personally, just be clear and confident with your answers.”

“Try to be concise but answer the question that was specifically asked.”

“Remember that ‘I don’t know’ is not a wrong answer to some questions.”

“Make clear how your answer is based on what *you* observed, versus what you were told, versus presumptions based on your experience.”

The court greatly values your expertise. Answering questions honestly, clearly, and respectfully – regardless of how they were asked – helps maintain your credibility. If you do not understand a question, ask for clarification.

If you do not know the answer, you can say so.

Remember that each case is specific to the individual respondent, so supporting your answers with person-based answers is the best approach.

What other resources can I find about being a court visitor?

There are a variety of helpful tools, resources, and contacts that can support you as a court visitor.

- Oregon Judicial Department Court Visitor [Webpage](#)
- Probate Department [Contacts and Supplemental Local Rules](#)
- LanguageLine [Training Video](#) and [Acknowledgment Form](#)
- Oregon Professional Fiduciary Locator: [Center for Guardianship Certification](#)
- Lay and Professional Fiduciary Standards and Ethics: [National Guardianship Association](#)
- Lay and Professional Fiduciary Education & Resources: [Guardian Partners](#)
- Oregon Judicial Department Contacts: [Jeffrey Petty](#) and [Carley Pouland](#)