SB 503

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Senator Floyd Prozanski
Chair, Senate Committee on Judiciary
900 Court St. NE, S-413
Salem, Oregon 97301

Sen.FloydProzanski@OregonLegislature.gov

Dear Senator Prozanski:

I write with regard to SB 503.

I am a former Chair of the Elder Law Section of the Oregon State Bar, and have practiced in the area for well over 20 years.

I have seldom seen such a poorly thought out bill.

Section 1 of this bill would require that Court Visitors, who must be appointed in every case where a guardianship is sought, and who in may be appointed in other cases, including conservatorships,

> 2(a) Be licensed and in good standing as a physician, physician assistant, psychologist, marriage and family therapist, professional counselor, clinical social worker, registered nurse or nurse practitioner;
> (b) Have at least two years of relevant experience in the range of protective proceeding case types that arise under this chapter, including but not limited to experience in professionally working with people with mental health conditions, intellectual disabilities, developmental disabilities and geriatric concerns; and
> (c) Have successfully completed a mandatory training as prescribed by the Judicial Department that includes education on guardianships, conservatorships, decision-making capacity, the fundamentals of abuse and neglect of vulnerable adults and the function of visitors for the court.

While a good idea in theory, there are simply not enough people who would be qualified to serve as Court Visitors in most counties.

I am not aware of a single person in Linn or Benton Counties, for example, who currently serves as a Court Visitor, who would qualify under this new standard. I can bet that there will be few if any such people currently serving as court visitors in any county other than possibly Lane, Marion, and the three metro counties.

Further, given the current rates of pay for Court Visitors, I do not expect that people who

would be qualified under these standards will be lining up for the work.

Time is of the essence when there is a vulnerable elder who needs protection.

It is my experience, as someone who also works on divorce cases, that there is a wait of at least several months for a well regarded expert on child custody to perform a custody evaluation (which is essentially the same kind of evaluation as the evaluation of a Court Visitor in a guardianship or a conservatorship).

The cost of such an evaluation is many thousands of dollars. This contrasts with the current cost for a Court Visitor, which is only several hundred dollars.

Further, Section 3 of this SB 503 proposes that a Court Visitor may be tasked with determining whether a protected person remains incapacitated, and determining whether a fiduciary should be removed for any reason.

These are very clearly functions of a judge. They are not functions to be delegated to a Court Visitor.

Not only are these functions of a judge - they are functions that a judge should and now can only exercise after an opportunity for a hearing, where both sides may present evidence, if there is any disagreement on whether a person is or remains incapacitated, or whether a fiduciary should be removed.

As an aside, it is worth noting that the author of this bill shows his or her ignorance of this area of law by the very fact that the author of this bill seems to think that incapacity is the standard for all protective proceedings, [see Section 3(2)(a)] when in actuality, the standard of incapacity only relates to guardianships, and does not apply to conservatorships.

I urge you to work to reject this bill.

Very truly yours,

Steven A. Heinrich

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