

To the Oregon Senate Committee on the Judiciary.

Statement in Support of SB 501, 502 and 503
Presented by Senior Judge Elizabeth Welch

Chief Probate Judge, Multnomah County Circuit Court,
1994-2006.

Co-Chair, Supreme Court Task Force on Protective
Proceedings, 2007- 2008

Chair, Legislative Task Force on Public Guardianship, 2009-
2013

Member, Residential Facilities Advisory Committee, 2014-
2016

**PERSONS WHO ARE THE SUBJECT OF A GUARDIANSHIP
PROCEEDING NEED LAWYERS AND SHOULD BE
ENTITLED TO A HEARING BEFORE GUARDIANSHIP IS
IMPOSED:**

The persons subject to such proceedings are incapacitated by reason of old age, dementia or other severe mental or physical disabilities or who are mentally ill or developmentally delayed.

If a proposed protected person is agreeable to Guardianship, arrangements may be made voluntarily.

Involuntary respondents may be opposed to the Guardianship for a variety of reasons or may be unable to communicate any objections.

In my experience very few people going through the Guardianship process have any comprehension of why they need a lawyer. I have heard innumerable times, " I haven't done anything wrong! Why do I need a lawyer?"

Guardianship is a profound intrusion into the freedoms and fundamental choices otherwise available to all. Respondents may be deprived of desired relationships, placed in a setting where they don't know anyone, lose their home, or even be placed in a locked facility. Guardianships are usually permanent. People are frightened, confused, and most of all, out of touch with their own circumstances.

The circumstances of persons who are the subject of a petition for civil commitment and those who face Guardianship are essentially the same. The potential loss of self determination and of liberty is actually greater in Guardianships than with Civil Commitments because Civil commitments are not permanent. Even so, for many decades the Civil Commitment process in Oregon has afforded the automatic appointment of counsel at State expense.

The State Office of the Public Guardian is a state agency. When the state initiates proceedings, whether civil commitments or guardianships, and seeks to deprive an individual of their liberty, counsel should be provided as a matter of law.

Oregon is one of only five states that do not provide for counsel in Guardianships at public expense.

Adult Guardianships, in general, have some complexities which are not relevant to the clients of the Public Guardian.

In my experience, the overwhelming majority of petitions for adult Guardianship are well founded. The financial and emotional burdens of filing a petition, providing unfavorable information about family members, confronting family dynamics are so great

that cases with reasonable alternatives to guardianship rarely make their way to formal proceedings.

Respondents may be unable to discern that those around them are dangerous to them or are "ripping them off."

Thus the real issue in establishing Guardianships is the suitability of the proposed Guardian.

Lawyers representing respondents speak for the client in general about what is happening to them. Respondents need an advocate to participate in the selection of the guardian. The proposed Guardian may well be the person who is abusing, stealing from or neglecting the Respondent.

When a Petition for Guardianship has been filed, that document together with a Blue Form objection sheet is served upon the respondent. If the respondent indicates on the form that he or she objects to the guardianship and requests hearing, current law requires the hearing be held.

The individual may not be able to comprehend the Blue Form or its implications. Persons may be present when the respondent receives the form or is completing it and interfere through coercion, misinformation or filling the form themselves. During the pendency of the matter, Respondent's incapacities may lead to frequent changes of heart about what they want.

Even where no Objections are filed, the Court has a role to safeguard the interests of the Respondent. Hearings require the Petitioner to prove to the Court that the legal requisites for Guardianship are present in the case, that no lesser alternative is appropriate, and that the proposed Guardian is suitable to exercise such power over the individual.

All things considered hearing should occur in all cases. **Oregon is the only state that does not require hearings in every Guardianship case.**

SB503 relating to Court Visitors: Court Visitors are the greatest safeguard against abusive treatment of and overreaching intrusion into the lives of incapacitated persons. While the law requiring Court Visitors is of long standing, the process is without clear guidelines regarding ethical boundaries in the designation of a Court Visitor and the qualifications of those who perform this vital function.

Court Visitors are a vital asset to the Court in ferreting out undue influence and family dynamics that directly impinge on the welfare of the respondent. It's through the work of qualified Court Visitors that the challenges of Guardian selection are identified and the addressed.

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