



OREGON JUDICIAL DEPARTMENT  
Office of the State Court Administrator

May 12, 2021  
**(SENT BY EMAIL)**

House Committee on Judiciary  
900 Court St NE  
Salem, Oregon, 97301

Re: Response to a Committee Questions– Appointed Counsel for Guardianships, SB 578A

Chair Bynum, Vice Chairs Noble and Power, and Members of the Committee:

The Oregon Judicial Department supports Senate Bill 578A which would launch a pilot program in Multnomah, Lane, and Columbia Counties for courts to appoint counsel in guardianship and conservatorship cases. I write to respond to some of the questions raised during the hearing in the Civil Law Subcommittee in the hopes that OJD's experience may be of assistance. If you have additional questions, please feel free to reach out to me anytime.

First, Representative Morgan asked whether the appointed attorney remains the attorney of record during the duration of the guardianship. Judge Holland correctly responded that, yes, the attorney will serve until the conservatorship or guardianship is terminated or the attorney withdraws from the case. We would like to add that attorneys are appointed when a petition for guardianship or conservatorship is filed *and* there is a need to appoint an attorney for the respondent/protected person. This need is made known to the court either by the respondent/protected person or the court visitor. Therefore, not every existing nor prospective guardianship or conservatorship will have counsel appointed. In addition, sometimes an attorney may move to withdraw shortly after the guardianship is established, and sometimes the attorney remains on the case for the duration. Each case is different, and the length of time the attorney stays on the case will vary depending on many variables.

Representative Morgan then asked whether the appointment of an attorney replaces need for the court visitor. Judge Holland answered that, no they do not, and provided some background and information about the role of the visitor. We would also like the Committee to understand the fundamental distinction between the attorney for the protected person and the visitor: the attorney advocates for their client's goals, wishes and personal desires; the visitor makes recommendations to the court based on what would be best for the protected person, which is not necessarily what that person may want. Visitors are there, as Judge Holland explained, to assist the court in making the best decision for the protected person and they are trained in medicine, psychology, or social work. Because the role of attorneys and the role of visitors are distinct and each have different training and expertise, one cannot replace the other.

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Representative Morgan asked whether the guardian needs to get the attorney's approval any time the protected person needs to move, or a new placement occurs. Judge Holland correctly answered that Oregon statute (ORS 125.320 (3)) requires that the guardian give notice when they move the protected person. What the attorney can do is ask the court to require the guardian to seek court approval for any moves. We'd like to add that attorneys for the protected person do not have oversight of the guardianship - that oversight is the role of the court. Guardians are granted authority to make decisions for the protected person but are not required to consult with or report to the protected person's attorney - unless the court has ordered that specifically.

Finally, there was a question about fees and whether there is a cost connected to the appointment of counsel for the protected person from Representative Morgan. Fee waivers and deferrals are available in all case types. The protected person will pay a fee only if the protected person files the petition to appoint the guardian - that is extremely rare. Everything thereafter would have no fee.

Please let me know if you have any other questions or concerns. Thank you.

Sincerely,

A handwritten signature in cursive script, appearing to read "Erin Pettigrew".

Erin Pettigrew