

WRITTEN TESTIMONY

OPPOSING SB 503 OF 2017

REGARDING
CHANGES TO THE DUTIES OF AND REQUIRED QUALIFICATIONS
FOR COURT VISITORS IN PROTECTIVE PROCEEDINGS SUCH AS
GUARDIANSHIPS AND CONSERVATORSHIPS

Submitted by: Steven A. Heinrich, J.D., Ph.D.

Executive Summary:

I oppose SB 503 of the 2017 Legislative Session.

This bill would add unrealistic qualification requirements for Court Visitors, which would be difficult or impossible to meet in many counties.

This bill would add very significant costs, possibly as much as \$2,000 to \$4,000 per protective proceeding.

This bill would likely also add significant delays to the process.

This bill presumes a role for Court Visitors which is beyond the appropriate role for Court Visitors.

This bill would give Court Visitors decision making powers that should be reserved for courts, and which should only be exercised even by a judge following a contested hearing, where both sides can present evidence to the court.

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 of elder law, including estate planning and protective proceedings, for well over 20 years.

I also practice in the area of family law.

I have seldom seen a more poorly thought out bill than SB 503.

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 proposed new 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 a custody evaluation is many thousands of dollars. This contrasts with the current cost for a Court Visitor in a protective proceeding, which is only several hundred dollars in most counties.

Further, SB 503 seems to be written with a misunderstanding of the role of Court Visitors, and with a lack of understanding of the development of our legal system.

Court Visitors are gate keepers. They have a role that is akin to the role of the grand jury.

Grand juries were established by William the Conqueror. When the French who accompanied William the Conqueror displaced the former English lords, the local peasants did what peasants under a new administration so often try to do - they tried to settle old scores by reporting their neighbors for things that the neighbors did not do.

In order to filter out the false accusations from the cases where a person really ought to have been put on trial, William the Conqueror established a set of grand juries of local peasants who determined whether there was a case to answer or not.

The Court Visitor serves a similar role in the modern legal system of Oregon, as regards protective proceedings, such as guardians or conservators.

The Court Visitor's job basically is to go out into the community, and to talk with the person who may need a guardianship or conservatorship, and with people who interact regularly with the person who may need protection. The Court Visitor then reports to the court whether there is something that seems to be an obvious problem, or whether it seems that there is a basis for the court to go forward to hear evidence and determine whether a guardianship and/or a conservatorship is necessary.

This takes common sense. It does not take an advanced degree.

It also does not involve actually making a decision in a case.

Returning to SB 503, Section 3 proposes that a Court Visitor may be tasked with determining whether a protected person remains incapacitated, and with 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,

A handwritten signature in black ink, appearing to read "Steven A. Heinrich". The signature is written in a cursive, slightly slanted style.

Steven A. Heinrich, J.D., Ph.D.