

Guardianships and Conservatorships in Oregon

Judge Lauren Holland
Lane Count Circuit Court
February 17, 2021

The Nature of Guardianships and Conservatorships

- ▶ **Tension between leading the life we choose and maintaining our independence versus having another person make decisions for us**
- ▶ **Terminology - Guardian and Conservator; Respondent/Protected Person**
- ▶ **Presumptions of competency of adults; no such presumption for minors**

Capacity

- ▶ How do we decide if someone has capacity
- ▶ Capacity..... for what?
- ▶ Determination of capacity in guardianship cases includes evidence of the Respondent's medical condition, functional ability and cognitive ability - not merely a diagnoses

Protective Proceedings by the Numbers

As of February 14, 2021:

- ▶ 14,252 pending protective proceeding cases statewide
- ▶ Pending cases by type:
 - Adult protected persons - 66%
 - Minor protected persons - 30%
- ▶ Pending cases by subtype:
 - Guardianships - 70%
 - Conservatorships - 13%
 - Guardianship/Conservatorship - 15%

By the Numbers (continued)

- ▶ **Pending protective proceeding cases by years since filing:**

- Less than one year: 12%

- One to five years: 35%

- Five to 10 years: 24%

- Ten years and older: 29%

- ▶ **Assets of protected persons under conservatorships:
Estimated \$1.8 billion owned by protected persons**

Demographics

- ▶ **Population of Oregon - approximately 4.2 million people**
- ▶ **Percentage of Oregon population:**
 - ▶ 65 and older: 18.2% (766,080 people)
 - ▶ 60 and older: 24.62% (1,038,317 people)
 - ▶ 50 and older: 36.83% (1,553,279 people)
- ▶ **Demographics of Oregon by Judicial District**

US Census Bureau, June, 2020, population estimates)

Life of a Guardianship/Conservatorship Case

- ▶ Petition to begin the case (ORS 125.055)
- ▶ Notice and time to object (ORS 125.060, 125.065, 125.070)
- ▶ Court Visitor appointed (ORS 125.150)
 - ▶ Mandatory for adult guardianship petition, certain minor guardianships and all temporary guardianships
 - ▶ Discretionary for all other protective proceedings
 - ▶ Independent investigation, qualified, training
- ▶ Objections by Respondent and others (ORS 125.075)
 - ▶ Respondent - in writing or orally
 - ▶ Others - in writing and filed

Life of a Guard/Cons Case (cont)

- ▶ Court appointed counsel for the Respondent (ORS 125.025(3)(b))
- ▶ The hearing
 - ▶ Petitioner has the burden of proof
 - ▶ Clear and Convincing standard
- ▶ Court determination: Dismissal or Limited Judgment (ORS 125.300, ORS 125.400)
- ▶ Continued duties of the guardian and conservator
- ▶ Continued Court oversight and monitoring

Temporary Guardianships and Conservatorships

- ▶ **Emergency circumstances**
- ▶ **Appointment for a specific purpose and not to exceed 30 days (ORS 125.600(3))**
- ▶ **Additional elements (ORS 125.600(1) and 125.600(2))**
- ▶ **Procedures and protections (ORS 125.605)**
 - ▶ **Court visitor**
 - ▶ **Court appointed attorney**
 - ▶ **Hearing within 2 judicial days of objection**
 - ▶ **Court may require hearing**