

March 10, 2025

Senate Committee on Judiciary

Re: SB 1123
Proposed court visitor immunity

Submitter: Christian Hale¹
On behalf of: Self

Position: Opposed

Dear Chair Prozanski, Vice-Chair Thatcher, and members of the committee:

I write to encourage you to vote to *not pass* SB 1123 on the grounds that one party to a protective proceedings lawsuit under ORS Chapter 125 should not be granted immunity for their court filings where other parties to these same proceedings enjoy no such immunity.

Court visitors are appointed by a court in adult guardianship cases, and occasionally in adult conservatorship cases.

A court visitor in this context is “a person appointed by the court under ORS 125.150 for the purpose of interviewing and evaluating a respondent or protected person.” See ORS 125.005. Court visitors are *parties* to such lawsuits. See ORS 125.012(1)(a)(D); however, their reports and testimony are afforded no extra weight above the pleadings and testimony of any other party.

Visitor duties

The duties of a court visitor are to conduct a statutory, limited investigation into whether a respondent needs a court appointed guardian and whether the proposed one is appropriate (see ORS 125.150), and then to write a report to the court that fits the statutory parameters of ORS 125.155.

ORS 125.155 Visitor’s report. (1) A visitor shall file a report in writing with the court within 15 days after the visitor is appointed. The court may grant additional time for filing the visitor’s report upon a showing of necessity and good cause.

(2) The report of the visitor appointed at the time a petition is filed requesting the appointment of a fiduciary must include the following:

¹ OJD’s statewide guardian and conservator auditor; Chair-Elect, OSB elder law section; Chair-Elect, OSB disability law section; licensed attorney and national certified guardian; former president, Guardian/Conservator Association of Oregon. *The opinions expressed are those of the author and are not the opinions of any state agency or OSB section.*

(a) A statement of information gathered by the visitor relating to the correctness of the allegations contained in the petition, whether the appointment of a fiduciary is necessary and whether the nominated fiduciary is qualified and willing to serve.

(b) The name, address and telephone number of each person interviewed for the report, the date of the interview and the relationship of the person interviewed to the respondent.

(c) The recommendations of the visitor with regard to the suitability of the nominated fiduciary, any limitations that should be imposed on the fiduciary and the need for further evaluation.

(d) The recommendation of the visitor on any issue the court specifically asks the visitor to investigate regarding the propriety of appointing a fiduciary for the respondent.

(e) The visitor's determinations required by ORS 125.150.

(f) Any express communication made by the respondent relating to the desires of the respondent regarding representation by counsel.

(g) Any express communication made by the respondent with respect to whether the respondent is willing to attend a hearing, wishes to contest the appointment of a fiduciary, objects to the nominated fiduciary or prefers another person act as fiduciary.

The visitor's report is uploaded to the court's case management system and, like most other filed documents, are generally made available to parties, their attorneys, and the public. The public nature of most court proceedings permits transparency and accountability of the court system. The content requirements of a visitor's report are shown above, and extraneous information should not be included in the report. Moreover, court-appointed visitors must meet the qualifications and standards prescribed by statute and by the court's presiding judge.

Visitor qualifications

125.165 Qualifications and standards for visitors. (1) A presiding judge shall by court order establish:

(a) Qualifications for persons serving as visitors for the court, in addition to those qualifications established by this section; and

(b) Standards and procedures to be used by visitors in the performance of their duties.

(2) A visitor may be an employee of the court. The visitor may not have any personal interest in the respondent or protected person, or any pecuniary or financial interest in the proceedings, if those interests could compromise or otherwise affect the decisions of the visitor. A visitor may not receive compensation for services rendered as a fiduciary for two or more protected persons at the same time who are not related to the fiduciary.

(3) A visitor must:

(a) **Have the training and expertise adequate to allow the person to conduct the interviews and make the recommendations** required under ORS 125.150 and 125.155, to communicate with, assess and interact with respondents and protected persons, and to perform the other duties required of a visitor; **and**

(b) **Demonstrate sufficient knowledge of the law** so as to be able to inform a respondent or protected person of the nature and effect of a protective proceeding, to inform a respondent or

protected person of the rights of the respondent or protected person in the protective proceeding, to answer the questions of a respondent or protected person and to inform fiduciaries concerning their powers and duties. [Emphasis added].

With the above requirements in place, court visitors are presumed to be competent to perform their duties and to submit a neutral report to the judge that meets requirements. Giving “*carte blanche*” immunity to court visitors does no favors to the administration of justice. Rather, passing SB 1123 to give a visitor immunity “*from any liability for acts, omissions or errors in judgment,*” whether such inaccuracies, errors, or other compromise are made “in good faith” or not, may well lead to:

- Court visitors extending their reports to include extraneous and irrelevant information;
- Inclusion of a respondent’s medical records that should be protected by federal and state privacy laws;
- Inclusion of information gained from state adult protective services investigations, which should be held confidential; and
- Inappropriate advocacy favoring one party over another.

Too often, visitors’ reports include information and opinions on specifics that are excluded from the statutory report requirements. Likewise, copies of portions of a respondent’s medical treatment records can show up in court records, as a part of a visitor’s report, which unnecessarily compromise a respondent’s rights to privacy, where a summary of concerns is what is expected. As a court filed document, a visitor’s report should not unduly embarrass a respondent or provide *unnecessary* details of a respondent’s frailties, their medical conditions, or a list of the prescription drugs they may be taking.

Conclusion

Following statutory requirements and the court’s additional instructions, if any, is considered “the norm.” Straying into recitation of tangential matters, providing surplus commentary and prose, and failure to abide by the relevant laws should not be encouraged or rewarded by civil immunity. Instead, visitors should be carefully selected and properly trained, which statute already requires. Courts already do their best to appoint qualified and appropriate visitors, and visitor training is now offered.

Improved practices result from training, education, and professional diligence, not from waving a wand of immunity from noncompliance.