



Oregon

Tina Kotek, Governor

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To: Chair Prozanski and Members of the Senate Judiciary Committee

From: Chris Rosin, The Oregon Public Guardian & Conservator

RE: Support for SB 1123

Court visitors are the unsung heroes of the guardianship appointment process in Oregon. They are the neutral and unbiased eyes and ears of the court assigned to investigate the appropriateness of guardianship when new petitions are filed.

They not only investigate whether the allegations about a person's incapacity and need for guardianship are true, but also whether the proposed guardian is appropriate to serve in that important and powerful role. They communicate the objections of proposed protected persons and other interested parties to the court and recommend the appointment of counsel. In some cases, they are the only unbiased witness able to testify at a hearing and at times do prevent inappropriate guardianships from being granted.

Guardianship, at its core, is a court process that removes an individual's right to make their own decisions and grants that authority over to someone else. It is the most restrictive form of decision-making support and should only be granted after significant due process. Court visitors are responsible for ensuring that much of that due process occurs.

While the role of the court visitor is highly important, in many ways they do not get the respect that they deserve. They are poorly paid and given short timelines to complete their work. When they do stop inappropriate guardians from being appointed, they can draw the ire of those individuals and their attorneys.

While Oregon law does allow for visitors to be employees or officers of the court, no court in the state has taken this approach and instead court visitors work as independent contractors. This is important to mention, because if they were employees of the court, the Oregon Judicial Department would be able to defend them against lawsuits for acting in good faith in the course of their employment. However, because they are contractors, they are afforded no such assistance, and should they ever find themselves sued by a disgruntled individual, unhappy with the outcome of a case, they alone must defend themselves against the suit without any assistance from the court or system that appointed them.

It is also worth mentioning that there is a very similar role in Oregon guardianship law to that of a court visitor. That is the role of Protected Person's Special Advocate. Special advocates are also appointed by the court to investigate the circumstances of a guardianship and the appropriateness of a guardian. The main difference is that the special advocate can be appointed to investigate after a guardianship is granted and a court visitor is appointed during the petitioning process before a guardianship is granted.



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Unlike the court visitor, special advocates are afforded liability protections for acting in good faith in their role. In fact, the liability immunity language used in SB 1123 is borrowed directly from the liability immunity statute that protects special advocates.

In Oregon there is a shortage of qualified court visitors. When none is available it can greatly slow down the process for a guardianship to be granted, which when the guardianship is appropriate and necessary is the only tool that can help a highly vulnerable adult get the help they desperately need. A recent lawsuit against a long serving, highly respected court visitor brought to light this hole in the process that leaves court visitors exposed. The lack of liability protection has some court visitors questioning whether they want to continue doing this work and will cause some prospective visitors to decide not to enter this field. Leaving an already stretched workforce even thinner

I urge the committee to pass SB 1123 and give court visitors the protection and respect they deserve.