**SPOKANE COUNTY SUPERIOR COURT**

**TITLE 11 GAL/COURT VISITOR DAY 2 TRAINING**

**BEST PRACTICES WHEN INVESTIGATING**

Sharon Ann Saito, Court Visitor

The adoption of the Uniform Guardianship Act, RCW 11.130 et seq., has ushered in some changes to the scope, activities and topics Court Visitors/Guardians ad Litem (investigators) are now required to include in their investigations, although basic topics and activities remain largely unchanged. (The new statute does not permit us to provide consent for emergency, life-saving treatment, for instance.) Our Court Visitor Report forms have themselves changed to reflect the shift from RCW 11.88 et seq., to RCW 11.130 et seq. Please note that we are largely still working with Spokane County forms (if you practice in Spokane County) and that the statewide forms are in wide use elsewhere. There are form differences which may or may not disappear over time as we refine our practices under RCW 11.130. Additional changes to the statute itself (and then forms) may also be modified by appellate cases down the road.

Our role as Court Visitors/Guardians ad Litem in adult guardianship, conservatorship and lesser restrictive options contemplated under RCW 11.130 et seq., remains to complete as thorough an inquiry as we can make in the time authorized into the merits of the Petition filed, the status and needs of the Respondent/Individual (Respondent), the response of the Respondent to the action and their preferences, whether a lesser restrictive alternative may be suitable, the suitability of the proposed guardian/conservator, the value of the Respondent’s estate which may be relevant to payment of costs and fees and/or require management assistance (if any) and the setting of an appropriate bond. The Court relies upon our reports in determining an appropriate disposition of the Petitions before it, so it is important that our Report provide the Court with an adequate factual basis for its ultimate decision(s).

***Practice tip: Be sure your Order Appointing Court Visitor has adequate***

***language to conduct your inquiry as independently and completely as possible***

***without overly relying on any one source. (See LAM Order Appointing Court***

***Visitor in materials. Thank you, Lisa Malpass!) If your Respondent is a***

***Developmental Disabilities Administration or Home & Community Services***

***client, ask Petitioner’s counsel to include them in your Order of Appointment.***

***A Motion for Order of Instructions to access necessary information from these***

***agencies is another alternative.***

GR 22 requires a publicly filed summary of the investigation to comply with transparency of the Court’s activities. There is no Court Visitor Report – Public Document Summary form in our forms bank. I would recommend Court Visitors use the RCW 11.88 form. (See form template in your materials.)

New topics under RCW 11.130 are a home visit and advising the Respondent that they are required to pay the costs of the guardianship/conservatorship action from their funds even if they did not request the action be brought. Another mandatory new topic is inquiring whether and how the Respondent may want to participate in the hearing and advising the Respondent of the consequences of not participating.

In the continuing age of Covid, **safe** home visits are not impossible, but may require prior inquiry into any potential risks as well as consent from the homeowner (especially if the respondent is not currently in their residence at the time of your appointment due to hospitalization). If there are allegations or concerns about violence, environmental hazards, or other unsafe conditions, you may explain to the Court why a home visit was not possible or necessary.

**BASICS.**

* Court visitors/guardians ad litem should review information on file with the Court, especially in on-going cases, cases involving the removal of court-appointed Guardians/Conservators, and cases involving the appointment of successor Guardians/Conservators.
* Look for guardianships in other jurisdictions.
* Does the Respondent have a Durable Power of Attorney? Is the agent willing and able to assist the Respondent?
* Court visitors/guardians ad litem must meet with the subject of the Petitions at least once, preferably multiple times, especially if the Petition was triggered by a traumatic event such as an accident, potentially incapacitating injury, or medically acute condition or illness.
* Court visitors/guardians ad litem must speak with the proposed guardian/conservator candidate(s), whether lay or professional, to assess the adequacy of their training, education, experiences, skills, knowledge of the issues for which assistance may be needed, and ability to secure a bond if necessary. This may require more than one interview. Is there is a good fit of personalities and skills? The guardian/conservator candidate must have the necessary training and background checks done prior to the Court hearing, unless the Court grants an exception. The court visitor/guardian should corroborate the information provided by guardian/conservator candidates as part of their investigation, not merely rely on verbal representations.
* Court visitors/guardians ad litem ideally should be present at the first meeting between lay or professional guardian/conservator candidates and the subject of the Petition to assess the dynamic between them. A follow up discussion with the Respondent to solicit their impressions of the proposed guardian/conservator candidate and whether they are comfortable with the guardian/conservator candidate assisting them should be done in private.
* Bankruptcies, criminal conviction history for offenses involving dishonesty, violence or moral turpitude, civil judgments related to financial obligations or delayed calls/responses to the court visitor/guardian ad litem should raise red flags in your investigation and require further inquiry. Timeliness and honesty are paramount when acting as a fiduciary for a vulnerable person.
* Guardianship/conservatorship actions filed on behalf of medically fragile or developmentally delayed individuals require additional planning. Efforts should be made to plan for a standby guardian as part of the investigation into appointment of the original guardian/conservator as time may be of the essence should the appointed guardian/conservator die or become incapacitated themselves while caring for a disabled adult who may not have safety awareness, is unable to speak or dial 911.
* Lay guardians may need additional attention and support in locating, understanding, and completing the required forms after appointment. Virtually all lay guardians have mentioned to me the lack of specific training on forms in the mandatory online training, yet risk removal as guardian should they fail to appropriately complete and timely file their reports. Our calendars are full of post-appointment settings to address deficiencies with these necessary Reports. It is a good practice to ensure lay guardians have the ability and confidence to complete this required aspect of their new role as fiduciaries. Ask them to practice by completing the forms needed immediately after they are appointed.
* Professional Guardians do not have ESP. They generally have more knowledge as to the functional aspects of serving as a guardian/conservator. Please provide them with a copy of the Reports filed under seal upon their appointment and direction on matters which may need their attention immediately. I included a Contact Facesheet template in my materials with the names of key people contacted in my investigation, relationship to the Respondent, and their contact information. We have developed valuable information for the Respondent and the guardians/conservators do not receive 15 or more hours at the outset to learn of their person’s needs.
* Lay guardians **may** have more personal knowledge regarding the Respondent, but they also do not have ESP. They should receive the same information as Professional Guardians as they will also be serving the interests of the Respondent under the same rules, powers and responsibilities.

**BEST PRACTICES.**

**Treat people as you wish to be treated if you were in their shoes.** Dignity and respect go a long way in establishing rapport with people, especially when they are feeling vulnerable. Be sure to extend this to those around your Respondent and (if in hospital) to their care givers there. Say thank you.

**Plan on meeting with your Respondent more than once**. This fosters a good working relationship with your Respondent and may result in additional information being exchanged as they build trust with you and have time to mull over questions or issues from your previous contact(s). The frequency of your meetings or contacts may vary, depending upon the age, needs and issues involved in your case. If your Respondent’s Petition is related to a change in cognition, injury or illness which affects their abilities to meet their own needs, periodic contact may be helpful in determining the need for guardianship, the appropriateness of other lesser restrictive arrangements, or dismissal.

**Listen.** Acknowledge your Respondent’s input and concerns, if any. Ask if they have any questions or concerns. Approach your Respondent as a person willing to help them. If they have concerns, assure them that you will look into the matter and get back to them. Then do it.

**Be aware of bias, your own and others,’ as you gather information.** What assumptions may color the interpretation of the information you are finding? There’s an article in the Day 1 materials referencing Malcom Gladwell’s takeaways from his book “Talking to Strangers.” What is fact and what is opinion? By what criteria do we determine what is relevant? Can you prove what you think you know? Are there cultural or religious priorities for your Respondent which are important to them in their current setting or in the context of a guardianship?

**Corroborate as much information as you can.** Document your findings for the Court. Attach exhibits, especially if you have a case involving exploitation or have learned disqualifying information regarding the proposed guardian/conservator. Good documentation creates a good record for the Court. A Quick Reference list is found in the materials for your convenience, as well as a sample Authorization for the Release of Information for lay guardian candidates.

**Document, document, document.** We are encouraged to use the approved forms to ensure compliance with our reporting obligations under RCW 11.130. However, the new forms do not encourage reporting of specific information learned from interviews or your review of materials. Add in a synopsis of relevant information learned, where appropriate, for the Court’s benefit and for the prospective guardian who will likely be receiving a copy of your Report upon appointment. You will have had the benefit of 15 hours getting to learn about your Respondent and their needs. The Court cannot assume facts not presented. The guardian/conservator, if appointed, needs to know what we know at the end of our investigation.

**Avoid describing your Respondent as a collection of diagnoses or deficient behaviors.**  Our Respondents are human beings whose life experiences, skills, accomplishments, interests and needs pre-date our involvement with them. In guardianship law, the focus has historically been to ensure their right to autonomy is protected. If they need assistance, both RCW 11.88 et seq., and RCW 11.130, require assistance which provides for their needs with minimal intrusion. Avoid the temptation to describe your Respondent in terms of deficiencies alone. We all have abilities and circumstances can and do change. Respect goes a long way.

**Discussing tough issues.** I like to use open-ended questions and invite the person to tell me about what’s going on that may have led to a guardianship petition being filed. Listen without judgment. If the circumstances raised appear to involve the abuse, neglect or financial exploitation of my Respondent (especially by the proposed lay guardian), I am likely to be seeking an Order on Motion for Instructions from the Court as to the next step. If I have a proposed lay guardian who admits to abuse, neglect or financial exploitation of my Respondent, I would likely do the same.

RCW 11.130 requires us to advise the Respondent that they are required to pay the costs of the guardianship/conservatorship action from their funds even if they did not request the action be brought. This is not one of my first appointment topics. We will discuss this once I know more about their finances and we have had a chance to form rapport.

Another mandatory new topic is inquiring whether and how the Respondent may want to participate in the hearing and advising the Respondent of the consequences of not participating. This may or may not be part of my first appointment topics and is something I will discuss with them one or more times, sometimes after they have had a chance to read my Court Visitor Report. If they are interested in participating in the hearing, I will request transportation or technical assistance to be provided for them. If they are not interested or capable of understanding the proceedings, I will ask them if they want to attend and relay a message to the Court. If they have no message, but want an update, I will visit them after the hearing with a copy of the Order and relay any observations or new information to them.

**Establishing contact with the Respondent’s medical providers for the Professional Report.** If your respondent is hospitalized at the time of your appointment, it may make it easier to request and obtain a timely Professional Evaluation. Be sure to thank the nurse, social worker, and doctor who make this a reality in short order. The new Court Visitor Report form includes a field to describe non-acute/hospital-based medical history, so an inquiry should be made with your Respondent’s usual providers. I ask about chronic medical issues, medication or food allergies, on-going health conditions which may require specialist attention or follow up. The information is helpful beyond our Report. Meeting the Respondent’s health and medical needs may figure in appropriate discharge planning, whether the Respondent returns home with community-based support services or to an adult family home (AFH) or skilled nursing facility (SNF).

***Practice tip:***  ***If your Respondent is in hospital at the time of your appointment and part of the scope of your duties per your Order of appointment may be to assist with discharge planning,*** ***you should consult with your Respondent, investigate the contemplated discharge plan to ensure your Respondent’s needs can be met, the residence or facility is safe and does not pose a hazard to your Respondent. If you do not feel the proposed discharge plan or residence/facility is safe or appropriate, you are not required to approve the discharge. You should advise the discharge coordinator if you feel this would be an “unsafe discharge”***  (Thank you Lynda Clark.)

**FINAL THOUGHTS.**

We have heard for years about the “Silver Tsunami” of Baby Boomers. That wave is here and more apparent with the lingering impact of Covid and its mutations and the imminent start of flu season. Our services are needed and your efforts are appreciated more than you could know by the Respondents we serve, their families and friends, the medical community and the Courts. Thank you! Be safe and stay well!