**SPOKANE COUNTY SUPERIOR COURT**

**TITLE 11 GAL/COURT VISITOR DAY 1 TRAINING**

**GUARDIANSHIP/CONSERVATOR BASICS: RCW 11.130, TERMINOLOGY, ROLES, DUTIES, SCOPE, LIMITATIONS AND RESOURCES**

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 **RCW 11.130.001: It is the intent of the legislature to protect the liberty and autonomy of all people of this state, and to enable them to exercise their rights under the law to the maximum extent, consistent with the capacity of each person. The legislature recognizes that people with incapacities have unique abilities and needs, and that some people with incapacities cannot exercise their rights or provide for their basic needs without the help of a guardian. However, their liberty and autonomy should be restricted through guardianship, conservatorship, emergency guardianship, emergency conservatorship, and other protective arrangements only to the minimum extent necessary to adequately provide for their own health or safety, or to adequately manage their financial affairs.**

 **RCW 11.130.037: For purposes of this chapter, an adult is presumed to have legal capacity.**

 The State of Washington’s commitment to an individual’s autonomy, fair treatment, dignity and respect does not end with the filing of a Petition for Guardianship/Conservatorship, nor the granting of relief under RCW 11.130 et seq. As Court Visitors, we uphold the rights of the Respondent and make recommendations to the Court by way of our Report.

 You are encouraged to periodically review RCW 11.130 et seq., the information and forms posted on the Spokane County Guardianship Program website, our local rules (especially LSPR 98.19 (conflicts of interest), RCW 7.70.065 (persons authorized to provide informed consent for patients who do not have capacity) and RCW 11.84 et seq., (inheritance rights of slayers or abusers, especially RCW 11.84.900 which directs the terms of this “chapter shall be construed broadly to effect the policy of this state that no person shall be allowed to profit by his or her own wrong, wherever committed.” If your Respondent is a veteran, please review RCW 73.04.140.

 I have requested materials and forms be posted for this training. The discussion below references modified forms which may be needed to conduct your investigation and complete the Court Visitor Report, or to meet the requirements of General Rule 22 (requiring public-access reports where the statute would have your full reports filed under seal). See posted materials.

 There are statewide forms posted at <https://www.courts.wa.gov/forms>. The local practice is to adhere to those forms or forms found on the Guardianship Monitoring Program website.

In general, Spokane County forms are preferred. You may add information, but not delete fields.

 **ROLE AND DUTIES OF COURT VISITORS/GUARDIANS AD LITEM**

Court Visitors/Guardians ad Litem serve as investigators for the Court upon filing of a petition for appointment of a guardian, or conservator and the entry of an Order Appointing Court Visitor. The role of the Court Visitor is defined in RCW 11.130.280 (adult guardianship), RCW 11.130.380 (conservatorship) and RCW 11.130 (petition for a protective arrangement not guardianship). We are permitted to investigate, report upon, and take action on the areas outlined in our Order Appointing Court Visitor, as well as “any other matter the court directs.” RCW 11.130.280 (6)(h), RCW 11.130.380(7)(f), and RCW 11.130.605(7)(g). The Court’s discretion is recognized in case law and by RCW 11.130.015. Quasi-judicial immunity applies if you stay within your parameters, so be sure to identify for the record what the Court is allowing you to do.

The previous statute titled investigators as “Guardians ad Litem” and many community contacts will know us as such.

 ***Practice tip:*** **How to Proceed – Do you need a Guardianship/Conservatorship?**

 If the Respondent is capable of meeting her/his needs and does not meet the requirements of RCW 11.130.265 or RCW 11.130.360, the Petition may be dismissed. If there is a validly executed Durable Power of Attorney (DPOA), many DPOAs state the Principal’s nomination of a guardian should a guardianship action be later filed. Both the Durable Power of Attorney and the nomination of an agent are granted deference under RCW 11.130 et seq. An inquiry should still proceed to verify the actual existence of a DPOA, whether the named agent is alive, aware of the nomination, familiar with the needs of the Respondent, familiar with the duties of a fiduciary, is suitable, and is still willing to serve as agent for the Respondent.

 RCW 11.130.305 lays out the hierarchy of appointment, if guardianship is needed.

 Other options which are lesser restrictive options to guardianship/conservatorship include Durable Powers of Attorney and protective arrangements (RCW 11.130.585) and supported decision-making (RCW 11.130.700).

***Practice tip:*** **How to Assess Medical Information.**

 In prior years’ trainings, our Court Visitors (largely lawyers) heard from medical professionals who gave guidance in evaluating medical information relating to seniors or patients in guardianship actions. This was especially helpful with hospitalized Respondents. We were told:

 \*Rule out medical conditions which could temporarily affect cognitive

 functioning such as: urinary tract infections (UTIs), pneumonia, or metabolic

 imbalances caused by diabetes, head injuries, exposure to toxins.

\*Rule out polypharmacy problems: drug interactions are common when someone is taking 5 or more prescription medications. Is this the cause of a change in mentation?

\*Look at what’s left after rule outs.

 Guardianships are not granted on the basis of a medical diagnosis. As a practical matter, I added active drug or alcohol use to that list. A Respondent’s abilities may significantly improve after a period of sobriety or treatment to counteract the effects of drug/alcohol use. Some mental health diagnoses also merit closer examination, as do situations involving exposure to environmental toxins (i.e., natural gas leaks).

RCW 11.130 et seq., is concerned with the abilities of individuals to meet their own personal needs, provide for basic functions, provide informed medical consent and financial management. A diagnosis is not sufficient to establish guardianship. The Professional Evaluation is helpful but not dispositive. I recommend approaching each investigation with an open mind, corroborating information provided from every source and avoiding snap judgments. What you are told at the outset of your investigation may not be true, as supported by evidence.

Whether the guardianship/conservatorship petition could be granted is defined in statute. RCW 11.130.265 (guardianship) and RCW 11.130.360 identify the bases upon which Court relief may be granted if the elements can be proved by clear and convincing evidence.

Legislative policy must also be considered. If guardianship/conservatorship MAY be granted does not necessarily dictate whether the Petition SHALL be granted. Lesser restrictive alternatives which promote autonomy such as Powers of Attorney and Supported Decision-Making Agreements may be more suitable for a Respondent, depending upon the Respondent’s circumstances, capabilities and wishes, but do not come with the court oversight that guardianships and conservatorships provide.

I encourage you to look for the strengths and capabilities of your Respondents. You are likely to hear primarily about lack of ability from collateral sources who may be interested in supporting a petition for appointment of a guardian or conservator, are required to make specific findings for access to community programs and services, OR think you are interested in supporting guardianship/conservatorship. Be aware of bias, especially confirmation bias (your own and others’). Our job is not to fit the information to the conclusion. Evaluate the information you receive and let the facts take you to the proper recommendation.

For younger Respondents, I ask the Respondent and the persons closest to them to describe their strengths or “superpowers.” We all have them. So do Respondents. It is easy to assume you “know” your Respondent who has a diagnosis of autism spectrum disorder or Down Syndrome. You may be surprised if you gather information without a pre-set conclusion in mind.

A more complete picture of your Respondent helps the Court to understand the context of the information in your Report, the appropriateness of the relief sought, the relevance and qualifications of the proposed guardian/conservator as it relates to this Respondent, and perhaps what may be needed in the Order Appointing Guardian/Conservator. This information has a place on the Court Visitor Report form.

Guardianships/conservatorships are Court-created and monitored arrangements which may be terminated when the Respondent’s abilities, circumstances or effects of chronic medical conditions no longer warrant the action.

***Practice tip:*** Your first contact is likely to be from the Petitioner, seeking an available Court Visitor from the Registry maintained by the Guardianship Monitoring Program (GMP); other counties may not have a GMP and your contact information may be shared by the Court Administrators for those counties. (Every county’s Registry is independently maintained.) The Petitioner may provide a summary of the characteristics of the case they are filing and some basic information on the age, location, proposed guardian (if any), and conditions which limit the Respondent’s ability to meet their own needs and for which assistance is needed.

Prior to accepting appointment, you will want to review your client lists for potential conflicts of interest and also review the proposed Order Appointing Court Visitor. I have posted a proposed Order Appointing Court Visitor which has been slightly modified to permit access to Adult Protective Services records for your Respondent and which contains authorization for access to all information concerning your Respondent. These additions are necessary if you are to complete the new Court Visitor Report form.

If the proposed Order Appointing Court Visitor does not contain language that would be satisfactory for inquiries to Adult Protective Services, Developmental Disabilities Administration, retirement/investment/brokerage houses, educational institutions or prior medical providers addressing conditions outside of the Profession Evaluation Report’s 30-day window, you may be limited in your investigation. You may want to request use of the posted sample Order Appointing Court Visitor in materials before you agree to entry of the Order.

Your other option is to seek a Motion for Order of Instructions to grant authority to for those issues which appear in the course of your investigation and for which you do not have authority. Be mindful that you generally will have 15 hours in which to meet your Respondent, conduct your investigation, issue the required Reports, serve your Respondent, and attend the scheduled hearing. Please note **pro tem Court Commissioners are not allowed to sign guardianship orders.** If you have an urgent matter that cannot wait for a Thursday guardianship ex parte docket, contact the Guardianship Monitoring Program (509.477.2622) for their assistance in locating an available Court Commissioner who may be able to assist you.

If your Respondent is in hospital when you receive your case, your point of contact will generally be the social worker for your Respondent. They can assist with obtaining the Professional Evaluation, provide you with chart notes and identify specialists consulted. Ask for the admission face sheet which will [hopefully] list a home address, next of kin and contact numbers, community medical providers names and contact information. Your Respondent may or may not have that information off the top of their head, or be able to speak. You may need to interview those closest to your Respondent for additional information, verify information as to pre-admission abilities, educational/work/social history or funeral arrangements and last wishes. Family members, neighbors and law enforcement requests for service can provide good leads to develop.

If your Respondent is a young adult, the parent or custodian, or other family member, may be the Petitioner. Some lay Petitioners are seeking appointment and some are not. They are generally informative and usually happy to facilitate the completion and return of the Professional Evaluation. Because they may have a pre-existing relationship with the medical provider, this can expedite the issuance of the Professional Evaluation Report. Many medical providers will complete and return the Professional Evaluation Report form at no charge, especially if requested by the family member. I provide parent/Petitioners with a cover letter to the provider requesting completion and return of the Professional Evaluation Report, a blank copy of the Professional Evaluation Report (highlight the date of last appointment on the first page), and a copy of Order Appointing Court Visitor which has the language giving me access to Respondent’s health information.

Other sources of information which should be contacted for young adults: school records for testing and Individualized Education Plans (IEP), Developmental Disabilities Administration for functional testing, Person Centered Care Plan with information on community supports and providers, and the contact information for the assigned Case Resource Manager. Assessments, formal tests and medical history information are also good sources to be reviewed.

 **TO DO:** **Upon appointment, Court Visitors are to file a Statement of Qualifications with the Court and serve that document upon the Respondent and other parties within five (5) days of receipt of notice of appointment. RCW 11.130.280 (3)(a)**

 ***Practice tip***: I recommend preparing that Statement of Qualifications after consenting to appointment due to the short time frames for filing and service. Personal service upon the Respondent, or by certified mail with return receipt, within five (5) days requires coordination early on. Where possible, personal service is preferred as some Respondents may be unable to sign the certified mail receipt.

 There is also a possible service issue with initial guardianship documents. RCW 11.130.275 requires the Respondent and Court Visitor in a guardianship matter to be personally served with a copy of the Petition and notice of hearing not more than five (5) business days of the original filing. As a practical matter, failure to timely serve initial guardianship/ conservatorship documents on the Respondent may risk dismissal of the action.

 In the past, training discussed the role of Court Visitors and whether we should be serving the Respondent with more than our Statement of Qualifications and Reports. Court Visitors are independent investigators for the Court. Service of legal documents is a duty of the Petitioner’s attorney in civil cases. Court Visitors, even when we are attorneys, are not agents of the Petitioner nor serving in the capacity as attorneys in guardianship/conservatorship cases.

I recommend inquiring of counsel who will be serving the initial guardianship documents upon the Respondent. Court Visitors are responsible for serving our Statement of Qualifications on the Respondent and for reviewing the rights on the Notice of Guardianship with the Respondent. I can find no authority that shifts the burden of original service of court documents onto the Court’s investigator. Spokane County’s guardianship bar is a collegial community and the court culture has often had Court Visitors serving initial documents as a matter of courtesy and expediency. Strictly speaking, this is not part of our duties under statute and is likely not covered by quasi-judicial immunity.

 ***Practice tip***: You may electronically file your Statement of Qualifications. If you haveagreed to receive your copies by electronic transmission, file an Acceptance of Service/Declaration of Service with the Court after serving the Respondent. Spokane County permits electronic filings. (Other counties may not allow electronic filing, so check with their Clerk’s Office). True Filing allows free filing of Court Visitor documents. To get started, see: <https://tf3.truefiling.com/login?/ReturnURL=%2Ffile>. Once accepted and electronically filed, you will receive a conformed (date stamped) copy by email.

 **TO DO: Request a Professional Evaluation Report from a physician, physician’s assistant, psychologist or advance practice nurse practitioner who has seen the Respondent within the past 30 days. RCW 11.130.290.**

 ***Practice tip*:** Make this request as early as you can. Delays in obtaining this mandatory form are a common basis for extended or untimely completion of investigations. The purpose of this Report form is to provide the Court with impartial professional information which may affect the Respondent’s functional abilities. It is not dispositive of the Petition. This form does not require any new testing and may include attached chart notes with the Respondent’s diagnoses and medications. It is more than okay to have a hand-written Professional Evaluation Report as long as it is legible. If received by fax, please complete a GR 17 Declaration and attach it to the faxed report before filing. **This Report requires a confidential cover** (see Spokane Guardianship Monitoring Program’s Guardianship and Trust Forms).

If your Respondent refuses to see the doctor, or you are not able to obtain a Professional Evaluation for whatever reason, RCW 11.130.290(4) allows consideration of medical information beyond the 30-day time frame. This is where the access to “all information” language of the modified Order Appointing Court Visitor comes in handy. It will allow you to inquire, consider relevant information older than 30 days, consider relevant information from sources other than the most recent contact with a medical provider, and add to your Report.

 ***Practice tip***: Since Covid, and from time to time, the question comes up whether the Professional Evaluation Report may be completed by a telehealth provider who is a physician, physician’s assistant, psychologist or advance practice nurse practitioner. If the provider is licensed by the State of Washington, has had access to and reviewed historical or collateral information, seen the Respondent for more than a fleeting video visit, and may be available to testify if there are questions about their Report, or the Report is challenged, you could take a chance on this. This Report is important, so anything that deviates from standard practice raises concerns over accuracy, validity and legal sufficiency. Best practice would be to have a medical provider who has actually seen the patient complete the Report within 30 days of that contact.

 **TO DO: Meet with your Respondent, explain who you are and the purpose of your visit, serve your copy of the Court Visitor Statement of Qualifications, and ask your Respondent their thoughts on the matter. Let the Respondent know that guardianship is intended to assist them and interfere with their autonomy only so far as assistance may be needed and that guardianships may be terminated when no longer needed (RCW 11.130.355).**

 ***Practice tip*:** Making a good impression is important to establishing trust, particularly when you may be meeting under difficult circumstances. Respondents may be aware that things are not going well in their lives. Or fearful of a stranger (i.e., you) in their space. Be positive in your approach. Address your Respondent respectfully. Ask open ended questions, giving your Respondent ample time to answer. Slow your speech and invite their thoughts. Listen. I ask the Respondent who they would want me to talk to and if there is anything that I could help with. Follow up with their concerns or requests. Tell them you will report back what you learn.

 If your Respondent is “non-verbal,” how does s/he communicate with family, caregivers, and others?

 If possible, meet at their home as this is something your Report addresses (i.e., what is the Respondent’s living environment like and is it suitable for their needs). Are they able to safely negotiate the physical environment? If mobility is a concern, what modifications have been made (or perhaps are still needed) for safe exit in case of fire or a health crisis.

 ***Practice tip:*** The individuals we meet as subjects of the various petitions have highly personal and fact-specific circumstances, abilities and limitations, a life history beyond our case, significant relationships with family, friends, and pets and community supports which are important to them and which may have been recently interrupted. On occasion, we are meeting them after a traumatic event has occurred to them. Trauma and loss are powerful events. It is unfair to portray a simplistic approach to conducting an investigation. What follows are suggestions for approaches which can be helpful. The purpose of our inquiry is to learn about the person, seek information which could explain the alleged limitations in the Petition and which could justify establishment of a guardianship or conservatorship if no other appropriate alternative arrangements have been made or if the Respondent is unable to make them now. It is important to meet Respondents where they are at the time of our contact and relate/communicate with them on their level.

 Respondents are presumed capable by law. Not every Respondent needs a guardian/conservator just because a petition has been filed.

RCW 11.130.265(3) states the basis for appointment of a guardian for an adult upon a finding by the court by clear and convincing evidence that:

1. the respondent lacks the ability to meet essential requirements for physical health, safety or self-care because the respondent is unable to receive and evaluate information or make or communicate decisions, even with appropriate supportive services, technological assistance, or supported decision making;
2. appointment is necessary to prevent significant risk of harm to the adult respondent’s physical health, safety, or self-care; and
3. the respondent’s identified needs cannot be met by a protective arrangement instead of guardianship or other less restrictive arrangement.

RCW 11.130.265 states: **A determination by the court that a basis exists under**

**subsection of this section for the appointment of a guardian and on the issues of the rights that will be retained or restricted by the appointment of a guardian is a legal decision, not a medical decision.** The determination must be based on a demonstration of management insufficiencies over time in the area of physical health, safety, or self-care. **Age, eccentricity, poverty, or medical diagnosis alone are not sufficient basis under subsection (1) to justify a determination that a guardian should be appointed for the respondent.** [Emphasis mine.]

The filing of the Petition does not negate the Respondent’s rights, wishes or free agency. It is helpful to keep an open mind as you learn information from and about the Respondent. Do they have family or friends nearby? What does their average day look like? What are their preferences, wishes, plans to meet their own needs? What do they enjoy? Are they or were they employed? Who might they rely upon for help? Who do they trust for assistance? Are they voters? Ask if they have a Durable Power of Attorney or Will. Do they meet the statutory criteria for granting a guardianship/conservatorship?

If there is a lesser restrictive arrangement (i.e., a validly executed Durable Power of Attorney) either already in place or which could be arranged to preclude the need for guardianship/ conservatorship, that may obviate the need for court action. If your Respondent has the ability to understand, describe the benefits and impact of such an arrangement, a trusted (and non-abusive, non-exploitive ) person to act as their agent, and a doable plan on how to execute this alternate arrangement, consider whether this could be appropriate in meeting the needs of your Respondent under the statute and policy favoring autonomy. If the lesser restrictive alternative could provide for the Respondent’s needs, but could also potentially put them at risk of abuse or financial exploitation, a guardianship/conservatorship may still be appropriate.

 Listen to your Respondent. Ask how they are doing and if they need anything or would like you to contact anyone on their behalf. Be aware of potential assumptions and biases by everyone. Repeat back any requests or instructions Respondents may have of you. If follow up is needed, let the Respondent know you will be back when you find the answers.

Seek factual information and corroboration as much as possible. I have a sample Interview Information sheet posted for this section which can assist in your investigation and the completion of your Report. I tend not to scribe as I interview except when needed to capture the information shared by the Respondent. If my Respondent is not sure whether they would like an attorney (RCW 11.130.285) or a jury trial, I let them know it’s okay to think on it and let me know once I have more information and we have discussed what I have learned. If they are in agreement with guardianship or conservatorship or a recommendation for a lesser restrictive alternative, we are okay. If they disagree with my recommendations, or need help in arranging execution of a lesser restrictive alternative, I will assist in getting an attorney appointed for them if they do not already have an attorney they wish to have represent them. If they are in hospital, I plan for as extended and relaxed an initial visit as Respondent can manage and try to see them more than once.

 ***Practice tip:*** I ask Respondents if they would like me to review the paperwork with them. We will go over at least the Notice of Petition’s list of rights that could be affected if guardianship is granted. I allow as much opportunity to participate as possible, within their tolerances.

The language of the Court Visitor Report indicates we should also advise the Respondent of the consequences of not appearing at the hearing, and asks if alternate arrangements or use of technology could be helpful in facilitating the Respondent’s appearance. Ask the Respondent for their preference. Some Respondents are intimidated at the thought of a Court appearance, or have had not so pleasant experiences with the legal system. Some Respondents are highly sensitive to sound or unfamiliar environments. A busy Courthouse environment could trigger extreme anxiety, behavioral outbursts, seizures or cessation of breathing for your very sensitive Respondents. ZOOM is an option. Ask Respondents and their caregivers what they might be able to tolerate.

The payment issue is not my first topic of discussion. Work on building rapport and trust. Try to demonstrate your usefulness to them in addressing a concern or comfort issue.

In my initial visit, I let the Respondent know that I am just beginning to learn about them and will check into what I am required to know and will report back to them. Whether Court fees and Court Visitor expenses will be paid by the County or the Respondent’s estate is contingent upon the size of the Respondent’s estate. The Respondent may not know this information (or be willing to disclose) in the early days of your contacts. If you can identify the financial institution they use, you can follow up with appropriate access language in your Order Appointing Court Visitor, or ask if they have their latest balance statement from the bank. Put yourself in their shoes: if a stranger approaches you for banking information, the size of your estate or personal identifying information ~ wouldn’t you be concerned and defensive?

 ***Practice tip*:**  If your Respondent is said to be non-verbal due to a medical condition (i.e., stroke, coma, autism), conduct your first meeting the same as you would if they were verbal. Ask clear questions, avoid compound questions, speak slowly and clearly and give them time to respond. Instead of a string of questions from the interview sheet, you may want to orient your Respondent to their surroundings and reasons why they may not be home ~ at least temporarily. Reassure them that they are being cared for. You are there to help. Many “non-verbal” people are able to communicate in some fashion. Invite their responses to questions asked, if they are able. If they are unable, reassure them that you will be back and can revisit that question later. Ask the persons closest to the Respondent how the Respondent makes their preferences known. Observe interactions between the Respondent and family/caregivers.

 ***Practice tip***: If the Respondent may not be English speaking and they are in a hospital, request assistance from the staff to arrange an interpreter for your contacts, doctor’s contacts and discharge planning. If the non-English speaking Respondent usually resides in the community, are there people in the home or facility who can help with communications? If there are no formal interpreters, are there community resources which might be available to assist on a paid or unpaid basis? Reach out to community resettlement organizations, churches affiliated with your Respondent’s country of origin, or your local Church of Latter Day Saints (their members often go on missions to other countries and may have congregants who know your Respondent and/or may be willing to help).

***Practice tip***: For many people with a diagnosis of a neurodivergent or autism spectrum disorder, any change in their environment (i.e., the appearance of a Court Visitor they have not met previously) can be anxiety-provoking and trigger behaviors. Direct eye contact is difficult and sometimes anxiety provoking. One recent non-verbal Respondent experienced seizures and could stop breathing when stressed. Please be mindful of personal space, levels of stimulation, indicators of stress and triggers. Please give them space and choose any verbal inquiries with care, minimize words and position yourself obliquely to avoid overloading them. Cultivate a calm approach. Grow comfortable with silence. Thank them.

***Practice tip:*** If your Respondent is said to be in a coma, conduct your first meeting as you would for a non-verbal person. We are told that hearing is the last sense to go. Your Respondent may have receptive speech and understand what you are saying, but may not (yet) have the ability to respond with behavior or verbalize. If in a hospital or facility, plan on regular visits over time to gauge improvement or changes. Drop in after business hours to see if their level of response changes or the staff’s level of care is appropriate. Observe the Respondent ‘s interactions with care providers: eye contact, physical stimulation, responses to voices traversing a room. Document your observations of non-verbal communication in your Report for the benefit of the Court and the eventual guardian (if appointed).

**TO DO: Ascertain the size of the Respondent’s estate, sources of funding for medical expenses and housing.**

**The size of Respondent’s estate is important to both guardianship and conservatorship actions. Placement options and your selection criteria of professional guardians/conservators may require this information. Assets may be held by banks, investment firms, and/or retirement programs. Your Order Appointing Court Visitor will need to have access language it in or you will need to prepare a Motion for Order of Instructions.**

**Generally speaking, you will need a certified copy of a Court Order allowing you access to your Respondent’s financial information and your driver’s license to verify you are the person named in the Order. Obtain a certified copy of the Order Appointing Court Visitor for this inquiry. Certified copies are provided to Court Visitors at the Clerk’s Office no charge, pursuant to GALR 4(g). You may want to verify ownership of the bank or credit union account, names added who are non-contributory, and obtain a copy of the signature card for the owner. Banks and credit unions may print copies of past statements at no charge to you as Court Visitor.**

**Large estates may require lay or professional guardians/ conservators to obtain bonds or make special arrangements. What is the proposed guardian/conservator’s plan to safeguard the Respondent’s financial interests?**

 ***Practice tip:*** Some financial institutions are more user-friendly than others and are able to assist you immediately. If there are concerns about financial exploitation, enlist the financial institution’s assistance in **deferring** outgoing transactions to allow you time to obtain an Order of Instructions to temporarily suspend disbursements, ATM cards, telephone or on-line transfers until the hearing on the Petition **OR** until you return with an Order to do so. There are banking laws that permit deferment of questionable activity and many bank managers are happy to protect their vulnerable customers. Return as soon as you can to the financial institution with a certified copy of the Order of Instructions that permits you to safeguard your Respondent’s assets. Be specific in your request for the documentation you may need. You may also be able to access the financial institution’s fraud or safety loss department with your Order of Appointment and receive assistance or return of funds with their help.

If automatic deposits or payments were previously set up by the Respondent, your Order can allow the financial institution to allow those to go through **OR** you may need to request Court permission to temporarily assist with bill payment. Document your actions taken by filing with the court the bills received and paid, a copy of the cashier’s check in the creditor’s name and for the amount requested, and a declaration as to the date payment was made.

***Practice tip***: If your Respondent is in hospital/skilled nursing and has an apartment or pets, action may be needed to preserve their personal belongings, maintain their apartment, pay bills, or care for their pets to avoid lapse or loss of assets. Seek a Motion for Order of Instructions to allow you to make necessary arrangements to temporarily maintain these assets.

 ***Practice tip***: Interview alleged perpetrators of exploitation as early as you can in order to get their story. They may have useful information to you in understanding your Respondent’s history, care needs and abilities to manage their own finances. Who has been helping when they need help? I have invited an alleged perpetrator to my office to tell me what’s going on with the Respondent over a cup of coffee. (He disclosed 19 years of his financial exploitation of his 24-year old grandson, both his use of his grandson’s SSI benefits and EBT cards – three of them – but not for the care or support of his grandson-) It’s pretty amazing what people are willing to share in a non-confrontational setting and you listen without judgment.

***Practice tip:*** If financial exploitation is a concern and you develop/obtain documentation to verify exploitation has occurred, (1) consider protective action by way of a Motion for Order of Instructions to protect assets, freeze outgoing funds and/or permission to share you information with Adult Protective Services or law enforcement **AND/OR** (2) attach your documentation to your Report. The Court needs a factual basis upon which to base its findings and issue an Order which may include specific protective language to prevent recurrence.

Ask the Court for permission to disclose evidence of potential exploitation to Adult Protective Services and/or law enforcement for further action. With a time budget of 15 hours, you may need to petition the Court for additional hours or make a report to Adult Protective Services to report fraud and request the filing of a Vulnerable Adult Protection Order (VAPO) if the circumstances warrant.

***Practice tip***: FYI ~ RCW 11.84 et seq., prohibits an abuser or slayer from benefiting from their financial exploitation of a vulnerable adult following a final civil judgment (clear and convincing evidence) or by criminal conviction. If your case involves financial exploitation of a vulnerable adult, you may want to address this in your Report to the Court. The Court may be willing to make specific findings.

**TO DO: Interview the prospective guardian/conservator, if listed in your Petition. Inquire into their relationship to the Respondent, identify potential conflicts of interest, ask about fiduciary experience, how many people have they assisted in the past/current case loads, training, criminal history or bankruptcies. Would they be comfortable accepting appointment for your Respondent? What information would they want to know before accepting appointment? Would they be interested in meeting your Respondent?**

***Practice tip*:** If the proposed guardian/ conservator is a lay person, have they filed a completion of training certificate, a WATCH Report, a Declaration of Proposed Guardian? Ask them to complete an Authorization for Release of Information for your investigation. (See sample form posted.) We are required to use due diligence in checking on the qualifications of guardians, lay or professional, to serve.

For lay guardians, reviewing Odyssey records for your prospective lay guardian is a start. If there are ANY criminal files, review the files for any pre-trial service reports. The Court staff in those cases have access to NCIC (National Crime Information Center) records for all 50 states. We do not. Convictions involving dishonesty or moral turpitude are difficult for us to identify when they occur out of state. Finding a disqualifying criminal conviction may preclude their appointment.

Ask Child Protective Services and Adult Protective Services public disclosure offices for any adverse administrative findings as to the proposed lay guardian. You will need a copy of your Order Appointing Court Visitor with the access language for all information and a Release of Information from the prospective guardian for these requests. Bankruptcy cases are listed on PACER for a multitude of jurisdictions and should be consulted if the lay person is seeking appointment as a conservator. Contact information for these data repositories are listed in a handout posted for this session.

If there is no proposed guardian/conservator listed **OR** the Order states you are to locate a prospective guardian/conservator, start calling.

If you are unfamiliar with certified professional guardians/conservators (CPGC), check with your mentor, colleagues or the Guardianship Monitoring Program weekly docket to see who may be taking new cases. There is a listing of certified professional guardian/conservators at https://www.courts.wa.gov/guardianportal . I would search among the CPGC’s with higher numbers (newer CPGCs may have greater capacity to accept new cases). For more complex cases, search for established CPGCs with experience. Then start interviewing prospective CPGCs. Focus on a good fit for your Respondent as a person, the identified issues needing assistance and the skills of the prospective CPGC.

**TO DO: Challenge - Interviewing potential guardian/conservators, lay or professional, when your Order Appointing Court Visitor requires you to keep information confidential.**

***Practice tip*:**  Ask your Respondent who they would want to help them. If they do not have a trusted individual in mind, ask if you may look for people who might be able to help. What qualities would be important to your Respondent? Keep the Respondent updated as to guardian candidates and ask the Respondent if they would like to meet and evaluate the prospective CPGC. I tell my Respondents I will visit after the prospective guardian/conservator appointment and see what the Respondent thinks about having that person assist them.

When contacting prospective guardians, use open ended questions, elicit their plan for the needs you have identified, use hypotheticals. Ask about financial management options given the nature and estimated size of the Respondent’s income and estate. If needed, are they bondable?

If your proposed guardian/conservator is a professional, many of the questions may apply (except WATCH report). Inquire into the guardian/conservator candidate’s ability to obtain a bond if there is a large estate to be managed. How do they plan to handle assets? How do they plan to keep Respondent connected with family, friends, or providers? If there is a known issue with potentially unsafe family members, what recommendation for protective language should the Court Visitor make to reduce risk to the Respondent in the Order Appointing guardian/conservator?

**TO DO: Time management.**

***Practice tip:*** Your Order Appointing Court Visitor will likely state you are authorized to spend 15 hours toconduct your investigation, write a Report, file and serve copies of your Report to the Petitioner and Respondent 15 days prior to the scheduled hearing, and attend the hearing. The authorized initial time permitted applies to County-pay cases and private pay cases. Your Reports may be electronically filed, but printed Bench Copies should be delivered to Court Administration (Spokane County Courthouse Annex, Third Floor).

I recommend posting your Court Visitor activities as you go, both for ease in tracking time spent but also tracking the details of contacts made for your Report. If you are in danger of exceeding allowed hours and there are tasks left undone, you may need to request approval of additional hours before exceeding your authorized hours. Use the Motion for Order for Instructions and the Order for Instructions forms found at the Guardianship Monitoring Program’s website and attach your timesheet or itemized invoice for the case. The Court will likely not approve billing for time which exceeds approved County-pay hours.

Requests for additional time are currently submitted to The Honorable Rachelle Anderson via her drop box at the Courthouse; her judicial assistant will let you know when your request has been considered, filed and granted (or not). If yours is a County-pay case, do not assume additional time will be approved as a matter of course or on a nunc pro tunc basis. The Court is juggling an unpredictable and increasing influx of cases with fixed County budgets that are established long before we appear in Court. Good time management is an art. Do your best. Ask for additional time when extraordinary circumstances warrant it.

If your Respondent has assets in excess of $3,000, and you are close to exhausting your authorized hours, I would still Motion for approval of additional time as the Court must determine reasonableness of fees, whether County-pay or private pay.

Final billing for your county-pay case must be pre-approved by Leanne Wakefield at the Court Administrator’s Office prior to your hearing (LWakefield@spokanecount.org). Reimbursement for expenses advanced may also be approved, subject to County policy. (See handout Best Practices and FAQs posted for this training.) It is a good idea to file your Motion, Declaration and invoice in advance and to provide a copy to counsel for the Petitioner to include in the proposed Order Appointing Guardian/Conservator.

**TO DO: Write your full Court Visitor Report (to be filed under seal), prepare a confidential cover sheet for your full Report, and file the original at the Clerk’s office in Room 300 of the Spokane County Courthouse or electronically via True Filing. See sample form in materials posted for this session.**

**Pursuant to General Rule 22 (GR22), a Court Visitor Report – Public Document Summary should also be prepared and filed at the Clerk’s Office or by True Filing. The adoption of RCW 11.130 et seq., resulted in the replacement of forms used in connection with the former guardianship statute, RCW 11.88 et seq., The adoption of RCW 11.130 et seq., did not negate the requirement of a public access Court Visitor Report, pursuant to General Rule 22, however and no “new” approved form was promulgated. A sample Court Visitor Report-Public Document Summary can be found in the materials posted for this session. The Public Document Summary is what will appear in the public access file.**

**Distribute copies to the parties entitled to receive them. Drop off a Bench copy with Court Administration on the third floor of the Courthouse Annex.**

**TO DO: File and serve your Reports on the Petitioner, Respondent and those notice parties who are listed in the statute and on the last page of the Petition. Complete and file a Declaration of Service and distribute conformed copies.**

***Practice tip*:** Meet with the Respondent and serve them with your Court Visitor Reports. Review your recommendations with them. What is their response? Do they agree or disagree with your recommendations? Do they want an attorney or jury trial after hearing your recommendations? Do they wish to appear in person or by ZOOM for the hearing? Some Respondents would prefer not to participate but may want you to relay a statement on their behalf and tell them what happened afterwards. Some Respondents may need interpreters. Some may require assistive devices. Some may not be able to compensate by using technology. Include the Respondent as much as possible in ways that are most comfortable and meaningful to them.

***Practice tip:*** If providing a copy of your full Report might endanger your Respondent (i.e., because they reside with a person believed to be abusing or exploiting them), ask the Respondent whether they would like a Summary copy to keep their information private and avoid making people around them angry. Ask them if they would like the guardian/conservator to hold their copy for them so they will have access when it would be safer. Or, ask the Court for permission through a Motion for Order of Instructions to exclude delivery of the full Report and provide the Public Document Summary instead.

***Practice tip:*** Make specific recommendations in your Report if the Order Appointing Guardian/Conservator should grant the guardian the authority needed to provide for and protect the best interests of the Respondent, even if this conflicts with the professional guardian standards of practice. The conflicts between the rights of the Respondent and the duties of their fiduciary may be addressed in the Order Appointing Guardian/Conservator.

***Practice Tip***: Until appointed, potential guardians/conservators do not have the right to have protected/ confidential health or financial information or a copy of the Court Visitor Report **unless** they are also agents under a validly executed Durable Power of Attorney (DPOA). If the DPOA is revoked at the time the guardianship/conservatorship is granted, the authority of the former agent under the DPOA ends, unless otherwise specified by the Court. Be prepared to provide copies of the confidential Reports on file with the Court to the guardian/conservator upon appointment. This will likely be the first time they will know what you know about the Respondent. I also provide them with a copy of my Contact Facesheet to expedite their access to those with knowledge of the case. (See sample form posted for this session.)

 **TO DO**: **Call the Guardianship Monitoring Program not later than noon on the Tuesday preceding the hearing (509.477.3886) to confirm the case is ready to proceed. You will need to leave the case name, case number, date and time of the hearing.**

 ***Practice tip***: If a party or interested person has indicated a desire to participate by Zoom, contact information and meeting ID should be provided to the party AND GMP notified of the person(s) expected to participate by ZOOM and their contact numbers so that the Commissioner may identify them to allow them into the electronic hearing.

If a case is not verified ready for hearing, it may be dropped from the docket. There is no bright line rule on who should call, so it is best practice to call in to assure your case appears. The final docket of guardianship hearings is posted on the GMP website under “Weekly Docket” by noon Wednesday. ZOOM information and reporting deadlines are listed on the weekly docket.

 If your Respondent is not planning on personally appearing, but would like to appear by ZOOM, please ask the proposed guardian/conservator if s/he is planning on being with the Respondent for the video hearing. Some Respondents may not understand voices or images addressing them via a screen. Any party not personally present for the hearing should review and sign proposed Orders or any other document needed for the completion of the hearing prior to the scheduled date.

 Visit your Respondent after the hearing to address any questions or concerns they may have. Provide a copy of the Order Appointing Guardian/Conservator. Wish them well.

**MOVING FORWARD**

Thank you for your interest and willingness to serve as Court Visitors/Guardians ad Litem. We appreciate your passion, skills and experiences. Your efforts will assist the Court in ensuring a safer path forward for the Respondents we serve.

 Please contact the Guardianship Monitoring Program or any of us on the Court Visitor Registry should you have questions. Ours is a close, collegial community of practitioners.

 You are welcomed to contact me as well. Please do not publish my email address or cell phone number, which you are welcome to use. I am best reached at:

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ATTORNEY AT LAW

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SPOKANE, WASHINGTON 99201

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**WELCOME!**