

# **Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act**

**January 1, 2022**

## **Introduction to the Court Visitor Role in Adult Guardianships, Conservatorships and Other Protective Arrangements**

*\*This information does not address the court visitor role in minor guardianships*

**Court Visitor and GAL Definitions**  
**RCW 11.130.010 Definitions Section**

**“Court Visitor” RCW 11.130.010 (7)** "Court visitor" means the person appointed by the court pursuant to this chapter.

**“Visitor” RCW 11.130.010 (40)** "Visitor" means a court visitor.

**“Guardian ad litem” RCW 11.130.010 (12)** "Guardian ad litem" means a person appointed to inform the court about, and to represent, the needs and best interests of a minor.

## Guardian ad Litem

### RCW 11.130.075

RCW 11.130.075 Guardian ad litem.

The court at any time may appoint a guardian ad litem for an individual if the court determines the individual's interest otherwise would not be adequately represented. If no conflict of interest exists, a guardian ad litem may be appointed to represent multiple individuals or interests. The guardian ad litem may not be the same individual as the attorney representing the respondent. The court shall state the duties of the guardian ad litem and the reasons for the appointment.

\*\*\*\*Note: The above provision states the court may appoint a guardian ad litem at any time if necessary to adequately represent an individual's interest. Compare to the definition of a GAL under RCW 11.130.010 (12) that refers to a GAL representing the needs and best interests of a minor.

# **Court Visitor Appointments in Adult Guardianships, Conservatorships and Other Protective Arrangement Proceedings**

## **Adult Guardianships**

- ✓ RCW 11.130.280 - Appointment and role of court visitor
- ✓ RCW 11.130.320 - Emergency guardian for adult
- ✓ RCW 11.130.345 - Guardian's report—Monitoring of guardianship

## **Conservatorships**

- ✓ RCW 11.130.380 - Appointment and role of court visitor
- ✓ RCW 11.130.430 - Emergency conservator
- ✓ RCW 11.130.530 - Conservator's report and accounting—Monitoring

## **Protective Arrangements**

- ✓ RCW 11.130.605 - Appointment and role of court visitor.

## **Grievance or Complaint**

- ✓ RCW 11.130.140 Grievance or complaint against guardian or conservator

## **Registry Provisions**

### **RCW 11.130.155**

#### **RCW 11.130.155 Registry for guardians ad litem and visitors.**

(1) The superior court of each county shall develop and maintain a registry of persons who are willing and qualified to serve as guardians ad litem and visitors in guardianship and conservatorship matters. **The court shall choose as guardian ad litem or visitor a person whose name appears on the registry in a system of consistent rotation, except in extraordinary circumstances such as the need for particular expertise.**

The court shall develop procedures for periodic review of the persons on the registry and for probation, suspension, or removal of persons on the registry for failure to perform properly their duties as guardian ad litem or visitor. In the event the court does not select the person next on the list, it shall include in the order of appointment a written reason for its decision.

(2) To be eligible for the registry a person shall:

(a) Present a written statement outlining his or her background and qualifications. The background statement shall include, but is not limited to, the following information:

(i) Level of formal education;

(ii) Training related to the duties of a guardian ad litem or visitor;

(iii) Number of years' experience as a guardian ad litem or visitor;

(iv) Number of appointments as a guardian ad litem or visitor and the county or counties of appointment;

(v) Criminal history, as defined in RCW 9.94A.030; and

(vi) Evidence of the person's knowledge, training, and experience in each of the following: Needs of impaired elderly people, physical disabilities, mental illness, developmental disabilities, and other areas relevant to the needs of persons subject to guardianship or conservatorship, legal procedure, and the requirements of this chapter.

The written statement of qualifications shall include the names of any counties in which the person was removed from a guardian ad litem or visitor registry pursuant to a grievance action, and the name of the court and the cause number of any case in which the court has removed the person for cause; and

(b) Complete the training as described in subsection (5) of this section. The training is not applicable to guardians ad litem appointed pursuant to special proceeding rule 98.16W.

(3) The superior court shall remove any person from the guardian ad litem or visitor registry who misrepresents his or her qualifications pursuant to a grievance procedure established by the court.

(4) The background and qualification information shall be updated annually.

(5) **The department of social and health services shall convene an advisory group to develop a model lay guardian, guardian ad litem, and visitor training program and shall update the program biennially.** The advisory group shall consist of representatives from consumer, advocacy, and professional groups knowledgeable in developmental disabilities, neurological impairment, physical disabilities, mental illness, domestic violence, aging, legal, court administration, the Washington state bar association, and other interested parties.

(6) **The superior court shall require utilization of the model program developed by the advisory group as described in subsection (5) of this section to assure that candidates applying for registration as a qualified guardian ad litem or visitor shall have satisfactorily completed training to attain these essential minimum qualifications to act as guardian ad litem or visitor.**

## Adult Guardianship

### RCW 11.130.280

#### Appointment and role of court visitor.

### RCW 11.130.280

(1) On receipt of a petition under RCW 11.130.270 for appointment of a guardian for an adult, the court shall appoint a court visitor. The court visitor must be an individual with training or experience in the type of abilities, limitations, and needs alleged in the petition.

(2) The court, in the order appointing a court visitor, shall specify the hourly rate the court visitor may charge for his or her services, and shall specify the maximum amount the court visitor may charge without additional court review and approval. The fee shall be charged to the person subject to a guardianship or conservatorship proceeding unless the court finds that such payment would result in substantial hardship upon such person, in which case the county shall be responsible for such costs: PROVIDED, That the court may charge such fee to the petitioner, the person subject to a guardianship or conservatorship proceeding, or any person who has appeared in the action; or may allocate the fee, as it deems just. If the petition is found to be frivolous or not brought in good faith, the court visitor fee shall be charged to the petitioner. The court shall not be required to provide for the payment of a fee to any salaried employee of a public agency.

(3)(a) The court visitor appointed under subsection (1) of this section shall within five days of receipt of notice of appointment file with the court and serve, either personally or by certified mail with return receipt, the respondent or his or her legal counsel, the petitioner or his or her legal counsel, and any interested party entitled to notice under RCW 11.130.080 with a statement including: His or her training relating to the duties as a court visitor; his or her criminal history as defined in RCW 9.94A.030 for the period covering ten years prior to the appointment; his or her hourly rate, if compensated; whether the court visitor has had any contact with a party to the proceeding prior to his or her appointment; and whether he or she has an apparent conflict of interest. Within three days of the later of the actual service or filing of the court visitor's statement, any party may set a hearing and file and serve a motion for an order to show cause why the court visitor should not be removed for one of the following three reasons:

- (i) Lack of expertise necessary for the proceeding;
- (ii) An hourly rate higher than what is reasonable for the particular proceeding; or

(iii) A conflict of interest.

(b) Notice of the hearing shall be provided to the court visitor and all parties. If, after a hearing, the court enters an order replacing the court visitor, findings shall be included, expressly stating the reasons for the removal. If the court visitor is not removed, the court has the authority to assess to the moving party attorneys' fees and costs related to the motion. The court shall assess attorneys' fees and costs for frivolous motions.

(4) A court visitor appointed under subsection (1) of this section shall interview the respondent in person and, in a manner the respondent is best able to understand:

(a) Explain to the respondent the substance of the petition, the nature, purpose, and effect of the proceeding, the respondent's rights at the hearing on the petition, and the general powers and duties of a guardian;

(b) Determine the respondent's views about the appointment sought by the petitioner, including views about a proposed guardian, the guardian's proposed powers and duties, and the scope and duration of the proposed guardianship; and

(c) Inform the respondent that all costs and expenses of the proceeding, including the respondent's attorney's fees, may be paid from the respondent's assets.

(5) The court visitor appointed under subsection (1) of this section shall:

(a) Interview the petitioner and proposed guardian, if any;

**(b) Visit the respondent's present dwelling and any dwelling in which it is reasonably believed the respondent will live if the appointment is made;**

(c) Obtain information from any physician or other person known to have treated, advised, or assessed the respondent's relevant physical or mental condition; and

(d) Investigate the allegations in the petition and any other matter relating to the petition the court directs.

**(6) A court visitor appointed under subsection (1) of this section shall file a report in a record with the court and provide a copy of the report to the respondent, petitioner, and any interested party entitled to notice under RCW 11.130.080 at least fifteen days prior to the hearing on the petition filed under RCW 11.130.270, which must include:**

(a) A summary of self-care and independent living tasks the respondent can manage without assistance or with existing supports, could manage with the assistance of appropriate supportive services, technological assistance, or supported decision making, and cannot manage;

(b) A recommendation regarding the appropriateness of guardianship, including whether a protective arrangement instead of guardianship or other less restrictive alternative for meeting the respondent's needs is available and:

- (i) If a guardianship is recommended, whether it should be full or limited; and
- (ii) If a limited guardianship is recommended, the powers to be granted to the guardian;
- (c) A statement of the qualifications of the proposed guardian and whether the respondent approves or disapproves of the proposed guardian;
- (d) A statement whether the proposed dwelling meets the respondent's needs and whether the respondent has expressed a preference as to residence;
- (e) A statement whether the respondent declined a professional evaluation under RCW 11.130.290 and what other information is available to determine the respondent's needs and abilities without the professional evaluation;
- (f) A statement whether the respondent is able to attend a hearing at the location court proceedings typically are held;
- (g) A statement whether the respondent is able to participate in a hearing and which identifies any technology or other form of support that would enhance the respondent's ability to participate; and
- (h) Any other matter the court directs.

(7) The appointment of a court visitor has no effect on the determination of the adult respondent's legal capacity and does not overcome the presumption of legal capacity or full legal and civil rights of the adult respondent.

*(Emphasis added)*

## **RCW 11.130.275**

### **Notice of hearing for appointment of guardian for adult.**

#### **RCW 11.130.275**

(1) All petitions filed under RCW 11.130.270 for appointment of a guardian for an adult shall be **heard within sixty-days unless an extension of time is requested by a party or the court visitor** within such sixty-day period and granted for good cause shown. If an extension is granted, the court shall set a new hearing date.

(2)(a) **A copy of a petition under RCW 11.130.270 and notice of a hearing on the petition must be served personally on the respondent and the court visitor appointed under RCW 11.130.280 not more than five court days after the petition under RCW 11.130.270 has been filed.**

(b) Notice under this subsection shall include a clear and easily readable statement of the legal rights of the respondent that could be restricted or transferred to a guardian by a guardianship order as well as the right to counsel of choice and to a jury trial on whether a basis exists under RCW 11.130.265 for the appointment of a guardian and the issue of the respondent's rights that will be retained or restricted if a guardian is

appointed. Such notice must be in substantially the same form as set forth in RCW 11.130.657 and must be double-spaced and in a type size not smaller than sixteen point font. The court may not grant the petition if notice substantially complying with this subsection is not served on the respondent.

(3) In a proceeding on a petition under RCW 11.130.270, the notice required under subsection (2) of this section must be given to the persons required to be listed in the petition under RCW 11.130.270(2) (a) through (c) and any other notice party. Failure to give notice under this subsection does not preclude the court from appointing a guardian.

(4) After the appointment of a guardian, notice of a hearing on a petition for an order under this article, together with a copy of the petition, must be given to:

(a) The adult subject to guardianship;

(b) The guardian; and

(c) Any other notice party or person the court determines pursuant to RCW 11.130.310(5) or a subsequent court order.

*(Emphasis added)*

## **RCW 11.130.290**

### **Professional evaluation.**

## **RCW 11.130.290**

(1) On receipt of a petition under RCW 11.130.270 and **at the time the court appoints a court visitor under RCW 11.130.280, the court shall order a professional evaluation of the respondent.**

(2) The respondent must be examined by a physician licensed to practice under chapter 18.71 or 18.57 RCW, psychologist licensed under chapter 18.83 RCW, advanced registered nurse practitioner licensed under chapter 18.79 RCW, or physician assistant licensed under chapter 18.71A RCW **selected by the court visitor** who is qualified to evaluate the respondent's alleged cognitive and functional abilities and limitations and will not be advantaged or disadvantaged by a decision to grant the petition or otherwise have a conflict of interest. **If the respondent opposes the professional selected by the court visitor, the court visitor shall obtain a professional evaluation from the**

**professional selected by the respondent. The court visitor, after receiving a professional evaluation from the individual selected by the respondent, may obtain a supplemental evaluation from a different professional.**

(3) The individual conducting the evaluation **shall provide the completed evaluation report to the court visitor within thirty days of the examination of the respondent. The court visitor shall file the report in a sealed record with the court.** Unless otherwise directed by the court, the report must contain:

- (a) The professional's name, address, education, and experience;
- (b) A description of the nature, type, and extent of the respondent's cognitive and functional abilities and limitations;
- (c) An evaluation of the respondent's mental and physical condition and, if appropriate, educational potential, adaptive behavior, and social skills;
- (d) A prognosis for improvement and recommendation for the appropriate treatment, support, or habilitation plan;
- (e) A description of the respondent's current medications, and the effect of the medications on the respondent's cognitive and functional abilities;
- (f) Identification of persons with whom the professional has met or spoken with regarding the respondent; and
- (g) The date of the examination on which the report is based.

**(4) If the respondent declines to participate in an evaluation ordered under subsection (1) of this section, the court may proceed with the hearing under RCW 11.130.275 if the court finds that it has sufficient information to determine the respondent's needs and abilities without the professional evaluation.**

## **RCW 11.130.295**

### **Attendance and rights at hearing.**

#### **RCW 11.130.295**

(1) **Except as otherwise provided in subsection (2) of this section, a hearing under RCW 11.130.275 may not proceed unless the respondent attends the hearing. If it is not reasonably feasible for the respondent to attend a hearing at the location court proceedings typically are held, the court shall make reasonable efforts to hold the hearing at an alternative location convenient to the respondent or allow the respondent to attend the hearing using real-time audio-visual technology.**

(2) A hearing under RCW 11.130.275 may proceed without the respondent in attendance if the court finds by clear and convincing evidence that:

(a) **The respondent has refused to attend the hearing after having been fully informed of the right to attend and the potential consequences of failing to do so;**

or

(b) **There is no practicable way for the respondent to attend and participate in the hearing even with appropriate supportive services and technological assistance.**

(3) The respondent may be assisted in a hearing under RCW 11.130.275 by a person or persons of the respondent's choosing, assistive technology, or an interpreter or translator, or a combination of these supports. If assistance would facilitate the respondent's participation in the hearing, but is not otherwise available to the respondent, the court shall make reasonable efforts to provide it.

(4) The respondent has a right to choose an attorney to represent the respondent at a hearing under RCW 11.130.275.

**(5) At a hearing held under RCW 11.130.275, the respondent may:**

(a) Present evidence and subpoena witnesses and documents;

**(b) Examine witnesses, including any court-appointed evaluator and the court visitor; and**

(c) Otherwise participate in the hearing.

(6) Unless excused by the court for good cause, a proposed guardian shall attend a hearing under RCW 11.130.275.

(7) A hearing under RCW 11.130.275 must be closed on request of the respondent and a showing of good cause.

(8) Any person may request to participate in a hearing under RCW 11.130.275. The court may grant the request, with or without a hearing, on determining that the best interest of the respondent will be served. The court may impose appropriate conditions on the person's participation.

## **RCW 11.130.300**

### **Confidentiality of records.**

#### **RCW 11.130.300**

(1) The existence of a proceeding for or the existence of a guardianship for an adult is a matter of public record unless the court seals the record after:

(a) The respondent or individual subject to guardianship requests the record be sealed; and

(b) Either:

(i) The petition for guardianship is dismissed; or

(ii) The guardianship is terminated.

(2) An adult subject to a proceeding for a guardianship, whether or not a guardian is appointed, an attorney designated by the adult, and a person entitled to notice under RCW 11.130.310(5) or a subsequent order are entitled to access court records of the proceeding and resulting guardianship, including the guardian's plan under RCW 11.130.340 and report under RCW 11.130.345. A person not otherwise entitled to access court records under this subsection for good cause may petition the court for access to court records of the guardianship, including the guardian's report and plan. The court shall grant access if access is in the best interest of the respondent or adult subject to guardianship or furthers the public interest and does not endanger the welfare or financial interests of the adult.

**(3) A report under RCW 11.130.280 of a visitor or a professional evaluation under RCW 11.130.290 is confidential and must be sealed on filing, but is available to:**

**(a) The court;**

**(b) The individual who is the subject of the report or evaluation, without limitation as to use;**

**(c) The petitioner, visitor, and petitioner's and respondent's attorneys, for purposes of the proceeding;**

**(d) Unless the court orders otherwise, an agent appointed under a power of attorney for health care or power of attorney for finances in which the respondent is the principal; and**

**(e) Any other person if it is in the public interest or for a purpose the court orders for good cause.**

## **RCW 11.130.320**

### **Emergency guardian for adult**

*(Selected portions only)*

### **RCW 11.130.320**

...

**(4) On its own after a petition has been filed under RCW 11.130.270, or on petition for appointment of an emergency guardian for an adult, the court may appoint an emergency guardian for the adult if the court makes specific findings based on clear and convincing evidence that:**

**(a) An emergency exists such that appointment of an emergency guardian is likely to prevent substantial and irreparable harm to the adult's physical health, safety, or welfare;**

**(b) The respondent's identified needs caused by the emergency cannot be met by a protective arrangement or other less restrictive alternative instead of emergency guardianship;**

**(c) No other person appears to have authority and willingness to act to address the respondent's identified needs caused by the emergency circumstances; and**

(d) There is reason to believe that a basis for appointment of a guardian under RCW 11.130.265 exists.

....

(8) The duration of authority of an emergency guardian for an adult may not exceed sixty days, and the emergency guardian may exercise only the powers specified in the order of appointment. **Upon a motion by the petitioner, adult subject to emergency guardianship, court visitor, or the emergency guardian, with notice served upon all applicable notice parties, the emergency guardian's authority may be extended once for not more than sixty days** if the court finds that the conditions for appointment of an emergency guardian in subsection (4) of this section continue.

(9) Immediately on filing of a petition for appointment of an emergency guardian for an adult, the court shall appoint an attorney to represent the respondent in the proceeding. **Except as otherwise provided in subsection (10) of this section, an order appointing an emergency guardian for the respondent may not be entered unless the respondent, the respondent's attorney, and the court visitor appointed under subsection (11) of this section have received a minimum of fourteen days' notice of the date, time, and place of a hearing on the petition. A copy of the emergency petition and notice of a hearing on the petition must be served personally on the respondent, the respondent's attorney, and the court visitor not more than two court days after the petition has been filed.** The notice must inform the respondent of the respondent's rights at the hearing, including the right to an attorney and to attend the hearing. The notice must include a description of the nature, purpose, and consequences of granting the emergency petition. The court shall not grant the emergency petition if notice substantially complying with this subsection is not served on the respondent.

(10) The court may appoint an emergency guardian for an adult without notice to the adult and any attorney for the adult only if the court finds from an affidavit or testimony that the respondent's physical health, safety, or welfare will be substantially harmed before a hearing with notice on the appointment can be held. If the court appoints an emergency guardian without giving notice under subsection (9) of this section, the court must:

- (a) Give notice of the appointment not later than forty-eight hours after the appointment to:
  - (i) The respondent;
  - (ii) The respondent's attorney; and
  - (iii) Any other person the court determines; and

(b) Hold a hearing on the appropriateness of the appointment not later than five days after the appointment.

**(11) On receipt of a petition for appointment of emergency guardian for an adult, the court shall appoint a court visitor. Notice of appointment of the court visitor must be served upon the court visitor within two days of appointment. The court visitor must be an individual with training or experience in the type of abilities, limitations, and needs alleged in the emergency petition. The court, in the order appointing a court visitor, shall specify the hourly rate the [court] visitor may charge for his or her services, and shall specify the maximum amount the court visitor may charge without additional court review and approval.**

(a) **The court visitor shall within two days of service of notice of appointment file with the court and serve, either personally or by certified mail with return receipt,** the respondent or the respondent's legal counsel, the petitioner or the petitioner's legal counsel, and any notice party with a statement including the court visitor's: Training relating to the duties as a court visitor; criminal history as defined in RCW 9.94A.030 for the period covering ten years prior to the appointment; hourly rate, if compensated; contact, if any, with a party to the proceeding prior to appointment; and apparent or actual conflicts of interest.

(b) **A court visitor appointed under this section shall use due diligence to attempt to interview the respondent in person and, in a manner the respondent is best able to understand:**

(i) Explain to the respondent the substance of the emergency petition, the nature, purpose, and effect of the proceeding, the respondent's rights at the hearing on the petition, and the proposed specific powers and duties of the proposed guardian as stated in the emergency petition;

(ii) Determine the respondent's views about the emergency appointment sought by the petitioner, including views about a proposed emergency guardian, the emergency guardian's proposed powers and duties, and the scope and duration of the proposed emergency guardianship; and

(iii) Inform the respondent that all costs and expenses of the proceeding, including but not limited to the respondent's attorneys' fees, the appointed guardian's fees, and the appointed guardian's attorneys' fees, will be paid from the respondent's assets upon approval by the court.

(c) **The court visitor appointed under this section shall:**

(i) Interview the petitioner and proposed emergency guardian;

(ii) Use due diligence to attempt to visit the respondent's present dwelling;

(iii) Use due diligence to attempt to obtain information from any physician or other person known to have treated, advised, or assessed the respondent's relevant physical or mental condition; and

(iv) Investigate the allegations in the emergency petition and any other matter relating to the emergency petition the court directs.

**(d) A court visitor appointed under this section shall file a report in a record with the court and provide a copy of the report to the respondent, petitioner, and any notice party at least seven days prior to the hearing on the emergency petition, which must include:**

(i) A summary of self-care and independent living tasks the respondent can manage without assistance or with existing supports, could manage with the assistance of appropriate supportive services, technological assistance, or supported decision making, and cannot manage;

(ii) A recommendation regarding the appropriateness of emergency guardianship, including whether a protective arrangement instead of guardianship or other less restrictive alternative for meeting the respondent's needs is available, and if an emergency guardianship is recommended;

(iii) A detailed summary of the alleged emergency and the substantial and irreparable harm to the respondent's health, safety, welfare, or rights that is likely to be prevented by the appointment of an emergency guardian;

(iv) A statement as to whether the alleged emergency and the respondent's alleged needs are likely to require an extension of sixty days as authorized under this section;

(v) The specific powers to be granted to the emergency guardian and how the specific powers will address the alleged emergency and the respondent's alleged need;

(vi) A recommendation regarding the appropriateness of an ongoing guardianship for an adult, including whether a protective arrangement instead of guardianship or other less restrictive alternative for meeting the respondent's needs is available;

(vii) A statement of the qualifications of the proposed emergency guardian and whether the respondent approves or disapproves of the proposed emergency guardian, and the reasons for such approval or disapproval;

(viii) A recommendation whether a professional evaluation under RCW 11.130.290 is necessary;

(ix) A statement whether the respondent is able to attend a hearing at the location court proceedings typically are held;

(x) A statement whether the respondent is able to participate in a hearing which identifies any technology or other form of support that would enhance the respondent's ability to participate;

(xi) A statement, as needed when the petition seeks emergency authority to change the respondent's place of dwelling, as to whether the proposed dwelling meets the respondent's needs and whether the respondent has expressed a preference as to residence; and

(xii) Any other matter the court directs.

**(Emphasis added)**

## **RCW 11.130.345 (3) and (6) (c)**

### **Guardian's report — Monitoring of guardianship**

*(Selected provisions)*

#### **RCW 11.130.345**

**(3) The court may appoint a court visitor to review a report submitted under this section or a guardian's plan submitted under RCW 11.130.340, interview the guardian or adult subject to guardianship, or investigate any other matter involving the guardianship.**

(5) The court shall establish procedures for monitoring a report submitted under this section and review each report to determine whether:

(a) The report provides sufficient information to establish the guardian has complied with the guardian's duties;

(b) The guardianship should continue; and

(c) The guardian's requested fees, if any, should be approved.

**(6) If the court determines there is reason to believe a guardian for an adult has not complied with the guardian's duties or the guardianship should be modified or terminated, the court:**

(a) Shall notify the adult, the guardian, and any other person entitled to notice under RCW 11.130.310(5) or a subsequent order;

(b) May require additional information from the guardian;

**(c) May appoint a court visitor to interview the adult or guardian or investigate any matter involving the guardianship; and**

**(d) Consistent with this section and RCW 11.130.350, may hold a hearing to consider removal of the guardian, termination of the guardianship, or a change in the powers granted to the guardian or terms of the guardianship.**

## Conservatorship

### RCW 11.130.380

#### Appointment and role of court visitor.

### RCW 11.130.380

- (1) If the respondent in a proceeding to appoint a conservator is a minor, the court **may** appoint a court visitor to investigate a matter related to the petition or inform the minor or a parent of the minor about the petition or a related matter.
- (2) If the respondent in a proceeding to appoint a conservator is an adult, the court **shall** appoint a court visitor. The duties and reporting requirements of the court visitor are limited to the relief requested in the petition. The court visitor must be an individual with training or experience in the type of abilities, limitations, and needs alleged in the petition.
- (3) The court, in the order appointing court visitor, shall specify the hourly rate the court visitor may charge for his or her services, and shall specify the maximum amount the court visitor may charge without additional court review and approval. The fee shall be charged to the person subject to a guardianship or conservatorship proceeding unless the court finds that such payment would result in substantial hardship upon such person, in which case the county shall be responsible for such costs: PROVIDED, That the court may charge such fee to the petitioner, the person subject to a guardianship or conservatorship proceeding, or any person who has appeared in the action; or may allocate the fee, as it deems just. If the petition is found to be frivolous or not brought in good faith, the court visitor fee shall be charged to the petitioner. The court shall not be required to provide for the payment of a fee to any salaried employee of a public agency.
- (4)(a) The court visitor appointed under subsection (1) or (2) of this section shall within five days of receipt of notice of appointment file with the court and serve, either personally or by certified mail with return receipt, the respondent or his or her legal counsel, the petitioner or his or her legal counsel, and any interested party entitled to notice under RCW 11.130.080 with a statement including: His or her training relating to the duties as a court visitor; his or her criminal history as defined in RCW 9.94A.030 for the period covering ten years prior to the appointment; his or her hourly rate, if compensated; whether the court visitor has had any contact with a party to

the proceeding prior to his or her appointment; and whether he or she has an apparent conflict of interest. Within three days of the later of the actual service or filing of the court visitor's statement, any party may set a hearing and file and serve a motion for an order to show cause why the court visitor should not be removed for one of the following three reasons:

- (i) Lack of expertise necessary for the proceeding;
- (ii) An hourly rate higher than what is reasonable for the particular proceeding; or
- (iii) A conflict of interest.

(b) Notice of the hearing shall be provided to the court visitor and all parties. If, after a hearing, the court enters an order replacing the court visitor, findings shall be included, expressly stating the reasons for the removal. If the court visitor is not removed, the court has the authority to assess to the moving party attorneys' fees and costs related to the motion. The court shall assess attorneys' fees and costs for frivolous motions.

**(5) A court visitor appointed under subsection (2) of this section for an adult shall interview the respondent in person and in a manner the respondent is best able to understand:**

(a) Explain to the respondent the substance of the petition, the nature, purpose, and effect of the proceeding, the respondent's rights at the hearing on the petition, and the general powers and duties of a conservator;

(b) Determine the respondent's views about the appointment sought by the petitioner, including views about a proposed conservator, the conservator's proposed powers and duties, and the scope and duration of the proposed conservatorship; and

(c) Inform the respondent that all costs and expenses of the proceeding, including respondent's attorneys' fees, may be paid from the respondent's assets.

**(6) A court visitor appointed under subsection (2) of this section for an adult shall:**

(a) Interview the petitioner and proposed conservator, if any;

(b) Review financial records of the respondent, if relevant to the court visitor's recommendation under subsection (7)(b) of this section;

(c) Investigate whether the respondent's needs could be met by a protective arrangement instead of conservatorship or other less restrictive alternative and, if so, identify the arrangement or other less restrictive alternative; and

(d) Investigate the allegations in the petition and any other matter relating to the petition the court directs.

**(7) A court visitor appointed under subsection (2) of this section for an adult shall file a report in a record with the court and provide a copy of the report to the respondent, petitioner, and any interested party entitled to notice under RCW 11.130.080 at least fifteen days prior to the hearing on the petition filed under RCW 11.130.365, which must include:**

(a) A recommendation:

(i) Regarding the appropriateness of conservatorship, or whether a protective arrangement instead of conservatorship or other less restrictive alternative for meeting the respondent's needs is available;

(ii) If a conservatorship is recommended, whether it should be full or limited;

(iii) If a limited conservatorship is recommended, the powers to be granted to the conservator, and the property that should be placed under the conservator's control; and

(iv) If a conservatorship is recommended, the amount of the bond or other verified receipt needed under RCW 11.130.445 and 11.130.500;

(b) A statement of the qualifications of the proposed conservator and whether the respondent approves or disapproves of the proposed conservator;

(c) A statement whether the respondent declined a professional evaluation under RCW 11.130.390 and what other information is available to determine the respondent's needs and abilities without the professional evaluation;

(d) A statement whether the respondent is able to attend a hearing at the location court proceedings typically are held;

(e) A statement whether the respondent is able to participate in a hearing and which identifies any technology or other form of support that would enhance the respondent's ability to participate; and

(f) Any other matter the court directs.

(8) The appointment of a court visitor has no effect on the determination of the adult respondent's legal capacity and does not overcome the presumption of legal capacity or full legal and civil rights of the adult respondent.

**RCW 11.130.390**

**Professional Evaluation**

**RCW 11.130.390**

**RCW 11.130.410**

**Confidentiality of records.**

*(Selected provisions)*

**RCW 11.130.410**

**(3) A report under RCW 11.130.380 of a court visitor or professional evaluation under RCW 11.130.390 is confidential and must be sealed on filing, but is available to:**

**(a) The court;**

**(b) The individual who is the subject of the report or evaluation, without limitation as to use;**

**(c) The petitioner, court visitor, petitioner's and respondent's attorneys, and proposed guardians, for purposes of the proceeding;**

**(d) Unless the court directs otherwise, an agent appointed under a power of attorney for finances in which the respondent is identified as the principal; and**

**(e) Any other person if it is in the public interest or for a purpose the court orders for good cause.**

## **RCW 11.130.430**

### **Emergency conservator**

*(Selected provisions)*

## **RCW 11.130.430**

**(4) On its own or on petition for appointment of an emergency conservator for an individual after a petition has been filed under RCW 11.130.365, the court may appoint an emergency conservator for the individual if the court makes specific findings based on clear and convincing evidence that:**

(a) An emergency exists such that appointment of an emergency conservator is likely to prevent substantial and irreparable harm to the individual's property or financial interests;

(b) The individual's identified needs caused by the emergency cannot be met by a protective arrangement or other less restrictive alternative instead of emergency conservatorship;

(c) No other person appears to have authority and willingness to act to address the individual's identified needs caused by the emergency circumstances; and

(d) There is reason to believe that a basis for appointment of a conservator under RCW 11.130.360 exists.

(9) Immediately on filing of a petition for an emergency conservator for an adult, the court shall appoint an attorney to represent the adult in the proceeding. **An order appointing an emergency conservator for an adult may not be entered unless the adult respondent, the adult respondent's attorney, and the court visitor appointed under subsection (10) of this section have received a minimum of fourteen days' notice of the date, time, and place of a hearing on the petition. A copy of the emergency petition and notice of a hearing on the petition must be served personally on the adult respondent, the adult respondent's attorney, and the court visitor appointed under subsection (10) of this section not more than two court days after the petition has been filed.** The notice must inform the respondent of the adult respondent's rights at the hearing, including the right to an attorney and to attend the hearing. The notice must include a description of the nature, purpose, and consequences of granting the emergency petition. The court shall not grant the

emergency petition if notice substantially complying with this subsection is not served on the respondent.

**(10)(a) On receipt of a petition for appointment of emergency conservator for an individual, the court:**

**(i) Shall appoint a court visitor if an emergency conservator is sought for an adult; or**

**(ii) May appoint a court visitor if an emergency conservator is sought for a minor.**

**(b) Notice of appointment of the court visitor must be served upon the court visitor within two days of appointment. The court visitor must be an individual with training or experience in the type of abilities, limitations, and needs alleged in the emergency petition. The court, in the order appointing a court visitor, shall specify the hourly rate the [court] visitor may charge for his or her services, and shall specify the maximum amount the court visitor may charge without additional court review and approval.**

**(c) The court visitor shall within two days of service of notice of appointment file with the court and serve, either personally or by certified mail with return receipt, the respondent or the respondent's legal counsel, the petitioner or the petitioner's legal counsel, and any notice party with a statement including the court visitor's:**

Training relating to the duties as a court visitor; criminal history as defined in RCW 9.94A.030 for the period covering ten years prior to the appointment; hourly rate, if compensated; contact, if any, with a party to the proceeding prior to appointment; and apparent or actual conflicts of interest.

**(d) A court visitor appointed under this section shall use due diligence to attempt to interview the adult respondent in person and, in a manner the individual is best able to understand:**

**(i) Explain to the adult respondent the substance of the emergency petition, the nature, purpose, and effect of the proceeding, the respondent's rights at the hearing on the petition, and the proposed specific powers and duties of the proposed conservator as stated in the emergency petition;**

**(ii) Determine the adult respondent's views about the emergency appointment sought by the petitioner, including views about a proposed emergency conservator, the emergency conservator's proposed powers and duties, and the scope and duration of the proposed emergency conservatorship; and**

**(iii) Inform the adult respondent that all costs and expenses of the proceeding, including but not limited to the adult respondent's attorneys' fees, the appointed conservator's fees, and the appointed conservator's attorneys' fees, will be paid from the individual's assets upon approval by the court.**

**(e) The court visitor appointed under this section shall:**

- (i) Interview the petitioner and proposed emergency conservator;
- (ii) Use due diligence to attempt to visit the adult respondent's present dwelling;
- (iii) Use due diligence to attempt to obtain information from any physician or other person known to have treated, advised, or assessed the adult respondent's relevant physical or mental condition; and
- (iv) Investigate the allegations in the emergency petition and any other matter relating to the emergency petition the court directs.

**(f) A court visitor appointed under this section shall file a report in a record with the court and provide a copy of the report to the petitioner, the adult subject to the emergency conservatorship, and any notice party at least seven days prior to the hearing on the emergency petition, which must include:**

- (i) A recommendation regarding the appropriateness of emergency conservatorship, including whether a protective arrangement instead of conservatorship or other less restrictive alternative for meeting the respondent's needs is available, and if an emergency conservatorship is recommended;
- (ii) A detailed summary of the alleged emergency and the substantial and irreparable harm to the individual's property or finances that is likely to be prevented by the appointment of an emergency conservator;
- (iii) A statement as to whether the alleged emergency and the respondent's alleged needs are likely to require an extension of sixty days as authorized under this section;
- (iv) The specific powers to be granted to the emergency conservator and how the specific powers will address the alleged emergency and the respondent's alleged need;
- (v) A recommendation regarding the appropriateness of an ongoing conservatorship for an individual, including whether a protective arrangement instead of conservatorship or other less restrictive alternative for meeting the respondent's needs is available;
- (vi) A statement of the qualifications of the proposed emergency conservator and whether the respondent approves or disapproves of the proposed emergency conservator, and the reasons for such approval or disapproval;
- (vii) A recommendation whether a professional evaluation under RCW 11.130.390 is necessary;
- (viii) A statement whether the respondent is able to attend a hearing at the location court proceedings typically are held;
- (ix) A statement whether the respondent is able to participate in a hearing which identifies any technology or other form of support that would enhance the respondent's ability to participate; and

(x) Any other matter the court directs.

## **RCW 11.130.370**

### **Notice and hearing for appointment of conservator.**

*(Selected provisions)*

## **RCW 11.130.370**

(1) All petitions filed under RCW 11.130.365 for appointment of a conservator **shall be heard within sixty days unless an extension of time is requested by a party or the court visitor within such sixty-day period and granted for good cause shown.** If an extension is granted, the court shall set a new hearing date.

(2)(a) A **copy of a petition under RCW 11.130.365 and notice of a hearing on the petition must be served personally on the respondent, the court visitor appointed under RCW 11.130.380, and the appointed or proposed guardian not more than five court days after the petition under RCW 11.130.365 has been filed.** If the respondent's whereabouts are unknown or personal service cannot be made, service on the respondent must be made by publication.

## **RCW 11.130.530**

### **Conservator's report and accounting—Monitoring**

*(Selected provisions)*

#### **RCW 11.130.530**

(5) The court shall establish procedures for monitoring a report submitted under this section and review each report at least annually to determine whether:

(a) The reports provide sufficient information to establish the conservator has complied with the conservator's duties;

(b) The conservatorship should continue; and

(c) The conservator's requested fees, if any, should be approved.

**(6) If the court determines there is reason to believe a conservator has not complied with the conservator's duties or the conservatorship should not continue, the court:**

(a) Shall notify the individual subject to conservatorship, the conservator, and any other person entitled to notice under RCW 11.130.420(6) or a subsequent order;

(b) May require additional information from the conservator;

**(c) May appoint a court visitor to interview the individual subject to conservatorship or conservator or investigate any matter involving the conservatorship;** and

**(d) Consistent with RCW 11.130.565 and 11.130.570, may hold a hearing to consider removal of the conservator, termination of the conservatorship, or a change in the powers granted to the conservator or terms of the conservatorship.**

## Protective Arrangements

### RCW 11.130.605

#### Appointment and role of court visitor.

### RCW 11.130.605

- (1) On filing of a petition under RCW 11.130.580 for a protective arrangement instead of guardianship, the court shall appoint a court visitor. The court visitor must be an individual with training or experience in the type of abilities, limitations, and needs alleged in the petition.
- (2) On filing of a petition under RCW 11.130.580 for a protective arrangement instead of conservatorship for a minor, the court **may** appoint a court visitor to investigate a matter related to the petition or inform the minor or a parent of the minor about the petition or a related matter.
- (3) On filing of a petition under RCW 11.130.580 or a protective arrangement instead of conservatorship for an adult, the court shall appoint a court visitor unless the respondent is represented by an attorney appointed by the court. The court visitor must be an individual with training or experience in the types of abilities, limitations, and needs alleged in the petition.
- (4) The court, in the order appointing a court visitor, shall specify the hourly rate the court visitor may charge for his or her services, and shall specify the maximum amount the court visitor may charge without additional court review and approval. The fee shall be charged to the person subject to a guardianship, conservatorship, or other protective arrangement proceeding unless the court finds that such payment would result in substantial hardship upon such person, in which case the county shall be responsible for such costs: PROVIDED, That the court may charge such fee to the petitioner, the person subject to a guardianship or conservatorship proceeding, or any person who has appeared in the action; or may allocate the fee, as it deems just. If the petition is found to be frivolous or not brought in good faith, the court visitor fee shall be charged to the petitioner. The court shall not be required to provide for the payment of a fee to any salaried employee of a public agency.

**(5)(a) The court visitor appointed under subsection (1) or (3) of this section shall within five days of receipt of notice of appointment file with the court and serve, either personally or by certified mail with return receipt, the respondent or his or her legal counsel, the petitioner or his or her legal counsel, and any interested party entitled to notice under RCW 11.130.080 with a statement including:** His or her training relating to the duties as a court visitor; his or her criminal history as defined in RCW 9.94A.030 for the period covering ten years prior to the appointment; his or her hourly rate, if compensated; whether the court visitor has had any contact with a party to the proceeding prior to his or her appointment; and whether he or she has an apparent conflict of interest. Within three days of the later of the actual service or filing of the court visitor's statement, any party may set a hearing and file and serve a motion for an order to show cause why the court visitor should not be removed for one of the following three reasons:

- (i) Lack of expertise necessary for the proceeding;
- (ii) An hourly rate higher than what is reasonable for the particular proceeding; or
- (iii) A conflict of interest.

(b) Notice of the hearing shall be provided to the court visitor and all parties. If, after a hearing, the court enters an order replacing the court visitor, findings shall be included, expressly stating the reasons for the removal. If the court visitor is not removed, the court has the authority to assess to the moving party attorneys' fees and costs related to the motion. The court shall assess attorneys' fees and costs for frivolous motions.

**(6) A court visitor appointed under subsection (1) or (3) of this section shall interview the respondent in person and in a manner the respondent is best able to understand:**

- (a) Explain to the respondent the substance of the petition, the nature, purpose, and effect of the proceeding, and the respondent's rights at the hearing on the petition;
- (b) Determine the respondent's views with respect to the order sought;
- (c) Inform the respondent that all costs and expenses of the proceeding, including respondent's attorneys' fees, may be paid from the respondent's assets;
- (d) If the petitioner seeks an order related to the dwelling of the respondent, visit the respondent's present dwelling and any dwelling in which it is reasonably believed the respondent will live if the order is granted;
- (e) If a protective arrangement instead of guardianship is sought, obtain information from any physician or other person known to have treated, advised, or assessed the respondent's relevant physical or mental condition;

(f) If a protective arrangement instead of conservatorship is sought, review financial records of the respondent, if relevant to the court visitor's recommendation under subsection (7)(b) of this section; and

(g) Investigate the allegations in the petition and any other matter relating to the petition the court directs.

**(7) A court visitor under subsection (1), (2), or (3) of this section promptly shall file a report in a record with the court and provide a copy of the report to the respondent, petitioner, and any interested party entitled to notice under RCW 11.130.580 (1) through (3), at least fifteen days prior to the hearing on the petition filed under RCW 11.130.585, 11.130.590, or 11.130.595, which must include:**

(a) To the extent relevant to the order sought, a summary of self-care, independent living tasks, and financial management tasks the respondent:

(i) Can manage without assistance or with existing supports;

(ii) Could manage with the assistance of appropriate supportive services, technological assistance, or supported decision making; and

(iii) Cannot manage;

(b) A recommendation regarding the appropriateness of the protective arrangement sought and whether a less restrictive alternative for meeting the respondent's needs is available;

(c) If the petition seeks to change the physical location of the dwelling of the respondent, a statement whether the proposed dwelling meets the respondent's needs and whether the respondent has expressed a preference as to the respondent's dwelling;

(d) A statement whether the respondent declined a professional evaluation under RCW 11.130.615 and what other information is available to determine the respondent's needs and abilities without the professional evaluation;

(e) A statement whether the respondent is able to attend a hearing at the location court proceedings typically are held;

(f) A statement whether the respondent is able to participate in a hearing and which identifies any technology or other form of support that would enhance the respondent's ability to participate; and

(g) Any other matter the court directs.

## **RCW 11.130.600**

### **Notice and hearing.**

#### **RCW 11.130.600**

**(1) All petitions filed under RCW 11.130.595 for the establishment of a protective arrangement shall be heard within sixty days unless an extension of time is requested by a party or the court visitor within such sixty-day period and granted for good cause shown.**

(2)(a) A copy of a petition under RCW 11.130.580 and notice of a hearing on the petition must be served personally on the respondent and the court visitor appointed under RCW 11.130.605 not more than five court days after the petition under RCW 11.130.595 has been filed.

(b) A copy of a petition under RCW 11.130.580 and notice of a hearing on the petition must be served personally on the respondent and the court visitor appointed under RCW 11.130.605 not more than five court days after the petition under RCW 11.130.595 has been filed. The notice must inform the respondent of the respondent's rights at the hearing, including the right to an attorney and to attend the hearing. The notice must include a description of the nature, purpose, and consequences of granting the petition for a protective arrangement. The court may not grant the petition if notice substantially complying with this subsection is not served on the respondent.

(3) In a proceeding on a petition under RCW 11.130.580, the notice required under subsection (2) of this section must be given to the persons required to be listed in the petition under RCW 11.130.595 (1) through (3) and any other person interested in the respondent's welfare the court determines. Failure to give notice under this subsection does not preclude the court from granting the petition.

(4) After the court has ordered a protective arrangement under this article, notice of a hearing on a petition filed under this chapter, together with a copy of the petition, must be given to the respondent and any other person the court determines.

**RCW 11.130.615**

**Professional evaluation.**

**RCW 11.130.615**

**RCW 11.130.620**

**Attendance and rights at hearing.**

**RCW 11.130.620**

**RCW 11.130.630**

**Confidentiality of records**

**RCW 11.130.630**

## **Other Provisions in Adult Guardianships, Conservatorships and Other Protective Arrangement Proceedings**

### **RCW 11.130.657**

#### **Notification of petition for guardianship or conservatorship.**

This form must be used to notify an adult respondent of the respondent's rights that could be restricted if a guardianship petition under RCW 11.130.270 or a conservatorship petition under RCW 11.130.365 is granted.

#### **IMPORTANT NOTICE**

#### **PLEASE READ CAREFULLY**

A petition to have a guardian or conservator appointed for you has been filed in the . . . county superior court by . . . If a guardian or conservator is appointed, you could lose one or more of the following rights:

- (1) To marry, divorce, or enter into or end a state registered domestic partnership;
- (2) To vote or hold an elected office;
- (3) To enter into a contract or make or revoke a will;
- (4) To appoint someone to act on your behalf;
- (5) To sue and be sued other than through a guardian;
- (6) To possess a license to drive;
- (7) To buy, sell, own, mortgage, or lease property;
- (8) To consent to or refuse medical treatment;
- (9) To decide who shall provide care and assistance;
- (10) To make decisions regarding social aspects of your life.

Under the law, you have certain rights.

You have the right to be represented by a lawyer of your own choosing. The court will appoint a lawyer to represent you if you are unable to pay or payment would result in a substantial hardship to you.

You have the right to ask for a jury trial on the issue of capacity.

You have the right to be present in court and testify when the hearing is held to decide whether or not you need a guardian or conservator. If a court visitor is appointed, you have the right to request the court to replace that person.

You have the right to ask the court to establish a protective arrangement instead of a guardianship or conservatorship.

## **RCW 11.130.035**

### **Practice in court.**

(1) Except as otherwise provided in this chapter, the rules of evidence and civil procedure, including rules concerning appellate review, govern a proceeding under this chapter.

(2) If proceedings for a guardianship, conservatorship, or protective arrangement under Article 5 of this chapter for the same individual are commenced or pending in the same court, the proceedings may be consolidated.

(3) An adult respondent may demand a jury trial in a proceeding under this chapter on the issue of whether a basis exists for the appointment of a guardian under RCW 11.130.265 or a conservator under RCW 11.130.360(2) and on the rights to be retained or restricted if a guardian or conservator is appointed.

(4) **Upon the motion of the respondent or the court visitor**, prior to the appointment of a guardian or a conservator or the establishment of a protective arrangement for an adult, or upon the motion of the respondent, guardian, conservator, or any notice party subsequent to such appointment, **whenever it appears that the adult respondent could benefit from mediation**, the court may require the petitioner, adult respondent, guardian, conservator, and any notice party to participate in mediation pursuant to RCW 11.96A.300. ***(Emphasis added)***

## **RCW 11.130.100**

### **Compensation and expenses—In general.**

- (1) Unless otherwise compensated or reimbursed, an attorney for a respondent in a proceeding under this chapter is entitled to reasonable compensation for services and reimbursement of reasonable expenses from the property of the respondent.
- (2) Unless otherwise compensated or reimbursed, an attorney or other person whose services resulted in an order beneficial to an individual subject to guardianship or conservatorship or for whom a protective arrangement under Article 5 of this chapter was ordered is entitled to reasonable compensation for services and reimbursement of reasonable expenses from the property of the individual.
- (3) Where the person subject to guardianship or conservatorship is a department of social and health services client, or health care authority client, and is required to contribute a portion of their income towards the cost of long-term care services or room and board, the amount of compensation or reimbursement shall not exceed the amount allowed by the department of social and health services or health care authority by rule.
- (4) Where the person subject to guardianship or conservatorship receives guardianship, conservatorships, or other protective services from the \*office of public guardianship, the amount of compensation or reimbursement shall not exceed the amount allowed by the \*office of public guardianship.
- (5) The court must approve compensation and expenses payable under this section before payment. Approval is not required before a service is provided or an expense is incurred.
- (6) If the **court dismisses a petition under this chapter and determines the petition was filed in bad faith**, the **court may assess the cost of any court-ordered professional evaluation or court visitor against the petitioner.** *(Emphasis added)*

## **RCW 11.130.140**

### **Grievance or complaint against guardian or conservator.**

(1) An individual who is subject to guardianship or conservatorship, or person interested in the welfare of an individual subject to guardianship or conservatorship, that reasonably believes the guardian or conservator is breaching the guardian's or conservator's fiduciary duty or otherwise acting in a manner inconsistent with this chapter may file a grievance in a record with the court.

(2)(a) **An unrepresented person or entity may submit a complaint to the court.**

Complaints must be addressed to one of the following designees of the court: The clerk of the court having jurisdiction in the guardianship, the court administrator, or the guardianship monitoring program, and must identify the complainant and the person who is the subject of the guardianship or conservatorship. The complaint must also provide the complainant's address, the case number (if available), and the address of the person subject to a guardianship or conservatorship (if available). The complaint must state facts to support the claim.

(b) By the next judicial day after receipt of a complaint from an unrepresented person, the court's designee must ensure the original complaint is filed and deliver the complaint to the court.

(c) **Within fourteen days of being presented with a complaint, the court must enter an order to do one or more of the following actions:**

(i) To show cause, with fourteen days' notice, directing the guardian or conservator to appear at a hearing set by the court in order to respond to the complaint;

(ii) **To appoint a court visitor or other court representative to investigate the issues raised by the complaint** or to take any emergency action the court deems necessary to protect the person subject to a guardianship or conservatorship until a hearing can be held;

(iii) To dismiss the complaint without scheduling a hearing, if it appears to the court that the complaint: Is without merit on its face; is filed in other than good faith; is filed for an improper purpose; regards issues that have already been adjudicated; or is frivolous. In making a determination, the court may review the matter and consider previous behavior of the complainant that is documented in the guardianship or conservatorship record;

(iv) To direct the guardian or conservator to provide, in not less than fourteen days, a written report to the court on the issues raised in the complaint;

(v) To defer consideration of the complaint until the next regularly scheduled hearing in the guardianship or conservatorship, if the date of that hearing is within the next three

months, provided that there is no indication that the person subject to a guardianship or conservatorship will suffer physical, emotional, financial, or other harm as a result of the court's deferral of consideration;

(vi) To order other action, in the court's discretion, in addition to doing one or more of the actions set out in this subsection.

**(3) Subject to subsection (4) of this section, after receiving a grievance under subsection (1) of this section, the court:**

(a) Shall promptly review the grievance against a guardian and shall act to protect the autonomy, values, preferences, and independence of the individual subject to guardianship or conservatorship;

(b) Shall schedule a hearing if the individual subject to guardianship or conservatorship is an adult and the grievance supports a reasonable belief that:

(i) Removal of the guardian and appointment of a successor may be appropriate under RCW 11.130.350;

(ii) Termination or modification of the guardianship may be appropriate under RCW 11.130.355;

(iii) Removal of the conservator and appointment of a successor may be appropriate under RCW 11.130.565;

(iv) Termination or modification of the conservatorship may be appropriate under RCW 11.130.570; or

(v) A hearing is necessary to resolve the allegations set forth in the grievance; and

**(c) May take any action supported by the evidence, including:**

(i) Ordering the guardian or conservator to provide the court a report, accounting, inventory, updated plan, or other information;

**(ii) Appointing a court visitor;**

(iii) Appointing an attorney for the individual subject to guardianship or conservatorship; or

(iv) Holding a hearing.

(4) The court may decline to act under subsection (3) of this section if a similar grievance was filed within the six months preceding the filing of the current grievance and the court followed the procedures of subsection (3) of this section in considering the earlier grievance; and may levy necessary sanctions, including but not limited to the imposition of reasonable attorney fees, costs, striking pleadings, or other appropriate relief, if after consideration the court finds that the grievance is made for reason to harass, delay, with malice, or other bad faith.

(5) In any court action under this section where the court finds the professional guardian or conservator breached a fiduciary duty, the court must direct the clerk of the court to send a copy of the order entered under this section to the certified professional guardianship board.

(6) A court shall not dismiss a grievance that has been filed against a guardian or conservator due to an inability to resolve the grievance in a timely manner.

**(Emphasis added)**

### **RCW 11.130.150**

#### **Ex parte communications—Removal.**

A guardian ad litem or **visitor** shall not engage in ex parte communications with any judicial officer involved in the matter for which he or she is appointed during the pendency of the proceeding, except as permitted by court rule or statute for ex parte motions. Ex parte motions shall be heard in open court on the record. The record may be preserved in a manner deemed appropriate by the county where the matter is heard. The court, upon its own motion, or upon the motion of a party, may consider the removal of any guardian ad litem **or visitor** who violates this section from any pending case or from any court-authorized registry, and if so removed may require forfeiture of any fees for professional services on the pending case.

### **RCW 11.130.330 (8) Powers of guardian for adult.**

(8) Nothing in this section shall be construed to require a court order authorizing placement of an incapacitated person in a care setting if such order is not otherwise required by law: PROVIDED, That notice of any residential placement of an individual subject to a guardianship shall be served, either before or after placement, by the guardian or limited guardian on such individual, **any court visitor of record**, any guardian ad litem of record, and any attorney of record