

## ***TEMPORARY GUARDIANSHIPS, Oregon Law Institute, 2003***

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### **I. DEFINING TEMPORARY GUARDIANSHIPS**

A temporary guardian may be appointed when an emergency situation exists and the standard notice period would be too long to wait. ORS 125.600 - 125.610. A temporary guardian will be appointed if the court makes a specific finding by *clear and convincing* evidence that:

1. The respondent is incapacitated or a minor;
2. There is an immediate and serious danger to the life or health of the respondent; and
3. The welfare of the respondent requires immediate action.

A temporary guardian may be appointed only for a specific purpose. ORS 125.600(3). For example, a temporary guardian may be required to make placement decisions or decisions regarding life support.

A temporary guardian is appointed for a specific period of time not to exceed 30 days. However, the court may extend this period for an additional 30 days upon motion if good cause is shown. 125.600(3). Notice of this motion must be served on all persons entitled to notice under ORS 125.060(2) at least two days before the entry of an order granting the extension. ORS 125.605(3).

The provisions of ORS Chapter 125 apply to temporary guardianships, except as otherwise provided in ORS 125.600- 125.610.

### **II. PROCEDURES FOR APPOINTMENT OF TEMPORARY GUARDIANS**

#### **1. The Petition**

In an emergency situation it is helpful to gather the information required for a petition as quickly as possible. If possible, fax an intake form (see e.g., Form 6-1) to the client the day you are contacted. The client can then gather the necessary information and bring it to the first appointment.

The petition for temporary guardianship must set forth all the information required in a petition for permanent guardianship (ORS 125.055) and *must also include* the factual allegations as to why there is an immediate and serious danger to the life or health of the respondent, as well as why the welfare of the respondent requires immediate action. ORS 125.605. The petitioner has the burden of proving by clear and convincing evidence that a temporary guardian is necessary. The petition contains

factual allegations that are often supported by documentation in the form of letters or affidavits from third parties with firsthand knowledge of the situation. This documentation can come from medical practitioners, social workers, protective service workers, police officers, family or friends. Form 6-2 is a sample Petition for Appointment of Temporary Guardian for an Adult.

## 2. Filing Fees

Filing fees increased as of September 1, 2003. See Multnomah County probate filing fee schedule Form 6-3 for an example. The filing fee for a petition for temporary guardianship is \$75.00. If you are also filing a petition for permanent guardianship an additional fee is not required. All checks should be made payable to the State of Oregon.

## 3. Court Visitor Fees and Selection of the Court Visitor

Local court practice differs greatly on payment to and selection of the court visitor. It is strongly recommended that you review the county's Supplemental Local Rules and contact the probate court for your county *before filing the initial petition*. The following are some examples of how the court visitor is paid and selected in various counties:

1. **Clackamas County**- The attorney chooses a court visitor from a list provided by the court before the petition is filed. You must provide an order appointing court visitor. (*See* Form 6-4). The visitor charges an hourly fee and will bill you directly when the report is filed. Visitors should be paid immediately upon receipt of the bill.
2. **Deschutes County**-The court appoints the court visitor from a list of eight. You must provide an order appointing court visitor. There is no court visitor fee.
3. **Jackson County**- The court assigns a court visitor. You can submit an order appointing court visitor or the court will create an order for you. The court visitor fee is \$150.00. The court recommends you send in two checks, one with your filing fee and another with the payee blank for them to fill in the name of the court visitor. The court will send the visitor their check.
4. **Lane County**-The court appoints a court visitor and prepares the order. The court will supply you with the name and address of the court visitor and you pay the visitor directly.
5. **Multnomah County**- When the petition is filed you must pre-pay \$450.00 for the court visitor along with the filing fee. The court selects the court visitor, and you must provide a duplicate copy of the petition and proof of service marked **AVISITOR'S COPY.** (*See*

Multnomah County SLR 9.075). The court creates the order appointing the court visitor.

6. **Umatilla County**- You must contact Mental Health at 541-278-6334 to have a court visitor assigned. You then submit the order appointing court visitor to the court. You work through Mental Health to pay the visitor.

7. **Washington County**- The visitor is chosen by the court. A visitor fee of \$240.00 is paid with the filing fee. If you are seeking both temporary and permanent guardianships you must pay \$480.00 as the court requires two visitor's reports.

#### 4. Notice

Notice must be given to the same persons in the same manner as for non-emergency guardianship proceedings, pursuant to ORS 125.060 and 125.065, *at least two days prior* to the appointment of a temporary guardian. ORS 125.065(2) (*See* Form 6-5). The respondent must be personally served and cannot waive personal service. (*See* Form 6-6). Notice may not be served on the respondent by the court visitor. ORS 125.065.

Be sure to send required notices to the appropriate agencies. (*See* Form 6-7).

The requirement for prior notice may be waived if the court finds that immediate and serious danger requires an immediate appointment. However, notice must then be given no more than two days after the appointment is made. ORS 125.605(2).

#### 5. Objections and Hearings

Objections to the appointment of a temporary guardian can be made at any time before or after the temporary fiduciary is appointed. Objections may be either written or oral. ORS 125.075(2). Check Supplemental Local Rule 9.081 in your county. It describes how to make oral objections. Many counties supply a form for making objections. (*See* Form 6-8). The respondent can also use the blue Respondent's Objection form that must be attached to the respondent's notice (Form 6-9) to object. No fees are charged to any person filing an objection to the appointment of a temporary fiduciary. ORS 125.605(5).

The court will hold a hearing within two judicial days after objections to a temporary fiduciary are filed. ORS 125.605(5).

#### 6. Order and Letters of Temporary Guardian

Local procedures for obtaining an order appointing a temporary guardian vary greatly. Since

you are dealing with an emergency situation where there is little room for error, it is essential to check the Supplemental Local Rules *and* call the probate court to obtain information on that court's procedures. The following are some examples:

1. **Clackamas County**- Call Probate Coordinator, Robin Huntting, at (503)655-8623 to schedule an ex parte appearance. The court will waive the two day advance notice requirement with appropriate allegations in the petition. Letters of Temporary Guardianship can often be made while you wait.

2. **Deschutes County**-No ex parte hearing is required. Submit your temporary paperwork and, if the court knows that the visitor is working on a report and the proper notices have gone out, the Judge will sign an order appointing temporary guardian.

3. **Jackson County**-If you want to appear ex parte you should contact Judge Mark Schiveley's assistant at (541)776-7171 ext. 230. The court can make your Temporary Letters while you wait. If you cannot appear ex parte, the Judge will likely review your order the day after you file it.

4. **Lane County**-No ex parte hearing is necessary. Submit your order after the two day advance notice and the court visitor report has been filed.

5. **Multnomah County**-Ex parte matters are heard by Judge Elizabeth Welch at 8:45a.m. on Tuesdays, Wednesdays and Fridays. Some months the Judge is in Juvenile Court and will preside via speaker phone. You *must* call the probate court at (503)988-3545 to schedule an ex parte appearance. The court strictly enforces the two day advance notice requirement. Letters of Temporary Guardianship will be mailed or can be picked up at a later date.

6. **Umatilla County**-Submit your order with the petition. No ex parte appearance is necessary.

7. **Washington County**-Arrange an ex parte appearance before Judge Pro Tempore Rita Cobb by calling (503)846-8879 (*attorneys only please*). The court requires specific allegations to waive the two day advance notice requirement. The temporary order must specify the date that it expires. The court can issue Letters while you wait.

The order for appointing a temporary fiduciary must include findings concerning the need for immediate action and state whether or not the two day advance notice was waived. If there are any limitations on the guardian's authority they should be clearly stated in the order. Form 6-10 is a sample order appointing temporary guardian for an adult in which the prior notice was waived.

The temporary guardian must have Letters of Temporary Guardianship to prove their fiduciary position. (*See* ORS 125.310) Attached to the Letters must be a copy of the order appointing temporary guardian. Some counties will issue a free set of Letters. However, you must pay for the Letters in other counties. Pursuant to the new filing fee schedule effective Sept. 1, 2003, Letters of Guardianship cost \$5.25 plus 25 cents per page of the temporary order.

### **III. ADVISING THE TEMPORARY GUARDIAN**

#### **1. Fiduciary Duties**

It is essential that the temporary guardian understand his/her fiduciary duties. Since they are dealing with an emergency situation they will need to act quickly. I strongly recommend going over a fiduciary duty letter with the temporary guardian as soon as he/she is appointed. (*See*, e.g., Form 6-11). It is especially important that the temporary guardian be made aware of any restrictions on his/her authority that may be in the temporary order.

#### **2. Informing Others of the Order**

Depending on the nature of the situation you may need to immediately inform others when the temporary order is signed. For example, if the protected person is in a hospital you should fax the order to the appropriate social worker as soon as it is signed. If the protected person is on a two-day physician hold you should also notify the appropriate court investigator. If the protected person resides in a residential care facility fax the order to the administrator. You should also promptly notify any other agency involved in the case, such as the police or Adult Protective Services.

#### **3. Report of the Temporary Guardian**

A temporary guardian must file a report with the court setting out all activities of the temporary fiduciary under the authority of the appointment. ORS 125.610. If the temporary guardian is also appointed as permanent guardian this report can be included in the first annual guardian's report. ORS 125.610(2). However, if another person is appointed permanent guardian or no permanent guardian is appointed the report is due when the temporary appointment expires. See Form 6-12 for a sample guardian's report.

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