

What Protection is Actually Required and Why?

The Court Visitor's Role:

Consider the history:

Review the petition and identified concerns.

Consider the Power of Attorney (POA) previously named and reasons the POA will not suffice.

Interview interested parties, court-appointed professionals and other counsel involved.

Don't take information at face value. Know what questions to ask of whom and what level of detail is necessary.

Consider the need to interview other family members, persons the individual lists as their support system if not yet noted and care providers.

Review the Qualified Healthcare Professional (QHCP) report to determine diagnoses and prognosis.

Consider the need to speak with additional healthcare providers or review medical or financial records.

Conduct an Individualized Assessment:

In a private setting in the residence of the individual

Interview the alleged incapacitated person independently to allow a forum for open discussion.

Consider the need for assistive devices to have a successful interview

Take into consideration the individual's vision, hearing and communication difficulty and make every effort to arrange for needed devices and support to optimize information gathered.

Who is this person?

Identify who the person is and what is important to him/her.

Identify the individual's interests, values, routines, strengths and goals.

Ask the individual who is important in his/her life.

Ask the individual how he/she feels about the proposed guardian and conservator and identify alternative decision-makers if needed.

Ask the individual questions instead of making assumptions or taking information obtained thus far at face value.

Guardianship Related Matters:

Review and identify safety concerns

Conduct a home safety assessment and ask questions regarding concerns.

Determine how receptive the individual is to addressing areas of concern. Would additional assistance or modifications be beneficial in reducing the need for legal protection?

Determine if the individual is able to adequately access help in an emergency situation and if additional supports would be beneficial. Is the individual receptive to recommendations?

Is there a reported history of abuse or neglect that must be taken into account?

Review Activities of Daily Living

Review reported concerns and identify assistance required with Activities of Daily Living and Instrumental Activities of Daily Living

Are there concerns surrounding driving, medication management, nutrition, additional care needs or the need for additional supervision, for instance?

It may help to ask the individual to demonstrate how shopping is managed (keeping a grocery list), for instance. How does meal planning work and how are meals prepared?

Evaluate the individual's capability regarding navigation of medical treatment

Identify the individual's understanding of his/her medical condition and review his/her navigation of the medical system. Do concerns exist regarding follow through after appointments, for instance?

Conservatorship Related Matters:

Assess financial concerns

Ask about his/her understanding of his/her income, assets, expenses and debts.

Review the ability to budget, balance accounts, pay bills, file taxes and apply for benefits for which they might be eligible for.

Review patterns of gifts and loans.

Review history of allegations of exploitation.

Formulating Recommendations

Are there options less restrictive than Guardianship or Conservatorship?

(for instance a power of attorney, advance directive for mental health treatment, care management, representative payee, setting up automatic payments, using a prepaid credit card, etc.)

Preserve rights based on abilities when possible.

Identify outstanding health and safety risks and recommend what/how to address in the court order.

Could the guardianship or conservatorship be limited in scope?

Perhaps a guardianship that springs into effect if needed can be an option.

If the individual's status improves it may be necessary to return to court to limit protection needed or to remove the guardianship or conservatorship.

This can often be the case when there is a history of alcohol or substance abuse or recovery from a medical condition such as a stroke. If a mental health crisis has resolved the court order may be adequately able to be replaced with an Advance Directive for Mental Health Treatment, for instance.

The loyalty of the visitor is to the court to represent the client's ultimate needs. This may mean having a differing opinion from the petitioning attorney, guardian ad litem and other parties.

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