Cosponsored by the Elder Law Section

Friday, October 6, 2017
8:30 a.m.–4:30 p.m.

4.25 General CLE or Practical Skills credits, 1 Ethics credit, and 1 Elder Abuse Reporting credit
GUARDIANSHIPS AND CONSERVATORSHIPS

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TABLE OF CONTENTS

Schedule ........................................................................................................................................ v

Faculty ........................................................................................................................................ vii

1. Guardianship for Adults and Alternatives ................................................................. 1–i
   — Tim McNeil, Davis Pagnano McNeil & Vigna LLP, Portland, Oregon

2. Conservatorships ............................................................................................................. 2–i
   — Julie Meyer Rowett, Yazzolino & Rowett LLP, Portland, Oregon

3. Advising Lay Fiduciaries—Presentation Slides ........................................................... 3–i
   — Leathan Teal, Educational Manager, Guardian Partners, Portland, Oregon

4A. UTCR 5.100 Continuing Confusion—Presentation Slides ........................................ 4A–i
    — The Honorable Paula Bechtold, Coos County Circuit Court, Coos Bay, Oregon

4B. Establishing Guardianships and Conservatorships; Contested Proceedings;
    Accounting Tips from the Court ...................................................................................... 4B–i
    — The Honorable Claudia Burton, Marion County Circuit Court, Salem, Oregon

5. Ethics Issues in Contested Cases ................................................................................... 5–i
   — Lisa Bertalan, Hendrix Brinich & Bertalan LLP, Bend, Oregon
   — Denise Gorrell, Samuels Yoelin Kantor LLP, Portland, Oregon
   — Stephen Owen, Attorney at Law, Portland, Oregon

6. Oregon Elder Abuse Reporting Requirements ......................................................... 6–i
   — Mark Johnson Roberts, Oregon State Bar, Tigard, Oregon

7. Resources on Guardianship, Conservatorship, and Other Options ............................ 7–i
   — Penny L. Davis, Davis Pagnano McNeil & Vigna LLP, Portland, Oregon
<table>
<thead>
<tr>
<th>Time</th>
<th>Event</th>
<th>Speaker</th>
<th>Affiliation</th>
</tr>
</thead>
<tbody>
<tr>
<td>7:30</td>
<td>Registration</td>
<td></td>
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<tr>
<td>8:30</td>
<td>Welcome—The Future of Protective Proceedings</td>
<td>Michael Levelle, 2017 Oregon State Bar President</td>
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<tr>
<td>8:45</td>
<td>Guardianship for Adults and the Alternatives</td>
<td>Tim McNeil</td>
<td>Davis Pagnano McNeil &amp; Vigna LLP, Portland</td>
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<td>Conservatorships</td>
<td>Julie Meyer Rowett</td>
<td>Yazzolino &amp; Rowett LLP, Portland</td>
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<td>10:45</td>
<td>Break</td>
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<td>11:00</td>
<td>Advising Lay Fiduciaries</td>
<td>Leathan Teal</td>
<td>Educational Manager, Guardian Partners, Portland</td>
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<td>Mark M. Williams, Gaydos Churnside &amp; Balthrop PC, Eugene</td>
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<td>Elder Law Section Annual Meeting</td>
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<td>12:15</td>
<td>Lunch</td>
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<td>1:15</td>
<td>Protective Proceedings</td>
<td>The Honorable Claudia Burton</td>
<td>Marion County Circuit Court, Salem</td>
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<td>2:15</td>
<td>Ethics Issues in Contested Cases</td>
<td>Lisa Bertalan, Denise Gorrell, Stephen Owen</td>
<td>Hendrix Brinich &amp; Bertalan LLP, Bend, Samuels Yoelin Kantor LLP, Portland, Portland</td>
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3:30 Oregon Elder Abuse Reporting Requirements
   ♦ Recognizing elder abuse
   ♦ Financial exploitation and “wrongful taking”
   ♦ Protecting client confidentiality
   Mark Johnson Roberts, Oregon State Bar, Tigard

4:30 Adjourn
The Honorable Claudia Burton, Marion County Circuit Court, Salem. Judge Burton became a Circuit Court Judge in January 2004. Before that, she was a hearings referee/pro tem circuit court judge, an administrative law judge, and in private practice in both California and Oregon. She is admitted to practice in Oregon, California, and Washington.

Lisa Bertalan, Hendrix Brinich & Bertalan LLP, Bend. Ms. Bertalan specializes in estate and tax planning, guardianship and conservatorship law, probate and elder law. She is a past member of the Oregon State Bar Estate Planning Newsletter Editorial Board, the Oregon State Bar Elder Law Section Executive Committee, the Department of Justice Elder Abuse Task Force, and the State of Oregon Long Term Care Advisory Committee. While serving on the Elder Abuse Task Force, Ms. Bertalan drafted several bills that are now law to protect Oregon seniors from financial and physical abuse. Ms. Bertalan also served as the Municipal Judge of Bend from 1993 to 2008.

Denise Gorrell, Samuels Yoelin Kantor LLP, Portland. Ms. Gorrell works on a wide range of litigation and guardianship administration issues, with a focus on fiduciary litigation for professional fiduciaries, individual trustees, beneficiaries, and personal representatives. Ms. Gorrell’s litigation expertise includes contested guardianship and conservatorship cases, will contests, undue influence, claims of fiduciary breach, and financial elder abuse cases. Ms. Gorrell is a regular lecturer on fiduciary litigation issues.

Tim McNeil, Davis Pagnano McNeil & Vigna LLP, Portland. Mr. McNeil is a member of the National Academy of Elder Law Attorneys and a past member of the Oregon State Bar Pro Bono Committee. He is the 2005 recipient of the Senior Law Project Volunteer of the Year Award for assisting elderly clients. He also volunteers to represent children in family court cases. Mr. McNeil is a regular presenter on elder law topics.

Stephen Owen, Attorney at Law, Portland. Mr. Owen’s practice emphasizes probate, trust, and elder law litigation matters, including cases involving contested conservator and guardian proceedings. He also acts as a neutral mediator in these types of cases. Mr. Owen is a frequent speaker on guardianship, conservatorship, trust dispute, and probate law matters.

Mark Johnson Roberts, Oregon State Bar, Tigard. Mr. Johnson Roberts is Deputy General Counsel to the Oregon State Bar. He provides prospective ethics advice to Oregon lawyers and counsel to the bar on regulatory, employment, and business matters. He practiced family law in Portland for 26 years before joining the bar’s staff in 2016. Mr. Johnson Roberts is chair of the American Bar Association Commission on Sexual Orientation and Gender Identity, past president of the Oregon State Bar, past president of the National LGBT Bar Association, and past chair of Oregon’s State Professional Responsibility Board. He is the 2014 recipient of the Multnomah Bar Association 2014 Professionalism Award in recognition of his many years of service to the bench and bar. Mr. Johnson Roberts holds an LL.M. in International Law from the Willamette University College of Law.

Julie Meyer Rowett, Yazzolino & Rowett LLP, Portland. Ms. Rowett’s expertise includes estate planning and administration, protective proceedings, special needs planning, Medicaid, and planning for long-term care. She is a member of the Oregon State Bar Estate Planning and Administration Section and Elder Law Section and the National Academy of Elder Law Attorneys. Ms. Rowett is a frequent presenter at continuing legal education events, speaking on topics such as Medicaid, income cap trusts, and guardianships. Ms. Rowett is a long-time volunteer with the Multnomah County Senior Law Project and the Senior Milwaukie Center. She is one of the 2013 recipients of the Multnomah Bar Association Senior Law Project Volunteer of the Year.
Leathan Teal, Educational Manager, Guardian Partners, Portland.

Mark M. Williams, Gaydos Churnside & Balthrop PC, Eugene. Mr. Williams’s practice comprises all facets of elder law, including contested guardianships and conservatorships for individuals and working with professional fiduciaries; he also has substantial experience in estate planning matters. Mr. Williams is a member of the National Academy of Elder Law Attorneys, the State of Oregon Continuing Care Retirement Communities Advisory Council, and the Oregon State Bar Elder Law Section and Legal Ethics Committee. He also serves as adjunct professor to the Concordia University College of Health and Social Services and an adjunct instructor and lecturer at the University of Oregon Law School.
Chapter 1
Guardianship for Adults and Alternatives

TIM McNEIL
Davis Pagnano McNeil & Vigna LLP
Portland, Oregon

Updated and revised based on materials authored by Don B. Dickman and Julie Meyer Rowett. Thank you to Mr. Dickman and Ms. Meyer Rowett for generously allowing use of their materials and forms.

Contents

I. General Background—Guardianships and Less Restrictive Alternatives ........................................ 1–1
   A. Protective Proceedings ...................................................................................................................... 1–1
   B. Civil Rights and Less Restrictive Alternatives ........................................................................... 1–1

II. The Intake Process and Case Evaluation ......................................................................................... 1–2
   A. The Attorney-Client Relationship ............................................................................................... 1–2
   B. Conflict Check .............................................................................................................................. 1–2
   C. Evaluate the Client ......................................................................................................................... 1–3
   D. Assess the Need for a Guardianship ............................................................................................. 1–3
   E. Obtain All Necessary Information ............................................................................................... 1–4
   F. Attorney Fees .................................................................................................................................. 1–4

III. Court Filings, Service, and Notices ................................................................................................. 1–4
   A. Petition for Appointment of Guardian ......................................................................................... 1–4
   B. Notice to Respondent ..................................................................................................................... 1–5
   C. Notice to Interested Persons .......................................................................................................... 1–5
   D. Appointment of Court Visitor ....................................................................................................... 1–6
   E. Proof of Service ............................................................................................................................. 1–6
   F. Limited Judgment Appointing Guardian ....................................................................................... 1–6
   G. Follow up with Guardian ............................................................................................................... 1–7
   H. Petition for Attorney Fees ............................................................................................................ 1–7
   I. Special Issues with Temporary or Emergency Guardianships ..................................................... 1–8

IV. Contested Case Hearings ............................................................................................................... 1–9
   A. Objections for the Petition and Cross Petitions .......................................................................... 1–9
   B. Objections in General ..................................................................................................................... 1–9
   C. Settlement and Compromise ......................................................................................................... 1–10
   D. Prepare the Case as Early as Possible ......................................................................................... 1–11
   E. Presenting the Evidence at the Hearing ....................................................................................... 1–11

V. The Powers and Duties of a Guardian ............................................................................................. 1–12
   A. Rights of the Protected Person ................................................................................................... 1–12
   B. Specific Powers of the Guardian ................................................................................................. 1–13
   C. Limitations of the Guardian’s Powers (ORS 125.320) ................................................................. 1–14
   D. Guardian’s Report ......................................................................................................................... 1–14
   E. Termination of the Guardian’s Authority ..................................................................................... 1–15

Forms .................................................................................................................................................... 1–17
   1-1. Release of Confidential Information A ....................................................................................... 1–17
   1-2. Release of Confidential Information B ....................................................................................... 1–19
   1-3. Guardianship/Conservatorship Information Sheet ...................................................................... 1–21
Contents (continued)

1-4. Petition for the Appointment of Guardian [and Conservator] of an Adult for an Indefinite Period .................................................. 1–27
1-5. Notice to Respondent (Adult) .................................................. 1–33
1-6. Respondent’s Objection .................................................. 1–37
1-8. Notice Addresses for Guardianship Petitions .................................................. 1–41
1-9. Proof of Service .................................................. 1–43
1-10. Limited Judgment Appointing Guardian (No Objection) .................................................. 1–45
1-11. Letter to Guardian Regarding Duties .................................................. 1–47
1-12. Duties of a Guardian .................................................. 1–49
1-14. Objection to Petition for Appointment of Guardian .................................................. 1–55
1-15. Notice of Intent to Place .................................................. 1–57
I. GENERAL BACKGROUND – GUARDIANSHIPS AND LESS RESTRICTIVE ALTERNATIVES.

A. Protective Proceedings

All guardianships, conservatorships and other protective proceedings fall under the jurisdiction of the probate court. See generally ORS 111.085. The probate court may appoint a guardian on behalf of a person in a circumstance in which a person is found to be incapacitated. The statutory definition of incapacitated as set forth in ORS 125.005(5) is:

“Incapacitated” means a condition in which a person’s ability to receive and evaluate information effectively or to communicate decisions is impaired to such an extent that the person presently lacks the capacity to meet the essential requirements for the person’s physical health or safety. “Meeting the essential requirements for physical health and safety” means those actions necessary to provide the health care, food, shelter, clothing, personal hygiene and other care without which serious physical injury or illness is likely to occur.

Some potential clients have difficulty understanding the difference between a guardian and conservator, especially when some states broadly use the term “guardian” to define the role of the conservator. At the risk of oversimplifying, it may be helpful to advise clients that the guardian “guards” the person by taking care of health and placement issues, while the conservator “conserves” the funds by taking care of finances.

During the intake and case evaluation process, the attorney will determine if there is a need to seek appointment of a guardian, conservator, or both. In many cases, there is a need for appointment of both a guardian and a conservator. These roles may be filled by one person or it may be a situation where two different people should be appointed as guardian and conservator. In other cases, only a guardianship is necessary because the only issues present relate to health care and placement. While guardianships and conservatorships are intertwined, this chapter will focus on guardianship cases exclusively.

Case evaluation is critical. While attorneys are not expected to diagnose any particular medical condition, the question of proving incapacity by a standard of clear and convincing evidence is ever present, and the conditions which are the cause of incapacity should be considered and examined right from the start of the case.

B. Civil Rights and Less Restrictive Alternatives

When considering a guardianship the attorney must first answer the question of “can an alternative be found which will eliminate the need for court involvement and not impose upon the civil liberties of the respondent?” In fact, recent legislation effective January 1, 2018, requires a petitioner for guardianship to describe “less restrictive alternatives to the appointment of a fiduciary that have been considered and why the alternatives are inadequate, . . .” A guardianship proceeding is a process that greatly curtails or even removes a person’s basic fundamental civil rights, and should be taken very seriously. Most courts will not grant a

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1 House Bill 2630, Section 1(g), 79th Oregon Legislative Assembly, 2017 Regular Session
guardianship unless there is an undisputed need for protection and there are no other reasonable alternatives. What are the alternatives to a guardianship proceeding?

1. **Advance Directive for Health Care.** ORS Chapter 127 sets forth the requirements for an advance directive for health care. This document allows management of health care (including placement) and access to medical records. If the respondent has executed an advance directive, the health care representative may be able to effectively manage the respondent’s health care needs without the need for a guardianship.

2. **Declaration for Mental Health Treatment.** ORS 127.736 provides a form for designation of a representative for mental health treatment. It authorizes the representative to admit the principal to a health care facility for mental health treatment for up to 17 days. The declaration may avoid the need for temporary guardianships and should be considered in the appropriate circumstances.

3. **Family Involvement.** Are family members able to provide care and work together? In many cases, family members are able to work together to provide for the physical needs of the respondent without the need for court involvement.

4. **Other Professional Assistance.** Has the family worked with professionals such as social workers and placement specialists to address the concerns of the respondent? Often professionals who specialize in these issues can navigate family dynamics and assist in finding an appropriate placement for the respondent. This type of action is more appropriate when the respondent is not in immediate danger.

5. **Durable Powers of Attorneys/Estate Planning/Revocable Trusts.** These types of alternatives do not relate directly to avoiding a guardianship. They are used to avoid a conservatorship where appropriate.

II. THE INTAKE PROCESS AND CASE EVALUATION

A. **The Attorney-Client Relationship.**

The first step to take when considering a guardianship is to establish the attorney-client relationship. This can be surprisingly difficult, but it is critical to identify the client. It is not uncommon to have a group of family members or friends of the respondent attend the initial appointment. If this happens, take a moment to clarify the scope of representation and inform the client that the presence of a non-client will breach the attorney client privilege. It is good practice to obtain a Release of Information (Forms 1-1 and 1-2) from your client, allowing you to discuss the case with others as you deem necessary, and allowing others to discuss the case with you. This may help to prevent any disputed issues or claims against you concerning your unauthorized release of confidential attorney client information.

B. **Conflict Check.**

Potential conflicts of interest are prevalent in protective proceedings due to the potential for adverse interests between spouses, siblings, parents and children. Pay attention for potential
developing conflicts as the case unfolds. If there is a potential future conflict between clients, write a letter explaining the potential conflict and asking both parties to sign indicating that you have fully informed them of the potential conflict. Review the Oregon Rules of Professional Conduct, Rule 1.7 carefully when considering this type of representation. Sample letters are available through the Professional Liability Fund.

Another common scenario is when an existing client has diminished capacity and a spouse, sibling, parent, or friend wishes to pursue a guardianship. In guardianship proceedings, a petitioner is an adverse position in relation to a respondent. An attorney cannot represent both petitioner and respondent due to these conflicting positions. While Rule 1.14 of the Oregon Rules of Professional Conduct allows a lawyer to take reasonably necessary protective action when the client is at risk of substantial physical, financial or other harm, this rule does not resolve the conflict of interest between a petitioner and a respondent. The most straightforward way to address this problem is to refer the family member to another attorney specializing in guardianships and conservatorships.

C. Evaluate the Client.

Is the potential client someone that you would like to work with for many years? Is the potential client credible? Does the potential client understand the complexity of the situation and demonstrate a willingness to follow directions? Does the client have an existing fiduciary relationship, such as power of attorney, with the protected person? It is good practice to run a cursory background check through the Oregon Judicial Information Network (OJIN) to check for convictions or pending court cases. A check for bankruptcy proceedings or federal court cases through the PACER system is accessible online.

D. Assess the Need for a Guardianship.

After you have ruled out all less restrictive alternatives, assess the strength of your case. Discuss the facts in detail with your client to help you determine that you can meet your burden of proof as set forth in statute and in the Schaefer case. Schaefer v. Schaefer, 183 Or App 515 (2002). Can you establish a nexus between the condition that has impaired the respondent and the respondent’s inability to manage the respondent’s care and safety? Evaluate the case from the worst case scenario, and make sure that the client understands the pitfalls.

1. Assess the Potential for Objections. Once you are confident you can meet your burden of proof, discuss the possibility of objections with the client. Is the protected person hostile to the proposed action? Are other family members in opposition? Is there another family member that wishes to serve as guardian? Will filing trigger family issues or a potential disinheritance? If objections are anticipated, discuss ways to minimize the risk with your client. Will open communication with other siblings prior to filing be helpful? Can you consider using a professional fiduciary to diffuse family tensions? If you can identify the need for a professional fiduciary from the beginning, this can save your time and expense of filing an amended petition in response to an objection.
2. **Mediation.** Multnomah County now has mandatory mediation for all objections in probate matters. See Multnomah County SLR 12.045 for a complete description of the procedures and rules related to mediation.

E. **Obtain all Necessary Information.**

Complete information about the protected person and all persons who may have an interest in the case is necessary. A completed Guardianship/Conservatorship Information Sheet (Form 1-3) is essential, and many attorneys have a potential client complete this form prior to the first interview. Another useful form is the “Guardianship Checklist” published by the Professional Liability Fund and available on the PLF website.

F. **Attorney Fees.**

ORS 125.095 requires court approval of attorney fees before payment from assets of the protected person. There is no guarantee that fees will be awarded, and it is nearly certain that fees will not be awarded if the court denies the petition for guardianship. For these reasons, it is important to have a fee agreement with the client. The client needs to assume the ultimate responsibility for payment of your fees.

Do not accept fees from the funds of the protected person without court approval. Take care to examine the source of your funds. For example, a spouse may write you a retainer check from an account with the protected person as joint owner. Accepting this payment without court approval may violate ORS 125.095 because the funds are at least partially owned by the protected person.

III. **COURT FILINGs, SERVICE AND NOTICES.**

A. **Petition for Appointment of Guardian.**

ORS 125.055 sets forth all the requirements for the Petition for Appointment of Guardian (and Conservator) of an Adult for an Indefinite Period (Form 1-4). Failure to include all required statutory information could result in rejection of the petition or requirement for correction. Note that recent legislation effective January 1, 2018, amends ORS 125.055 to require (1) an explanation of less restrictive alternatives to the appointment of a fiduciary that have been considered and why the alternatives are inadequate,\(^2\) and “A statement that indicates whether the petitioner is petitioning for plenary authority or specified limited authority for the person nominated as fiduciary.”\(^3\) The petition sets the stage for your case and it is important to have full, complete and accurate information. Make sure that your petition tells the story of your case in detail. If necessary, consider filing supplemental affidavits if they will help provide a clear picture of the situation.

The filing fee for a guardianship is now $111. If you are filing a conservatorship together with your guardianship, the fees will increase based on the size of the protected person’s estate. The fees for the court visitor vary from county to county. In addition, the procedure for

\(^2\)House Bill 2630, Section 1(g), 79th Oregon Legislative Assembly, 2017 Regular Session
\(^3\)House Bill 2630, Section 1(k), 79th Oregon Legislative Assembly, 2017 Regular Session
appointing the court visitor varies from county to county. In many counties, the attorney is responsible for selecting and submitting the Order Appointing Visitor. If this is the case, provide an Order Appointing Visitor to the court. Failing to do so can result in unnecessary delay of your case.

**B. Notice to Respondent.**

ORS 125.060 requires personal service for a respondent 14 years of age or older. Use of a private process server is recommended as the presence of a uniformed sheriff’s deputy may cause unnecessary distress for the respondent.

ORS 125.070(3) sets forth the statutory Respondent’s Notice that is personally served on the respondent. (Form 1-5). The notice must be printed in at least 14 point type. Check your local rules as well. Some counties require that the notice contain specific information as to the availability of low cost or free legal services for seniors. ORS 125.070(4) sets forth the Respondent’s Objection Form (Form 1-6). The Respondent’s Objection Form is printed on blue paper and attached to the Respondent’s Notice.

**C. Notice to Interested Persons.**

A sample Notice to Interested Person is found at Form 1-7. Read ORS 125.060 carefully and often. The notice requirements are very broad. The primary notice is given to the spouse, parents, and adult children. However, the statute has many additional requirements including:

1. Any person who is cohabiting with the respondent and who is interested in the affairs or welfare of the respondent;

2. Any trustee, health care representative or agent under a financial power of attorney;

3. Any known attorney for the respondent;

4. If the person is in a nursing home or residential facility, the Long Term Care Ombudsman;

5. If the person receives Veteran’s Benefits or money paid through the Department of Veteran’s Affairs, the Regional Office of the US Department of Veteran’s Affairs;

6. If the respondent is receiving moneys paid or payable for public assistance provided under ORS chapter 411 by the State of Oregon through the Department of Human Services, a representative of the department;

7. If the respondent is receiving moneys paid or payable for medical assistance provided under ORS chapter 414 by the State of Oregon through the Oregon Health Authority, a representative of the authority. OAR 407-043-1101 states that mailing or service of notices or documents on the Department shall be considered notice on the Oregon Health Authority.
Authority. Therefore, the one notice sent to the Department of Human Services also satisfies this notice requirement;

8. If the person is a resident of a mental health treatment facility or a residential facility for individuals with developmental disabilities, or if the guardian intends to place the respondent in such a facility, to Disability Rights Oregon.

9. Any other person that the court requires.

10. If there is any doubt err on the side of caution and provide notice. Failure to provide a required notice can result in additional delay. Addresses for the notice requirements set forth above are found in Form 1-8.

D. Appointment of Court Visitor.

The court visitor’s report carries substantial credibility with the court. The court visitor is appointed after the filing of the petition. The procedures for the appointment of the court visitor vary from county to county. After appointment, the court visitor investigates the circumstances of the case. Generally, the court visitor interviews the respondent in person. The court visitor also interviews the petitioner, listed relatives, and all persons listed as having information to support the finding of incapacity. (Paragraph 15, in Form 1-5). The court visitor submits a report to the court which informs the court of the visitor’s conclusions and recommendations as to the appropriateness of appointing a guardian. The court visitor’s report is filed prior to the appointment of a guardian. In most cases, the court visitor completes the report during the objection period.

E. Proof of Service.

File the appropriate Proof of Service upon the respondent. If you use a process server to personally serve the respondent, the process server will provide the Proof of Service to file with the court. You also need to file the appropriate Proof of Service of Notice of Time for Filing Objection to Petition for Appointment of Guardian. (Form 1-9).

F. Limited Judgment Appointing Guardian.

Submit an appropriate limited judgment based on Form 1-10. In addition, submit a Certificate of Compliance in accordance with UTCR 5.100, which informs the court regarding the position of any adverse party with regard to the proposed judgment. If there is no adverse or objecting party, the proposed judgment need not be reviewed by any other party prior to submission to the court. (Note: This certificate is required to be submitted with all proposed orders and judgments, including Court Visitor Orders). Order your Letters of Guardianship. Procedures vary from county to county. In some counties, the first Letters of Guardianship are free. If you need additional copies of the Letters of Guardianship, pay the appropriate fees to the court when requesting the extra Letters.
G. Follow up with Guardian.

Upon appointment, send the guardian a detailed letter outlining the specific powers and duties of guardian. (Form 1-11). Some counties send a general duties letter to the guardian upon appointment. This is generally not sufficient. The guardian needs a more detailed and specific letter addressing the unique facts of your case. See below for more information. The Professional Liability Fund publishes a sample “Duties of Guardian” letter (Form 1-12).

1. The Guardian’s Report. In your letter, advise the client of the due date of the annual Guardian’s Report. Calendar the date in your file to send the report well in advance of the due date. It is a good idea to send the guardian two blank copies of the Guardian’s Report (From 1-13). The first copy can serve as a draft copy and the second copy can be the final version.

2. Guardianship Class. The Circuit Courts in Lane, Clackamas, and Multnomah Counties require guardians to sign up for a guardianship class within fifteen days of appointment and to take the class within sixty days of appointment. The class currently costs $100, and can be taken on line or in person. Guardian Partners is the organization that provides the class and receives the fee.

H. Petition for Attorney Fees.

After appointment of the guardian, you may be ready to petition for your attorney fees and costs. ORS 125.095(2)(c) establishes that “Prior court approval is required before the payment of fees from the funds of a person subject to a protective proceeding when the payment is to any attorney who has provided services relating to a protective proceeding, including services provided in preparation or anticipation of the filing of a petition in a protective proceeding.” ORS 125.098(2) establishes factors for the court to consider in the determination of whether to award attorney fees, while ORS 125.098(3) directs the court to consider the same factors as well as additional ones in the determination of the amount of an award of attorney fees. A fee petition should specifically address each factor, even if only to state that a specific factor does not apply. Of all of the factors, “the benefit to the person subject to the protective proceeding by the party’s actions in the proceeding, . . .shall be given the greatest weight in the court’s consideration.”

1. Service of Fee Petition. UTCR 9.060(4) directs that the fee petition must be served on all persons described in ORS 125.475(5), which re-directs the reader to ORS 125.060(3). The statute requires notice on the respondent, and any other person who has filed an appearance or Request for Notice. Read the statute carefully to be sure all required notices are properly sent. A Notice of Time for Filing Objections to Petition for Payment of Attorney Fees and Costs (modify Form 1-8) must be served along with the Petition.

4 ORS 125.098(2)(a)
2. **Proof of Service.** Submit a Proof of Service of Notice of Time for Filing Objections to Petition for Payment of Attorney Fees and Costs. Provide 15 days for filing objections along with 3 days for mailing the Notice. After the notice period has run, and if no objections have been filed, submit an Order Approving Payment of Attorney Fees and Costs and a Certificate of Compliance in accordance with UTRC 5.100.

3. **Guardian Fees and Costs.** Much like the attorney’s requirement for court approval, the guardian must also have prior court approval for guardianship fees See ORS 125.095(2)(b). If the guardian is going to request a fee, it is efficient to request such fees at the same time of filing the attorney’s Petition for Payment of Attorney Fees and Costs. The guardian should also file a Statement in Support of Request for Guardianship Fees. The issue of reimbursement of costs advanced by the guardian varies from county to county. Many counties require court approval for reimbursement of costs.

I. **Special Issues with Temporary or Emergency Guardianships.**

If there is a life threatening emergency, the court may appoint a temporary guardian for a period not to exceed 30 days pursuant to ORS 125.600. This can be extended for a period of 30 day for good cause shown (ORS 125.600(3).

1. The court must make a specific finding by clear and convincing evidence that the respondent is “incapacitated or a minor, that there is an immediate and serious danger to the life or health of the respondent, and that the welfare of the respondent requires immediate action.” Add factual information to your Petition for Appointment of Guardian for an Indefinite Period (Form 1-5) that specifically addresses the requirements of ORS 125.600.

2. The appointment of a temporary fiduciary may be requested in a separate petition or may be incorporated into the regular petition for appointment of a guardian for an indefinite period. It is often most efficient to incorporate everything into one petition. Clarity in writing and presentation to the court are essential in this situation. Headings can help to differentiate the different sections of your petition.

3. Notice must be given to the respondent and other persons specified in ORS 125.060(2) at least two days prior to the appointment of a guardian. The court may waive the two day notice requirement upon a finding of immediate and serious danger.

4. An ex parte appearance is necessary for the appointment of a temporary guardian. Call the court to schedule your appearance. Procedures vary from county to county. If the two day notice requirement is not waived, the court visitor may complete a report prior to the appearance date and will also attend the ex parte appearance. Have your Limited Judgment Appointing Temporary...
Guardian, along with an extra copy for conforming, ready at the ex parte appearance.

5. ORS 125.605(5) requires the court to hear any objections to the appointment of a temporary guardian within two judicial days after the date the objection is filed. Therefore, be prepared to attend an emergency hearing on a moment’s notice.

6. Some counties require a letter from a medical professional that confirms the need for the temporary guardianship. There is active debate among practitioners regarding this requirement that is beyond the scope of these materials.

7. Washington County requires a hearing if the temporary guardian plans to place the protected person at the Oregon State Hospital.

8. One of the most important safeguards to the civil rights of a respondent in a protective proceeding is notice. The procedure for the appointment of a temporary guardian severely limits or eliminates notice. For this reason, the temporary guardianship procedure is only appropriate in the most severe and dangerous of circumstances, when immediate and serious danger is clear. Clients are often advised by hospital or care facility personnel to retain counsel and secure the appointment of a temporary guardian immediately. Legal counsel must make certain that appropriate circumstances exist to take this drastic action.

IV. CONTESTED CASE HEARINGS

A. Objections for the Petition and Cross Petitions.

The case strategy will vary depending on who has filed an objection. The respondent has an absolute right to object to the guardianship proceeding. When a respondent objects, the court will often appoint an attorney to represent the respondent. Any interested person has the right to object to the guardianship proceeding. In many cases, at the time an objection is filed, a cross-petition will be filed nominating a different guardian. When representing a person who is objecting, you must file a cross petition nominating an alternative guardian and serve it in the same manner as the original guardianship. The court has no authority to appoint any person as a fiduciary unless the respondent has received proper notice of the petition. Spady v. Hawkins, 155 Or App 454, 1998. See Form 1-14 for a sample objection.

B. Objections in General.

1. **Respondent is not incapacitated.** The standard of proof for a finding of incapacity is set forth in statute and interpreted in the Schaefer case. The petitioner must prove by clear and convincing evidence that the person has 1) such severely impaired perception or communication skills, that 2) the person cannot take care of his or her basic needs to an extent to be life or health threatening, and 3) the impaired perception or communication skills cause the
life threatening disability. The petitioner must prove the inability to process and communicate information and the inability to perform essential functions. The petitioner must overcome the presumption of competency.

2. **No Guardian is Needed but a Protective Order May be Appropriate.** There are instances where the respondent may be incapacitated but a guardian is not needed because of the prior execution of an Advance Directive for Health Care, yet for some reason court assistance is required. For example, feuding family members may dispute visitation of the respondent. It may be a case where a relative or acquaintance has been harassing the respondent, borrowing money, or living in the respondent’s home. ORS 125.060 allows the entry of a protective order without the appointment of a fiduciary, if the court determines that grounds exist for appointment of a fiduciary.

3. **The Proposed Guardian is not Suitable.** In many cases, it is clear that the respondent needs a guardian but the parties cannot agree who should be appointed as guardian. ORS 125.200 establishes that “The court shall appoint the most suitable person who is willing to serve as fiduciary after giving consideration to the specific circumstances of the respondent, any stated desire of the respondent, the relationship by blood or marriage of the person nominated to be fiduciary to the respondent, any preference expressed by a parent of the respondent, the estate of the respondent and any impact on ease of administration that may result from the appointment.” Note that while the court considers the stated desire of respondent, the law assigns no higher priority to these factors than any others (see Grimmett v. Brooks, 193 Or App 427 (2004)). The hearing may turn into an assault upon the character of the nominated guardian, so make sure that the nominated guardian can withstand the stress of the hearing. Conversely, if opposing the nomination of the guardian, then the objector needs to show unsuitability.

4. **Request for Restrictions on the Authority of the Guardian.** There are situations where an objection may simply contain a request to place limitation on the authority of the guardian, perhaps restrictions on placement of the respondent or allowing the continuation of a previously appointed Health Care Representative.

C. **Settlement and Compromise.**

Look at the case realistically and make every attempt to compromise and settle the case if at all possible. Consider the following:

1. In Multnomah County, mediation is now mandatory. Even if not required by local rules, mediation may be helpful.

2. A judicial settlement conference may be appropriate.

3. Disputed cases often have more to do with unfinished personal matters between family members than with the legal issues.
4. Consider whether the appointment of an independent person such as a professional guardian would be appropriate?

5. Consider creative approaches. Stephen R. Owen has published an excellent article, “Creative Solutions to Contested Conservator and Guardian Matters,” that offers excellent ideas and sample language. Most settled cases include some inclusion of the language from this article.

D. Prepare the Case as Early as Possible.

Prepare your case well in advance of your hearing date. Consider the following when preparing for your hearing:

1. Issue subpoenas promptly, and be sure to include witness and mileage fees. Proper service is necessary. See ORCP 55.

2. Under the revised ORCP 55H, a “qualified protective order” is needed for obtaining medical records.

3. Interview all witnesses and prepare your direct examination of each witness. Surprises at trial are less likely to occur.

4. Prepare your direct examination of the court visitor with care. Prepare the direct examination to avoid hearsay objections.

E. Presenting the Evidence at the Hearing.

1. Burden of Proof- What Needs to Be Proven at Hearing? The most recent case on point regarding the fundamental issues of guardianship is Schaefer and Schaefer, 183 Or App 513, (2002). The facts in that case involved an 86 year old woman with medical problems, memory lapses, resistance to medical treatment, and a large collection of dogs and cats resulting in a smelly house. The trial court appointed a guardian, but the Court of Appeals reversed. The Court held that in order for the appointment of a guardian to be proper, the Petitioner must prove by clear and convincing evidence that the respondent has 1) such severely impaired perception or communication skills that 2) the respondent cannot take care of his or her basic needs to an extent to be life or health threatening, and 3) the impaired perception or communication skills cause the life threatening disability.

Practitioners have noted that Schaefer appears to confuse the statutory standard for a finding of incapacity as set forth in ORS 125.005(5), and instead appears to blend three differing statutory standards of: (a) a guardianship under ORS 125.005(5); (b) an emergency guardianship under ORS 125.600(1); and (c) a civil commitment proceeding under ORS 426.005(1)(d)(A).
As a practical matter, very few guardianship cases are taken to the court of appeals and there has been no further clarification of the holding in *Schaefer*. Don B. Dickman, in previous years, has set forth the belief that the holding in *Schaefer* narrowly addresses causation, as the appeals court determined that while the respondent showed signs of diminished mental health, there was no causal connection between her diminished capacity and a substantial life threatening condition.

When preparing for a contested proceeding before a court, consider characterizing the evidence incorporating both the statutory and the *Schaefer* standards.

2. **The Court Visitor.** Generally speaking, the testimony of the court visitor may be most important testimony because such testimony often carries the greatest weight with the judge. Some judges consider the court visitor to be a representative of the court. The court visitor is generally considered an expert pursuant to OEC 702, as ORS 125.150(2) states that the person appointed as visitor must have the training and experience required to make the recommendations required under ORS 125.150 and 125.155. If the court visitor does not agree with the petitioner, it does not mean there is no hope for your case. Evidence may be presented to rebut findings of the court visitor. However, also carefully consider the recommendations of the court visitor. Can the petitioner change the strategy to incorporate recommendations of the court visitor, such as considering a more appropriate care setting?

3. **Other Witnesses.** Present credible witnesses who will support your position and will be able to relate specific facts about the case. For example, a caregiver can testify as to the level of assistance that the respondent may need, and the behaviors that he or she has observed. Neighbors and friends can testify as to the changes in the respondent’s behaviors and health, and provide a “before and after” contrast. Family members who are regularly involved with the respondent can provide testimony as to their observations about the respondent.

4. **Trial Memorandum.** A brief trial memorandum outlining the case history and the evidence that is expected to be presented is usually helpful to the court. You may want to also consider submitting proposed findings of fact on a separate pleading form, such as a finding that “based on the testimony presented, the petitioner has proven by clear and convincing evidence, that the respondent…”

V. **THE POWERS AND DUTIES OF A GUARDIAN**

A. **Rights of the Protected Person.**

The statutes require that the court enter the least restrictive order possible. “The court shall make a guardianship order that is no more restrictive upon the liberty of the protected
person than is reasonably necessary to protect the person.” ORS 125.305(2). Under the terms of ORS 125.300(3), the protected person retains all of his or her legal and civil rights, “except those that have been expressly limited by court order or specifically granted to the guardian by the court.” Basic rights include, but are not limited to:

1. Right to vote.
2. Right to marry.
3. Right to contact and obtain counsel.
4. Right to seek termination of the guardianship or review or modify any aspect of the guardianship.
5. If mentally competent, the right to enact estate planning including making or changing a will, changing beneficiaries of a life insurance policy or annuity.
6. Right to receive notices concerning any aspect of the guardianship proceeding, including attorney fee petitions, accountings, intent to change placement, and any other relevant proceeding. Be sure to send direct notice to the respondent of all future actions which require notice.

B. Specific Powers of the Guardian.

It is important that the guardianship limited judgment have a general recitation of the powers of the guardian, although it is not required that all powers of the guardian are listed within the limited judgment. ORS 125.315 lists the general powers and duties of a guardian, including, but not limited to:

1. Health care.
2. Placement/residence.
3. Care, comfort and maintenance.
4. Disposition of remains.
5. Finances. Pursuant to ORS 125.315(f) and 125.320(2), the guardian may receive money and personal property deliverable to the protected person and apply the money and property for the support, care and education of the protected person. The statute directs that the guardian shall exercise care to conserve any excess for the protected person. The court may require the guardian to post a bond if the guardianship will clearly involve financial management.
C. Limitations of the Guardian’s Powers (ORS 125.320).

1. **Use of the Protected Persons Funds.** The guardian may not use the protected person’s funds to pay the guardian, or the guardian’s spouse, parent or child, for the room and board of the protected person without court approval. Carefully review ORS 125.221(4).

2. **Conflicts of Interest.** Review ORS 125.221 for any issues which can arise concerning conflict of interest by the guardian in the expenditure of the protected person’s funds.

3. **Placement.** Before placement of an adult protected person in a mental health facility, nursing home, assisted living, residential care, or adult foster home, the guardian must file a Notice of Intent to Place the protected person (Form 1-15) and give proper notice pursuant to ORS 125.065. Note that as of January 1, 2018, statutory guidelines for changing the placement or a protected person will change. All placement changes, not just moves to care facilities, will require notice. The notice must be filed and served at least 15 days prior to the change in placement, unless the guardian determines that the placement change must occur in less than 15 days in order to protect the immediate health, welfare or safety of the protected person or others. If these circumstances exist, they must be articulated in the move notice, and the notice must be filed or served no later than two judicial days after the move. A court order authorizing the move is not required.


ORS 125.325 requires the filing of a Guardian’s Report within 30 days after the anniversary of the guardian’s appointment. A statutory form is reproduced as Form 1-13. The court is not required to approve the report or take any other action on the report. The report must also be served upon:

1. The protected person.

2. Any other fiduciary other than the guardian who has been “appointed” for the protected person (beyond a court appointed conservator, it is prudent to include any trustee, health care representative or any other fiduciary).

3. Any person who is a party or has required notice.

4. Department of Veterans Affairs if the protected person is receiving Veteran’s Administration benefits.

5. Any other person the court requires.
E. **Termination of the Guardian’s Authority.**

The authority of the guardian ends upon the death, resignation or removal of the fiduciary. Upon termination of the guardian’s authority, if the need for a guardian still exists, a petition to appoint a successor guardian must be filed and served in the same manner as the original petition. Under ORS 125.090(2), the court has authority to terminate the guardianship if the protected person has died, if the need for a guardianship no longer exists due to restoration of capacity, or the best interest of the protected person would be served by the termination of the guardianship.
Form 1-1—RELEASE OF CONFIDENTIAL INFORMATION

AUTHORIZATION FOR RELEASE OF CONFIDENTIAL INFORMATION

I, ________________, authorize you, __________ Attorney, or ______________, legal assistant, to disclose to _____________________, information from the confidential records pertaining to me or my estate.

I also authorize you to disclose confidential information to any State Agency, to any financial institution, or any other person or entity which you reasonably believe would need to have such confidential information to assist you in providing legal services to me or on my behalf.

I understand that the specific type of information to be disclosed includes any and all oral or written information contained in your files, of any type whatsoever. This disclosure is being made to assist _____________________ in providing legal services.

I understand that I may revoke this Authorization for Release of Confidential Information at any time, but I wish to remain in effect until I state otherwise.

DATED, this ___________ day of ____________, 20__.
Form 1-2—RELEASE OF CONFIDENTIAL INFORMATION

AUTHORIZATION FOR RELEASE OF CONFIDENTIAL INFORMATION

STATE OF OREGON )
               ) ss
COUNTY OF ________ )

I, ______________, authorize you ______________, Attorney, or ______________, legal assistant, to disclose information from the confidential records pertaining to _________________________________or to me. I understand that the specific type of information to be disclosed includes any and all oral or written information requested, of any type whatsoever. This disclosure is being made to assist ________________ in providing legal services.

A photocopy of this authorization shall be considered as effective and valid as the original. This authorization for disclosure of information is effective until I revoke it.

Thank you for your cooperation.

DATED, this ____day of __________, 20__.

_____________________________
SUBSCRIBED AND SWORN TO before me this ____day of __________, 20__.

_____________________________
Notary Public for Oregon
My commission expires: __________
Form 1-3—GUARDIANSHIP/CONSERVATORSHIP INFORMATION SHEET

Information about the person who needs a guardian and/or a conservator:

Name: 
Address: 
Telephone: 
Social Security No.: 
Date of Birth: 
Age: 
Current Location: 
County: 
If in a hospital or care facility, when admitted: 
Your relationship to the person: 

Information about the person’s spouse: [Check here if the person is not married: ]

Name: 
Address: 
Telephone: 
Age: 18 or older _____ Under 18 years _____

If the person lives with a domestic partner, friend, or relative, information about him or her:

Name: 
Relationship: 
Age: 18 or older _____ Under 18 years _____

Information about the children or other closest living relatives of the person [For example, parents, brothers and sisters, aunts and uncles, or nieces and nephews]:

Name: 
Address: 
Telephone: 
Relationship: 
Age: 18 or older _____ Under 18 years _____

Name: 
Address: 
Telephone: 
Relationship: 
Age: 18 or older _____ Under 18 years _____

Name: 
Address: 
Telephone: 
Relationship: 
Age: 18 or older _____ Under 18 years _____
Guardianships and Conservatorships

Name: ____________________________
Address: ____________________________
Telephone: ____________________________
Relationship: ____________________________
Age: 18 or older ______ Under 18 years ______

Name: ____________________________
Address: ____________________________
Telephone: ____________________________
Relationship: ____________________________
Age: 18 or older ______ Under 18 years ______

Name: ____________________________
Address: ____________________________
Telephone: ____________________________
Relationship: ____________________________
Age: 18 or older ______ Under 18 years ______

(If more space is needed, add information on the back of this page)

Has there been a guardian or conservator for the person before?        Yes___ No___

Has the person ever signed a power of attorney, advance directive for health care, trust or other
document naming someone to make financial, medical or personal decisions?        Yes___ No___

Who was named to make decisions? (If more than one person, add information on the back of this page)

Name: ____________________________
Address: ____________________________
Telephone: ____________________________
Relationship: ____________________________
Type of document or decision maker: ____________________________

Information about the person’s current doctors(s): (If more than one, add information on the back of this page)

Name: ____________________________
Address: ____________________________
Telephone: ____________________________

Information about the person’s lawyer(s): (If more than one, add information on the back of this page)

Name: ____________________________
Address: ____________________________
Telephone: ____________________________

Briefly describe the person’s physical and mental condition: ____________________________

Does the person need help making medical and health care decisions?        Yes___ No___

If yes, please give examples showing why the person needs this type of help: ____________________________
Does the person need help to take care of basic physical needs like food, shelter, clothing and personal cleanliness?  

Yes___ No___

If yes, please give examples showing why the person needs this type of help: ________________

Does the person need to stay in a care facility, or be moved to a care facility?  

Yes___ No___

If yes, please give examples showing why the person needs to be in a care facility: ________________

Does the person need help to respond to other problems?  

Yes___ No___

If yes, please describe the other problems: ________________

What other kinds of help and services have been tried in the past year? [For example, help with housekeeping or bathing: someone setting up the medication or balancing the checkbook; medical or mental health treatment] ________________

Does the person need help making decisions about finances and property?  

Yes___ No___

If yes, please give examples showing why the person needs this type of help: ________________

Who else has personal experience with the situations you described? [For example, caregivers, case managers, other family members, friends and neighbors]

Name: __________________________
Address: __________________________
Telephone: __________________________
Relationship: __________________________

Name: __________________________
Address: __________________________
Telephone: __________________________
Relationship: __________________________

Is there an immediate, life-threatening problem?  

Yes___ No___

If yes, what is the harm that will come to the person if there is not an emergency guardianship or conservatorship? ________________

The court requires sworn statements from people with personal knowledge of the emergency situation. Who would be willing and able to provide those statements?

Name: __________________________
Address: __________________________
Telephone: __________________________
Relationship: __________________________
Chapter 1—Guardianship for Adults and Alternatives

Name: ____________________________
Address: ____________________________
Telephone: ____________________________
Relationship: ____________________________

Who should be the guardian and/or conservator?

Name: ____________________________
Address: ____________________________
Telephone: ____________________________
Date of Birth: ____________________________
Age: ____________________________
Relationship: ____________________________

Has the proposed guardian and/or conservator filed for bankruptcy, been convicted of a crime, or had any occupational or professional license revoked?  Yes___ No___
If yes, please explain: ____________________________

Information about the income and assets of the person who needs a guardian and/or a conservator:

<table>
<thead>
<tr>
<th>Income</th>
<th>Source</th>
<th>Monthly Amount</th>
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<tbody>
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</table>

Does the person have money or other assets worth more than $10,000?  Yes___ No___

Does the person receive benefits from the U.S. Department of Veterans Affairs?  Yes___ No___

Does the person receive Medicaid assistance (Oregon Health Plan), food stamps, or other public assistance from the Oregon Department of Human Services?  Yes___ No___

Please answer the following questions if the person needs a conservator. Note: A conservator is usually needed if the person who cannot manage his or her finances has assets worth more than $10,000 or if money or property has to be recovered. If the finances are already being managed by someone else, like a trustee, please describe the arrangement: ____________________________

<table>
<thead>
<tr>
<th>Real Property:</th>
<th>Address</th>
<th>Value</th>
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</thead>
<tbody>
<tr>
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<thead>
<tr>
<th>Bank Accounts:</th>
<th>Bank or Institution</th>
<th>Account Number</th>
<th>Balance</th>
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<tbody>
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</tbody>
</table>
### Brokerage Accounts:

<table>
<thead>
<tr>
<th>Broker</th>
<th>Account Number</th>
<th>Balance</th>
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<tbody>
<tr>
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</table>

### Retirement Plans/IRAs:

<table>
<thead>
<tr>
<th>Company or Bank</th>
<th>Account Number</th>
<th>Cash Value</th>
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<tbody>
<tr>
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### Annuities/Company Life Insurance:

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<tr>
<th>Policy Number</th>
<th>Cash Value</th>
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### Vehicles:

<table>
<thead>
<tr>
<th>Year, Make and Model</th>
<th>Value</th>
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### Other Assets:

<table>
<thead>
<tr>
<th>Description</th>
<th>Value</th>
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</table>
Form 1-4—PETITION FOR THE APPOINTMENT OF GUARDIAN [AND CONSERVATOR] OF AN ADULT FOR AN INDEFINITE PERIOD

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF ________
PROBATE DEPARTMENT

In the Matter of the Proposed Guardianship [and Conservatorship] of

NAME, Respondent.

No. _____________

PETITION FOR THE APPOINTMENT OF A GUARDIAN [AND CONSERVATOR] OF AN ADULT FOR AN INDEFINITE PERIOD
ORS 21.175 (Guardianship fee authority)

_______________ petitions the court to appoint [him/her or proposed fiduciary] as guardian [and conservator] for _________, respondent, and presents the following information to the court:

1. The following information is given with regard to respondent:
   Name: ___________________________________________________________
   Age/Date of Birth: _________________________________________________
   Currently located at: ________________________________________________
   County: __________________________________________________________
   Telephone Number: _________________________________________________
   Residence address: _________________________________________________
   County: __________________________________________________________

2. Petitioner is respondent’s [relationship or interest of petitioner].

3. The following information is given with regard to the proposed guardian [and conservator]:
   Name: ___________________________________________________________
   Age: _____________________________________________________________
   Address: _________________________________________________________
   Telephone Number: _______________________________________________

The proposed guardian [and conservator] is respondent’s [relationship or interest], and is qualified, suitable, and willing to serve as guardian.

4. The proposed guardian [and conservator] has not been convicted of any crime, has not filed or received protection under the bankruptcy laws, and has not had a state professional or...
occupational license revoked or canceled [if there has been a conviction or a bankruptcy, etc., revise accordingly and add an explanation].

5. The proposed guardian [and conservator] is not a public or private agency that provides services to respondent, and is not an employee of such an agency.

6. Respondent is not presently able to meet the essential requirements for [his/her] health care. [Add specific allegations about medical and health care decisions.]

7. (Add to petition after 01/01/2018) The following less restrictive alternatives to guardianship are ineffective in this case or unavailable: (describe alternatives which have been attempted and/or which are unavailable)

8. (Add to petition after 01/01/2018) Petitioner seeks plenary authority / specific limited authority for the guardian.

9. The guardian should be authorized to make medical and health care decisions for respondent.

10. Respondent is not presently able to meet the essential requirements for [his/her] physical health and safety. [Add specific allegations about health and safety concerns, including whether the person needs to be in a residential facility]

11. The guardian should be authorized to make decisions about where respondent lives and about the services respondent receives. The proposed guardian plans to [maintain respondent in his/her current living situation] seeks authority to place respondent in [facility name and location] or another appropriate care facility.

12. Add if appropriate: Respondent is presently in need of protection from [Add specific allegations about abuse, exploitation or access issues.]

13. Add if appropriate: The guardian should be authorized to make the decisions needed to protect respondent from [name or problem,] including [add specific authority being requested].

14. Respondent is not presently able to manage [his/her finances due to [Add specific allegations about financial issues, including vulnerability to financial exploitation.]
15. The appointment of a conservator [is necessary to protect respondent’s money and property/is not necessary at this time because [ad allegations about existing financial management arrangement or fact that the total assets are less than $10,000.00; if appropriate, ask for authority for guardian to manage limited amount of income and assets].

16. Respondent’s treating physicians are:

<table>
<thead>
<tr>
<th>Name</th>
<th>Address and Telephone Number</th>
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17. In addition to petitioner and the above doctors, the following people have information to support a finding that respondent is incapacitated and financially incapable:

<table>
<thead>
<tr>
<th>Name and Relation</th>
<th>Address and Telephone Number</th>
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18. Based on petitioner’s reasonable inquiry, respondent has not named a fiduciary under a power of attorney, an advance health care directive or otherwise. No other court has ordered guardianship or conservatorship, and no trust exists. If any fiduciaries are found, petitioner will notify the court of their names and addresses. [Or Respondent has named the following fiduciaries:

<table>
<thead>
<tr>
<th>Name</th>
<th>Fiduciary Relationship</th>
<th>Address and Telephone Number</th>
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<tbody>
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</table>

19. Respondent [is/is not] receiving moneys paid or payable by the Department of Veterans Affairs or by the State of Oregon Department of Human Services.

20. Respondent receives income from [source of payment] of approximately $[amount] per month, for a total annual income of $[amount].

21. A general description of the respondent’s assets, income, and other property in need of protection and the approximate values is as follows:

A. Real Property: [value];
B. Bank Accounts: [values and locations];
C. Investments: [values and locations]; and
D. Personal Belongings: [value].
Petitioner estimates that the total value of respondent’s assets known to petitioner is $[amount].

22.  

[Include if requesting appointment of a conservator] Petitioner requests that the court set the bond in the amount of $[total amount from 18 and 19], representing respondent’s yearly income and the unrestricted assets known to petitioner at this time.

23.  
The persons entitled to notice of this proceeding, in addition to respondent, are:

<table>
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<th>Name and Relation</th>
<th>Address and Telephone Number</th>
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24.  

Petitioner is entitled to seek reasonable attorney’s fees and costs from the funds of respondent in accordance with ORS 125.095.

WHEREFORE, petitioner requests a limited judgment:

1.  

Appointing a court visitor [or Appointing [name] as court visitor];

2.  

Appointing [proposed guardian] as guardian for [respondent], to serve without bond;

3.  

Directing that Letters of Guardianship issue to [proposed guardian],

4.  

[If conservator is requested] Appointing [proposed conservator] as conservator for [respondent];

5.  

[If conservator is requested] Setting the conservator’s bond in the amount of $[amount];

6.  

[If conservator is requested] Directing that Letters of Conservatorship issue to [proposed conservator] upon filing and approval of the bond;

7.  

[If conservator is requested] Authorizing the Conservator to sell the petitioner’s real property, located at [location];

8.  

[If conservator is requested] Revoking any powers of attorney, durable powers of attorney or other grant of financial agency or financial decision making authority for the Respondent; and

9.  

[If conservator is requested] For such other relief as seems to the Court to be just and equitable.

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

DATED this day of __________, 20__.  

[Petitioner] PETITIONER
PETITIONER:
[Name, address, and telephone number]

ATTORNEY FOR PETITIONER:
[Name, OSB number, address, telephone number, fax number, and e-mail address]
Form 1-5—NOTICE TO RESPONDENT (ADULT)

Important Note: This notice must be printed in at least 14 point type.

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF ________
PROBATE DEPARTMENT

In the Matter of the Proposed Guardianship of

) )
) ) NOTICE TO RESPONDENT OF
NAME, ) ) TIME FOR FILING OBJECTIONS
) ) TO APPOINTMENT OF
) ) GUARDIAN OF AN ADULT FOR
) ) AN INDEFINITE PERIOD

Respondent.

No. ________________

TO: [Name and address of respondent]

____________________, petitioner, [who is your [relationship] or that is an agency or business that provides guardianship services], has asked a judge for the power to make decisions for you. The judge has been asked to give this person, agency or business the authority to make the following decisions for you:

Medical and health care decisions, including decisions on which doctors you will see and what medications and treatments you will receive.
Residential decisions, including decisions on whether you can stay where you are currently living or be moved to another place.
Financial decisions, including decisions on paying your bills and decisions about how your money is spent.

Other decisions: [describe other authority requested].


YOU MUST TELL SOMEONE AT THE COURTHOUSE BEFORE [deadline for making objections] IF YOU OPPOSE HAVING SOMEONE ELSE MAKE THESE DECISIONS FOR YOU.

1
OBJECTIONS:
You can write to the judge if you do not want someone else making decisions for you. The judge’s address is: ___________________.

You have the right to object to the appointment of a guardian by saying you want to continue to make your own decisions. If you do not want another person, agency or business making decisions for you, you can object. If you do not want [proposed guardian] to make these decisions for you, you can object. If you do not want your money to be used to pay for these expenses, you can object.

You can object any time after the judge has appointed a guardian. You can ask the judge at any time to limit the kinds of decisions that the guardian makes for you so that you can make more decisions for yourself. You can also ask the judge at any time to end the guardianship.

THE HEARING:
The judge will hold a hearing if you do not want a guardian, do not want this particular person to act as your guardian or do not want your money used this way. At the hearing, the judge will listen to what you and others have to say about whether you need someone else to make decisions for you, who that person should be and whether your money should be spent on these things. You can have your witnesses tell the judge why you do not need a guardian and you can bring in records and other information about why you think that you do not need a guardian. You can ask your witnesses questions and other witnesses questions.

[As of the date on this notice, no hearing has been set.]

THE COURT VISITOR:
The judge will appoint someone to investigate whether you need a guardian to make decisions for you. This person is called a “visitor.” The visitor works for the judge and does not work for the person who filed the petition asking the judge to appoint a guardian for you, for you or for any other party. The visitor will come and talk to you about the guardianship process, about whether you think that you need a guardian and about who you would want to be your guardian if the judge decides that you need a guardian. The visitor will talk to other people who have information about whether you need a guardian. The visitor will make a report to the judge about whether what the petition says is true, whether the visitor thinks that you need a guardian, whether the person proposed as your guardian is able and willing to be your guardian, who would be the best guardian for you and what decisions the guardian should make for you. If there is a hearing about whether to appoint a guardian for you, the visitor will be in court to testify.
You can tell the visitor if you don’t want someone else making decisions for you when the visitor comes to talk with you about this matter.

LEGAL SERVICES:
You can call a lawyer if you don’t want someone else making decisions for you. If you don’t have a lawyer, you can ask the judge whether a lawyer can be appointed for you.

There may be free or low-cost legal services or other relevant services in your local area that may be helpful to you in the guardianship proceeding. For information about these services, you can call [Insert local legal services offices’ telephone numbers] and ask to talk to people who can help you find legal services or other types of services.

OBJECTION FORM:
You can mark the blue sheet (Respondent’s Objection) that is attached to this form if you do not want someone else to make your decisions for you. You can give the blue sheet to the visitor when the visitor comes to talk with you about this, you can show it to your attorney or you can mail it to the judge.

DATED this ____ day of ________________ , 20__.  

[Name and OSB number]  
Attorney for petitioner

PETITIONER:  
[Name, address, and telephone number]

ATTORNEY FOR PETITIONER:  
[Name, OSB number, address, telephone number, fax number, and e-mail address]
Form 1-6—RESPONDENT’S OBJECTION

Important Note: This must be printed on blue paper in at least 14 point type and attached to the Notice to Respondent (Adult).

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF ________
PROBATE DEPARTMENT

In the Matter of the Proposed Guardianship of)
) No. ______________
NAME, ) RESPONDENT'S OBJECTION
) Respondent.)

I object to the petition for the following reasons:

______ I do not want anyone else making any of my decisions for me.

______ I do not want [fill in proposed guardian’s name] making any decisions for me.

______ I do not want ____________________ to make the following decisions for me: _________________________

__________________ (Date) ____________________ (Signature of Respondent)

GIVE TO THE VISITOR OR MAIL TO: ________________.
[Name and address of court]
FORM 1-7—NOTICE OF TIME FOR FILING OBJECTIONS TO
APPOINTMENT OF GUARDIAN [AND CONSERVATOR]

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF _______________

PROBATE DEPARTMENT

In the Matter of the Proposed Guardianship of: ) Case No. __________________
) ) NOTICE OF TIME FOR FILING
) ) OBJECTIONS TO PETITION FOR
) ) APPOINTMENT OF GUARDIAN FOR
) ) AN ADULT FOR AN INDEFINITE
) ) PERIOD

NAME, ) Respondent.
) )

TO: [Name(s) and address(es) of person(s) other than the respondent who are entitled to notice]

NOTICE IS HEREBY GIVEN that ____________________ filed a petition asking the court
to appoint [him/her or proposed fiduciary] as guardian [and conservator] of ________________
respondent. A copy of the petition for the appointment of a guardian [and a conservator] for an adult
for an indefinite period accompanies this notice.

The petitioner is the respondent's ________________________________________.

Any objections must be made or filed in the guardianship [and conservatorship] proceeding
in the above court on or before [insert date which is 15 days from date of notice, plus 3 days for
mailing notice]. Objections may be made in writing or in person, orally, at:

Probate Department
[Name and address of court].

If the court receives objections, the judge will hold a hearing. As of the date on this notice, no
hearing has been set.

NOTICE: If you wish to receive copies of future filings in this case, you must inform the
court and the person named as petitioner in this notice. You must inform the court by filing a request
for notice and paying any applicable fee. The request for notice must be in writing, must clearly
indicate that you wish to receive future filings in the proceedings, and must contain your name,
address, and phone number. You must notify the person named as petitioner by mailing a copy of
the request to the petitioner. Unless you take these steps, you will receive no further copies of the
filings in the case.

DATED this ________ day of ___________ , 20 __ .

____________________________________________________
[Name and OSB number]
Attorney for Petitioner

PETITIONER:
[Name, address, and telephone number]
ATTORNEY FOR PETITIONER:
[Name, OSB number, address, telephone number, fax number, and e-mail address]
FORM 1-8—NOTICE ADDRESSES FOR GUARDIANSHIP PETITIONS

ORS 125.060(2)(h):
If the respondent is receiving money paid or payable by the U.S. Department of Veterans Affairs, send notice to:

U.S. Department of Veterans Affairs
WAREA Fiduciary Hub
P.O. Box 58086
Salt Lake City, Utah 84158

ORS 125.060(2)(i):
If the respondent is receiving moneys paid or payable for public assistance (e.g., Medicaid, Oregon Health Plan) send notice to:

Oregon Health Authority
500 Summer St. NE, E-20
Salem, OR 97301

ORS 125.060(7)(b):
If the respondent is the resident of a nursing home or residential facility or if the proposed guardian intends to place the respondent in a nursing home or residential facility send notice to:

Office of the Long-Term Care Ombudsman
3855 Wolverine NE Ste. 6
Salem, OR 97310

ORS 125.060(7)(c):
If the respondent is a resident of a mental health treatment facility or a residential facility for individuals with developmental disabilities or if the proposed guardian intends to place the respondent in such a facility send notice to:

Disability Rights Oregon
610 SW Broadway, Suite 200
Portland, Oregon 97205

HB 2091/ORS 125.060(2)(k):
If the respondent is a foreign national, send notice to the consulate for the respondent's country. (Effective Jan. 1, 2004)
FORM 1-9—PROOF OF SERVICE

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF __________________
PROBATE DEPARTMENT

In the Matter of the Proposed Guardianship [and Conservatorship] of

NAME,

Respondent.

Case No.

PROOF OF SERVICE OF NOTICE OF TIME FOR FILING OBJECTIONS TO PETITION FOR [Insert petition]

I, ______________, of attorneys for ________, the Petitioner in the above-captioned proceeding, hereby state the following:

On this____day of _____, 20____, I served the following:

1. Notice of Time for Filing Objections to Petition for [insert petition contents] and,

2. Petition for [insert petition contents].

by depositing true copies thereof in the U.S. Mail in [   ], Oregon, enclosed in an envelope addressed to the following at the following last know mailing address listed below, with postage prepaid thereon.

[Insert Mailing Address]

The date of mailing was not less than 15 days prior to the deadline for filing objections in the above-captioned protective proceeding.

DATED this _____ day of __________, 20__.

[Attorney name, OSB number]
ATTORNEY FOR [Petitioner/Guardian]
FORM 1-10—LIMITED JUDGMENT APPOINTING GUARDIAN (NO OBJECTION)

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF ____________
PROBATE DEPARTMENT

In the Matter of the Guardianship [and Conservatorship] of:
NAME, Respondent.

No. __________________
LIMITED JUDGMENT
APPOINTING PERMANENT
GUARDIAN [AND
CONSERVATOR] OF AN
ADULT FOR AN INDEFINITE
PERIOD

This matter came before the court upon the petition of ________________ for the appointment of a Guardian for ________________.

1. It appears to the court from the records and files herein that:
   (a) Venue for this protective proceeding is properly in this county, and no other court in this state has acquired jurisdiction over this proceeding;
   (b) Notice of this protective proceeding has been given to the persons entitled to such notice under Oregon law; and,
   (c) The time for filing objections has expired and no objections have been filed.

2. There is clear and convincing evidence that:
   (a) ________________, Respondent, is [incapacitated/a minor];
   (b) The appointment of a Guardian is necessary to provide continuing care and supervision for Respondent; and,
   (c) ________________ is the most suitable person to serve as Guardian for. [He/She] is qualified and has consented to act as respondent's Guardian.

NOW, THEREFORE, IT IS ORDERED AND ADJUDGED THAT:
(a) ________________ is appointed as Guardian for to serve without bond. The protected person retains [his/her] legal and civil rights, except for those granted to the Guardian by the court. To promote and protect the well-being of the protected person, the Guardian shall have the following powers:
Chapter 1—Guardianship for Adults and Alternatives

1. **Medical and Health Care.** The Guardian may consent, refuse consent, withhold or withdraw consent to health care and to services for the protected person. The Guardian will make health care decisions that are consistent with the protected person's desires and values to the extent reasonable and possible.

2. **Residence and Placement.** The Guardian may establish the protected person's place of abode. [If appropriate, insert language about placement, for example, "and, notice having been given in the petition the Guardian shall have the power to continue the protected person's placement in [care facility]."]

3. **Finances.** Pursuant to ORS 125.315(f) and 125.320(2), the Guardian may receive money and personal property deliverable to the protected person and apply the money and property for support, care and education of the protected person. The Guardian shall exercise care to conserve any excess for the protected person.

4. **General Duties.** The Guardian shall arrange for the care, comfort, and maintenance of the protected person.

   [If appropriate, add additional duties and/or limitations.]

   (b) Letters of Guardianship, to which a copy of this limited judgment shall be attached, shall be issued to ________________________________________________

   GUARDIAN:
   [Name, address, and telephone number]

   SUBMITTED BY ATTORNEY FOR GUARDIAN:
   [Name, OSB number, address, telephone number, fax number, and e-mail address]
FORM 1-11—LETTER TO GUARDIAN REGARDING DUTIES

Re: Guardianship of [Protected Person]

___________ County Circuit Court Case No. ________________

Dear [Guardian]:

The order appointing you as guardian for [protected person], was signed by [judge or probate commissioner] on [date]. A conformed copy of the order appointing you as guardian is enclosed. The order refers to [protected person] as the respondent or as the protected person.

We have ordered two certified copies of the Letters of Guardianship from the court and will forward one to you once we receive them. We will keep the second certified copy in the file in case you need it in the future. The certified copy of the Letters of Guardianship will be the official proof of your authority. Keep the certified copy for yourself, and make photocopies for [care facility, if applicable,] the protected person's doctors, and others who may need documentation of your power to make decisions for [him/her].

General Powers and Duties of a Guardian

As guardian, you have special responsibilities to act for the protected person's benefit. I am enclosing copies of the state laws (Oregon Revised Statutes 125.315 and 125.320) that describe the general powers and duties of (as well as the limitations on) a guardian. You have the general duty to provide for the protected person's care, comfort, and maintenance. The order lists several specific powers, including the power to make health care decisions. The decisions that you make for [him/her] should be consistent with [his/her] values and wishes, if reasonable and possible. [If applicable, insert direction to follow instructions given by the protected person in an existing Advance Directive for Health Care or similar document and any other limitations.]

The guardianship will remain in force for the rest of the protected person's life, unless [he/she] regains the ability to make and communicate decisions and provide for [his/her] basic needs. You will continue to be [his/her] guardian unless you decide to resign, or unless you are removed by the court. You are required to notify the court if you change your name, residence, or mailing address. When you sign any documents as the protected person's guardian, you should sign your own name and add "guardian for [protected person]."

Authority Regarding Placement

The order [gives you the authority to continue the protected person's current placement at [care facility]/gives you the authority to place the protected person at [care facility]/states that you plan to maintain the protected person in [his/her] home. Should it become necessary to [move the protected person to a different placement], either because of changes in [his/her] condition or for any other reason, please call me. A guardian is required to provide a special notice before placing the protected person in a care facility, and before moving [him/her]. I can prepare and send out the necessary notice.

Authority to Manage Money and Property [use only if the guardian will be managing funds]

We did not ask the court to appoint a conservator to manage [protected person's] finances because [insert reason]. As guardian, you will have the authority to take charge of the protected person's money and property and to use [his/her] funds to pay for [his/her] care and other expenses. If you feel that it is appropriate, you may provide the protected person with a limited amount of cash or with a small bank account for [his/her] personal use.
There are some limits on your authority regarding the protected person's money and property. You cannot become involved in a transaction in which you have a personal financial interest. You also cannot use [his/her] funds to pay yourself or your family members for providing services to the protected person or to pay for the legal fees and court costs related to the guardianship case unless the court approves the payments in advance.

A guardian is not permitted to manage larger amounts of money or property. If the protected person acquires money or property that would increase the total value of [his/her] assets to $10,000 or more, we will have to notify the court and file a petition asking the court to appoint a conservator to manage [his/her] funds and property.

The Social Security Administration has its own representative payment system and does not recognize the authority of a guardian appointed by a state court. If you need to make any changes with regard to the protected person's Social Security benefits (such as changing the direct deposit arrangements), you will have to apply to become [his/her] representative payee through the Social Security Administration. You can start that process by calling 1-800-772-1213, reviewing the information on the Social Security web site, www.ssa.gov, or by visiting a local Social Security office. You will need the protected person's Social Security number and the Letters of Guardianship. If you do change a direct deposit arrangement, do not close the existing direct deposit account until you have confirmation that the payments have been received in the new account.

**Personal Liability of Guardian**

Under Oregon law, becoming the guardian does not make you personally liable to other people for the expenses of or actions of the protected person. However, you can be found liable if you sign to be personally liable or if you do not reveal that you are acting as guardian for the protected person. You may be liable to the protected person for losses to [his/her] estate if you use [his/her] funds to pay yourself or your family members without prior court approval, or if you get involved in a transaction in which you have a conflicting financial interest.

**Guardian's Annual Report**

You are responsible for filing an annual guardian's report with the court, summarizing your activities as guardian and the important decisions you have made for the protected person in the preceding year. Since you will be managing the protected person's finances as [his/her] guardian, you will also have to report the income that [he/she] has received, the amount that has been spent, and the value of the money and property at the end of your reporting year. **The first report is due within 30 days of the anniversary of your appointment, or within 30 days of [date].** Please mark that date on your calendar. [Insert description of attorney's practice regarding the annual guardian's report.]

Please keep this letter with your records for the guardianship so that you can refer to it. If you have questions or concerns about the information in this letter, or if you have other questions, please call me.

Sincerely,

[Attorney]
The purpose of this handout is to summarize your duties as a Guardian.

The following list describes the principal duties of a Guardian after appointment by the Court:

1. Take custody of the Protected Person, which entails an element of control over the activities of that person, including, for instance, determining where he or she lives.

2. Provide for the safety, care, comfort, maintenance, and, if necessary, the training and education of the Protected Person.

3. Take reasonable care of the Protected Person's clothing, furniture, and personal effects.

4. When appropriate, make health care decisions on behalf of the Protected Person, always seeking to carry out the known wishes of the Protected Person, or if those wishes be not known, then to act in the best interests of the Protected Person.

5. Make funeral arrangements in advance and control disposition of the remains of the Protected Person in the event of death. [Advance payment of funeral expenses is very important if the Protected Person's long term health care costs may be paid for by the Medicaid program. Alternatively, establish a savings account for an appropriate amount in the Protected Person's name and mark on the face of the account book "Dedicated to funeral services" or the like.] Determine if the Protected Person is a registered organ donor.

6. If a conservator has been appointed for the Protected Person, work with the appointed conservator to see that the Protected Person has adequate funds to provide for his or her support, care, and education.

7. The Guardian must make an annual report to the Court, due 30 days after the anniversary of appointment as Guardian. The first report is due _____________________. Mark your calendar for each anniversary.

8. Pursuant to ORS 125.320(3), you must file a statement with the Court (and a copy to the Protected Person, any conservator, the Long-Term Care Ombudsman, any attorney who has represented the Protected Person during the proceedings, and anyone else entitled to notice) giving notice in advance of your intention to move the Protected Person. If the Protected Person is to be placed in a mental health treatment facility, the Disability Rights Oregon must be notified. Hospitalization for medical care does not require notice. If the placement is an emergency, give any required notice as soon as possible, but the life and safety of the Protected Person is more important than the paperwork.

9. Contact an attorney if a conflict arises between you and a health care representative under an Oregon Medical Advance Directive about health care decisions, or if a conflict arises between you and (other) family members about funeral arrangements and disposition of the body or anatomical gifts.

I HAVE READ THIS DOCUMENT PROVIDED BY MY ATTORNEY, AND I UNDERSTAND THAT I MUST FULFILL THESE DUTIES AS GUARDIAN.

______________________________  ________________________________
Guardian                      Date


---

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FORM 1-13—GUARDIAN'S REPORT

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF _______________
PROBATE DEPARTMENT

In the Matter of the Guardianship of

No. _____________

GUARDIAN’S REPORT

I am the Guardian for the Protected Person named above, and I make the following report to the Court as required by law:

1. My name is: __________________________________________

2. My address and telephone number are: __________________________________________

3. The name, if applicable, and address of the place where the Protected Person now resides: __________________________________________

4. The Protected Person is currently residing at the following type of facility or residence: __________________________________________

5. The Protected Person is currently engaged in the following programs and activities and receiving the following services: __________________________________________

6. I was paid for providing the following items of lodging, food, or other services to the Protected Person: __________________________________________

7. The name of the persons primarily responsible for the care of the Protected Person at the Protected Person’s place of residence are: __________________________________________

8. The name and address of any hospital or other institution where the Protected Person is now admitted on a temporary or permanent basis are: __________________________________________
9. The Protected Person’s physical condition is as follows: ____________________________
   ___________________________________________________
   ___________________________________________________
   ___________________________________________________

10. The Protected Person’s mental condition is as follows: ____________________________
    ___________________________________________________
    ___________________________________________________
    ___________________________________________________

11. **Facts that support the conclusion that the person is incapacitated include the following (effective 01/01/2018):**
    ___________________________________________________
    ___________________________________________________
    ___________________________________________________

12. I made the following contacts with the Protected Person during the past year: _____
    ___________________________________________________

13. I made the following major decisions on behalf of the Protected Person during the past year:
    ___________________________________________________
    ___________________________________________________
    ___________________________________________________

14. I believe the guardianship should continue because: ____________________________
    ___________________________________________________

15. At the time of my last report, I held the following amount of money on behalf of the Protected Person:
    ___________________________________________________

16. A true copy of this report will be given to the Protected Person, any conservator for the Protected Person, and any other person who has requested notice.

17. Since my last report:
   (a) I have been convicted of the following crimes (not including traffic infractions): N/A
   (b) I have not filed for or received protection from creditors under the federal Bankruptcy Code.
   (c) I have not had a professional or an occupational license revoked or suspended.
   (d) I have not had my driver license revoked or suspended.

18. Since my last report, I have delegated to the persons named below the following powers over the Protected Person for the following periods of time: **NONE**
I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

DATED this ___ day of __________, 20__.

[Guardian] Guardian

NOTICE: ANY PERSON INTERESTED IN THE AFFAIRS OR WELFARE OF THE PROTECTED PERSON WHO IS THE SUBJECT OF THIS REPORT WHO HAS CONCERNS ABOUT THE REPORT OR THE GUARDIAN’S PERFORMANCE MAY CONTACT THE COURT AS FOLLOWS: [Address and telephone number for probate court) (effective 01/01/2018)]
FORM 1-14—OBJECTION TO PETITION FOR APPOINTMENT OF GUARDIAN

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF _________________________
PROBATE DEPARTMENT

In the Matter of the Proposed Guardianship of _________________________

No. _____________

A protected person.

I, ____________________, have an interest in the above-referenced protective proceeding by virtue of the fact that [state the objecting party's interest]. I object to the petition for appointment of guardian(s) as follows:

A. [Enumerate whether the objector admits or denies each and every allegation contained in the petition for appointment of guardian, e.g., Objector admits paragraphs 1, 2, 3, 7, 8, 9, and 10 of the petition for appointment of a guardian; objector denies paragraphs 4, 5, and 6 of the petition for appointment of a guardian; objector is unable to admit or deny paragraphs 11 and 12 of the petition for appointment of guardian because of lack of information or knowledge.]

B. [Enumerate the objections to the petition for appointment of a guardian and the reasons therefore.]

C. [Include cross-petition for appointment of a different fiduciary than nominated in the petition if applicable. All statutory requirements apply to any cross-petition.]

WHEREFORE, __________________________ requests that this matter be set for hearing.

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

DATED THIS ___ DAY OF __________, 20__

[Name of objector/interested party]

NOTE: The petitioner or person making the objection shall give notice to all persons entitled to notice under ORS 125.060 of the date, time, and place of the scheduled hearing at least 15 days before the date set for hearing. Notice shall be given in the manner prescribed by ORS 125.065.
FORM 1-15—NOTICE OF INTENT TO PLACE

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF _____________________________

PROBATE DEPARTMENT

In the Matter of the Guardianship of ) No. _____________
 )
 ) NOTICE OF INTENT TO PLACE
 ) PROTECTD PERSON

_________________________ ) A protected person. )

NOTICE IS HEREBY GIVEN that _________________, the guardian for [protected person], intends to place the protected person in the following location:

[Name and address of facility; contact name and telephone number].

The guardian is the protected person's [relationship].

[If notice provided is less than 15 days prior to move, explain why the move must occur in less than 15 days in order to protect the immediate health, welfare, or safety of the protected person or others].

Any objections to this placement must be filed with the court in this guardianship case by [deadline for filing objections.] Objections may be made in writing by mailing or delivering the objections to:

Probate Department
[Name and address of court].

DATED this ___ day of ________, 20____.

[Name and OSB number] Attorney for Guardian

GUARDIAN:
[Name, address, and telephone number]

ATTORNEY FOR GUARDIAN:
[Name, OSB number, address, telephone number, fax number, and e-mail address]
Chapter 2
Conservatorships

Julie Meyer Rowett
Yazzolino & Rowett LLP
Portland, Oregon

Contents

I. Probate Jurisdiction ........................................................................................................... 2–1
II. Intake .................................................................................................................................. 2–1
   a. Screening Cases .................................................................................................................. 2–1
   b. Is a Conservatorship Necessary? ....................................................................................... 2–1
   c. Pre-Petition Research ........................................................................................................ 2–1
   d. Fee Agreement .................................................................................................................. 2–2
   e. Educate Your Client .......................................................................................................... 2–3
III. Initiating the Protective Proceeding .................................................................................. 2–3
   a. Venue ................................................................................................................................ 2–3
   b. Contents of the Petition ...................................................................................................... 2–3
   c. Prima Facie Evidence and the Burden of Proof ................................................................. 2–3
   d. Filing of the Petition .......................................................................................................... 2–4
IV. Notices ............................................................................................................................... 2–4
   a. Two Tiers of Notices ........................................................................................................... 2–5
   b. First Tier Notices ................................................................................................................ 2–5
   c. Objection Deadlines ......................................................................................................... 2–5
   d. Waiver of Notice .............................................................................................................. 2–5
V. Appointment ......................................................................................................................... 2–6
VI. Bonding ............................................................................................................................... 2–6
VII. Managing the Estate ........................................................................................................... 2–7
     a. First Steps—Duties Letter ................................................................................................ 2–7
     b. Inventory .......................................................................................................................... 2–7
     c. Estate Planning Documents ............................................................................................. 2–8
VIII. Action Requiring Court Approval and Voidable Transactions ....................................... 2–8
IX. Claims .................................................................................................................................. 2–11
X. Accountings .......................................................................................................................... 2–11
   a. UTCR .................................................................................................................................. 2–11
   b. Disclosures ........................................................................................................................ 2–11
   c. Conservator Fees .............................................................................................................. 2–11
   d. Attorney Fees ................................................................................................................... 2–12
   e. Contested Accountings ..................................................................................................... 2–12
XI. Terminating and Closing ...................................................................................................... 2–12
    a. After Death ....................................................................................................................... 2–12
    b. After Majority or Regaining Capability ........................................................................... 2–12
    c. Insufficient Assets .......................................................................................................... 2–12
    d. Terminating by Judgment ............................................................................................... 2–13
### Contents (continued)

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>XII.</td>
<td>Temporary Conservators</td>
<td>2–13</td>
</tr>
<tr>
<td>XIII.</td>
<td>Other Protective Order and Limited Conservatorships</td>
<td>2–14</td>
</tr>
<tr>
<td>Forms</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2-1.</td>
<td>Petition for Appointment of a Conservator of an Adult for an Indefinite Period</td>
<td>2–15</td>
</tr>
<tr>
<td>2-2.</td>
<td>Notice to Respondent of Time for Filing Objections to Petition for Appointment of a Conservator of an Adult for an Indefinite Period</td>
<td>2–23</td>
</tr>
<tr>
<td>2-3.</td>
<td>Respondent’s Objection</td>
<td>2–29</td>
</tr>
<tr>
<td>2-4.</td>
<td>Notice of Time for Filing Objections to Petition for Appointment of Conservator of an Adult for an Indefinite Period</td>
<td>2–31</td>
</tr>
<tr>
<td>2-5.</td>
<td>Proof of Service of Notice of Time for Filing Objections to Petition for Appointment of Conservator of an Adult for an Indefinite Period</td>
<td>2–33</td>
</tr>
<tr>
<td>2-7.</td>
<td>Abstract of Real Property (ORS 125.470(3))</td>
<td>2–39</td>
</tr>
<tr>
<td>2-8.</td>
<td>Acknowledgment of Restriction of Assets</td>
<td>2–41</td>
</tr>
<tr>
<td>2-9.</td>
<td>Letter Re Duties of Conservator</td>
<td>2–43</td>
</tr>
<tr>
<td>2-10.</td>
<td>Inventory</td>
<td>2–51</td>
</tr>
<tr>
<td>2-11.</td>
<td>Supplemental Inventory</td>
<td>2–53</td>
</tr>
<tr>
<td>2-12.</td>
<td>First Annual Accounting; Motion for Order Approving Payment of Attorney Fees and Costs</td>
<td>2–55</td>
</tr>
<tr>
<td>2-14.</td>
<td>General Judgment Approving Conservator’s First and Final Accounting, Release of Restriction, Exoneration of Bond and Payment of Fiduciary Fees and Expenses and Attorney Fees and Costs on Behalf of the Conservator</td>
<td>2–65</td>
</tr>
<tr>
<td>2-16.</td>
<td>Conservatorship Checklist</td>
<td>2–71</td>
</tr>
<tr>
<td></td>
<td>Presentation Slides</td>
<td>2–75</td>
</tr>
</tbody>
</table>
Chapter 2—Conservatorships

I. PROBATE JURISDICTION
   a. Protective proceedings (guardianships and conservatorships) are actions in equity and are specifically exercised within the jurisdiction of the County or Circuit Courts acting in probate. ORS 111.085(7) and ORS 125.015.
   b. Although no particular form of pleadings are required in probate, many forms are now codified in ORS Chapter 125. Additionally, the required form of accounting is set forth in UTCR 9.160.
   d. Chapter 9 of the Oregon Uniform Trial Court Rules applies to probate matters. Also review supplemental local rules for county specific rules.

II. INTAKE
   a. Screening Cases
      i. Develop and provide a comprehensive intake form for the client to complete prior to the initial consultation.
      ii. Check for conflicts of interest carefully. Generally, it is not advised to file a conservatorship over your own client. Although there are limited exceptions to this rule, if the potential protected person is a former client it is better to refer the caller to a different attorney.
   b. Is a Conservatorship Necessary?
      i. During intake, it is important to assess whether the filing of a conservatorship is necessary. If a less restrictive means exists for management of assets, then a conservatorship can often be avoided with significant cost savings to the client. Is there a power of attorney or trust? If so, do you have the ability to manage the assets effectively without court involvement?
      ii. Does the person that needs assistance still have capacity? Can they retain an attorney to prepare a power of attorney or trust?
      iii. Are there alternative forms of management? Is there a joint owner on the account that can manage the account?
   c. Pre-Petition Research
      i. In many cases, clients have exhausted the less restrictive means and it is clear that a conservatorship is necessary. In these cases there are no estate planning documents and the protected person clearly lacks capacity to execute documents. In other cases the estate planning documents exist but are
being abused and the removal of the agent is necessary. Often, by the time the client visits the attorney's office it is clear that these methods of management have failed and the conservatorship filing will be necessary.

ii. Upon determining that the conservatorship is necessary it is important to take certain steps prior to filing. Do your due diligence in reviewing all available bank account statements. Talk to other parties involved in the matter and verify the facts. If APS has been involved speak with the APS investigator to determine the status of the investigation.

iii. It is essential to confirm that the potential conservator is able to serve. Check the conservator's record in OECI. Additionally, sign up for the PACER system through the US Bankruptcy Court for the District of Oregon. This will allow you to verify whether the potential conservator has filed for bankruptcy. Finally, always get pre-bond approval for the potential conservator. If you cannot get even a minimal bond for the conservator the person will be unable to serve. Have this discussion with your client early in the case to avoid delay and increased cost if you discover the proposed conservator cannot obtain a court bond. Inability to bond is one of the most common reasons a person is not able to serve as conservator. In those cases, consider whether restriction of assets is possible and if not, whether a professional fiduciary is appropriate.

d. Fee Agreement

i. Discuss the costs of filing early in the case intake. In addition to the costs of filing the petition, discuss the annual costs of accountings. Discuss with your client the procedure for being paid from the funds of the protected person. It can be helpful to include a clause in your fee agreement stating that the client is personally responsible for the fees and costs regardless of whether the protected person's assets are available. In addition, consider taking a retainer from the personal funds of the client instead of the protected person. The funds can be held in trust and refunded if you are later paid from the assets of the protected person. This is not always possible, and at times, the attorney takes some risk in incurring costs with no guarantee of payment from the protected person's assets. Each attorney needs to carefully assess the risk and probability of approval of the fees.
e. Educate Your Client

i. Provide your client with a copy of ORS Chapter 125 and a list of conservator duties. Many attorneys require their clients to sign and return a copy of the Duties of Conservator form.

PRACTICE TIP: Clients do not always read the information you send. In addition, people have different learning styles. Keep in mind that some clients need to speak with you directly and ask questions instead of reading a statute. Ask your client how they prefer to communicate. Do they like e-mails, letters in the mail or telephone contact? Encourage them to approach the fiduciary class (Multnomah, Lane, Marion and Clackamas County) with an open mind.

ii. If the case is likely to be contested, talk with your client about the process and procedure for contested cases. Discuss potential objections and whether they can be avoided with decisions early in the case. If the Protected Person will object to a certain family member serving, consider a different family member or even a professional fiduciary.

III. INITIATING THE PROTECTIVE PROCEEDING

a. Venue

i. A conservatorship petition may be filed in any county where the respondent resides or is present, or, if the respondent does not reside in this state, in any county where property of the respondent is located. ORS 125.020.

b. Contents of the Petition

i. ORS 125.055 sets forth the requirements for a petition in a protective proceeding. A sample petition is provided as Form 2-1. The sample provided is intended as a guide and can be modified as needed.

c. Prima Facie Evidence and the Burden of Proof

i. There are two prongs that must be proved for the appointment of a conservator. First, the respondent must be shown to be “financially incapable.” Second, the respondent must have “money or property” which requires management or protection.

1. Financially incapable means a condition in which a person is unable to manage financial resources of the person effectively for reasons including, but not limited to, mental illness, mental deficiency, physical illness or disability, chronic use of drugs or controlled substances,
chronic intoxication, confinement, detention by a foreign power or disappearance. Manage financial resources means those actions necessary to obtain, administer and dispose of real and personal property, intangible property, business property, benefits and income. ORS 125.005(3).

ii. The burden of proof is on the petitioner to show financial incapability and assets which require management by clear and convincing evidence. Clear and convincing evidence means evidence which is of “extraordinary persuasiveness,” or evidence establishing that the “truth of the facts asserted is highly probable.” State v. Hayes, 202 Or App 63 (2005).

1. NOTE: If using a letter or other information from a Department of Human Services or Adult Protective Services caseworker, make sure the letter or information is sealed by the Court. ORS 125.012.

2. PRACTICE TIP: Exercise caution when attaching confidential medical information. Is it necessary or appropriate to meet your burden of proof? Do not include social security numbers. Always redact bank account numbers and confirm that the numbers are redacted properly throughout the statements. Often, better evidence presents in the form of family members and friends that have direct knowledge and have observed the inability to manage assets.

d. Filing of the Petition

i. E-filing has streamlined the filing of petitions. Now, the petition is e-filed and, in most cases, you can obtain a case number within hours.

1. PRACTICE TIP: Timing is important when filing a petition. If possible, file the petition in the morning. This gives adequate time to obtain a case number, finalize your notices and arrange for same day personal service on the respondent. Have your notices ready at the time the petition is filed.

IV. NOTICES

a. There are two tiers of noticing in protective proceedings. The first tier of notices is a list of persons and entities that must receive notice of the petition filing. ORS 125.060(2) and (7). The second tier of notices is a list of persons and entities that receive notice of subsequent petitions and motions after the conservatorship is established.
b. First Tier Notices

i. When filing the petition for the appointment of a conservator there are two separate notices required. The notice to the respondent is codified in ORS 125 and a sample is provided as Form 2-2. A blue form objection form must be attached to the notice. A sample objection form is provided as Form 2-3. The notice to the respondent must be personally served on the respondent. A respondent or protected person cannot waive notice. After service, e-file the notice provided to the respondent together with the affidavit of service. Other instances where personal service is required include:

1. Petitions for the appointment of a successor fiduciary;
2. Petitions for the appointment of a conservator (or successor) of a minor who is 14 years or older;
3. The parents of a minor child must be personally served.

   a. PRACTICE TIP: Since the Protected Person cannot waive notice, it is not uncommon to need a new notice period upon settlement with the nomination of a different fiduciary. For this reason, make sure the amended pleadings are filed as soon as possible after settlement.

   ii. The second notice provided at filing is the notice to the other interested parties listed in ORS 125.060(2) and (7). This notice is generally provided by mail. A sample notice to interested persons is provided as Form 2-4. E-file this notice together with a proof of mailing notice. A sample proof is provided as Form 2-5.

c. Objection Deadlines

i. In protective proceedings the time for filing objections is 15 days. ORS 125.065(3) & ORS 125.075. Objections are not necessarily barred simply because the time stated in the notice has passed. ORS 111.235 allows objections to be filed at any time up to and including the day set for hearing.

d. Waiver of Notice

i. ORS 111.215 and ORS 125.075(5) allow the court to change notice requirements upon “good cause shown.” Because of clear due process implications, courts take noticing very seriously and if you are seeking modification of the notice requirements it is important to provide compelling information to the court as to why the request is in the best interest of the respondent.
V. Appointment

a. The conservator is appointed, after the objection period, by limited judgment. A sample limited judgment is included as Form 2-6. It is essential for the judgment to address restriction of assets, bonding and any other action requiring prior court approval.

VI. Bonding

a. Setting the bond in the petition takes careful thought. ORS 125.410 requires that the bond be sufficient to cover all assets of the conservatorship plus one year’s estimated income. Depending on the size of the estate, the bond may be a significant cost to the conservatorship. In some cases, it can save on costs to restrict assets and lower your bond premium. Keep in mind that restriction brings additional work and often headaches with financial institutions. Assess whether the additional attorney time needed to restrict assets will be less than the savings on the bond premium. When requesting restriction, consider the monthly expenses of the respondent and bond enough assets to cover the costs of the full accounting year.

b. Restricting real property can often save on the cost of the bond premium. The attorney prepares the Abstract of Real Property recorded in county real property records and filed with the Court. Even if the real property is not restricted, an Abstract of Real Property is still required. The difference between the Abstracts is the reference to the restriction on the sale of the property without court order. A sample Abstract of Real Property is provided as Form 2-7.

c. Restriction of financial accounts requires the financial institution to sign an Acknowledgement of Restriction of Assets. The Court often requires that these are filed within 30 days from the date the judgment is entered. A sample Acknowledgement of Restriction of Assets is provided as Form 2-8. The sample provided is required in Multnomah County. There are several financial institutions that refuse to sign this form and attempt to present its own form of acknowledgment.

i. PRACTICE TIP: Multnomah County will not accept an alternative to Form 2-8. The financial institution alternatives often lack the necessary language stating that the institution is liable in the event funds are released without prior court approval. If the institution refuses to sign the required form you will need to move assets to an institution that is willing to accept the required form. Practices vary in other counties and courts may accept alternative proof of restriction. Even if your county does not require Multnomah County’s language it may be advisable to insist on working with institutions that will accept responsibility for the restricted funds. Given the high
value of these accounts, maximum protection and clear expectations with financial institutions is advisable.

ii. **PRACTICE TIP:** There are financial advisors that specialize in restricted accounts and can ease the process of restricting assets. Professional fiduciaries can be an excellent resource if you need help identifying institutions that are willing to create restricted accounts. It is also helpful to send the proposed order to the financial institutions restricting the assets prior to submitting it to the court. Some institutions require language in the order clarifying its rights to manage and invest the account. Prior approval will save on the need to file subsequent clarifying motions.

d. Restriction of IRA Accounts

i. Be aware that restricting IRA accounts with required minimum distributions can be problematic. Consider drafting the restriction to specifically allow the release of the required annual minimum distribution without a separate order of the court.

VII. MANAGING THE ESTATE

a. First Steps – Duties Letter

i. Upon your client’s appointment, the first step is to send a comprehensive duties letter to the client. To the extent possible, this letter should be customized to reflect the assets of the conservatorship. A sample duties letter is provided as Form 2-9. It is essential to customize this letter. Provide clear instructions on how to re-title assets.

b. Inventory – ORS 125.470 requires filing of the Inventory of Assets within 90 days of appointment. The values listed on the Inventory need to reflect the value of the assets as of the date of appointment. A sample Inventory is provided as Form 2-10.

1. **PRACTICE TIP:** Conservators never receive the Letters of Conservatorship on the date of appointment. This is because the bond has to be filed before the Court will issue Letters. E-filing has eased the time lapse between date of appointment and date for issuance of Letters. E-mailing the judgment and the bonds cuts down on mail time and allows you to request the Letters more promptly. Check local practices for issuance of Letters. Advise your client to request statements and transaction summaries dating back to the date of appointment.
ii. Communicate with your client clearly about the deadlines to avoid late filings. Do not accept e-mailed values for your inventory. Instead, require the client to provide documentation directly from the financial institution showing the value on date of appointment.

iii. For the first several months, require the client to send you monthly statements for all accounts. This will help you identify titling issues well in advance of the first annual accounting. Common issues to occur early in the conservatorship include fiduciary mistakes with cash and spending money and the bank failing to provide copies of cancelled check images.

iv. Supplemental Inventory – It is not uncommon to discover assets after filing of the original inventory. A sample Supplemental Inventory is provided as Form 2-11. Be mindful of how the additional assets affect your bond. County practices vary on whether the attorney needs to motion for an increase in bond or whether the Court will generate an order increasing bond on its own motion.

c. Estate Planning Documents

i. Immediately inquire about the status of the estate planning documents of the protected person. If the documents exist, take custody of the documents and review them carefully. Knowledge of the existing estate plan is essential to advising clients on the disposition of assets. If there is no formal estate plan, review the statements for informal estate planning. Review assets for existing pay on death beneficiaries or joint ownership. If the estate plan is consistent and clear, further court involvement is not likely necessary. In some cases, the Protected Person may still have testamentary capacity. If that is a possibility and there is an existing estate planning attorney, confer with that attorney regarding any questions or concerns regarding the estate. If there is testamentary capacity and there is no attorney, consider seeking the appointment of an attorney for the protected person. If testamentary capacity is clearly not present and there are potential issues with disposition of the estate based on estate planning, it may be necessary to seek court approval of a spending plan.

VIII. ACTION REQUIRING COURT APPROVAL AND VOIDABLE TRANSACTIONS

a. There are many actions that require prior court approval and failure to first obtain that approval can result in removal of the conservator. It is important to identify the assets that may be affected by these rules and confirm with the conservator that they are not to take any actions with those assets without a court order.
i. **Sale of the Protected Person’s Principal Residence.** Court approval must be obtained before the sale of the protected person’s principal residence. This includes a house, manufactured home or other property where the protected person resides or last resided. It does not matter if the protected person is not currently residing in the residence or if the protected person does not wish to return to the residence. ORS 125.430.

   1. **PRACTICE TIP:** If you are anticipating immediate sale of the protected person’s residence, include this in your petition and judgment appointing conservator. This will avoid a subsequent petition after appointment of the conservator and save on cost.

ii. **Compensation of the Conservator and the Attorney for the Conservator.** The conservator may not be paid compensation and the attorney for the conservator may not be paid from funds of the conservatorship estate without first obtaining court approval. ORS 125.095 has been updated in recent years to clarify who may be paid with funds of the protected person. It is now clear that prior court approval is required before the payment of fees from the funds of a person subject to a protective proceeding when the payment is to any attorney who has provided services relating to a protective proceeding, including services provided in preparation or anticipation of the filing of a petition in a protective proceeding.

   1. **PRACTICE TIP:** Attorney and fiduciary fees are generally only requested annually, except in extraordinary cases. An initial fee petition can be filed after filing of the inventory. A second fee petition will not be filed again until the first annual accounting.

iii. **Release or Transfer of Future Interests and Survivorship Interests.** The conservator must obtain court approval prior to the release or conveyance of any expectant or contingent interest the protected person may have in any personal or real property, including marital property rights, rights of survivorship incident to joint tenancy or tenancy by the entirety. This includes transferring assets to a spouse under spousal impoverishment rules in order to help the protected person qualify for Medicaid benefits.

iv. **Trusts.** The Conservator must obtain court approval prior to establishing any trust for the property of the conservatorship estate. No trust may be created or established which has the effect of terminating the conservatorship. ORS 125.440(2).
Chapter 2—Conservatorships

primary exception to this rule is for trusts created for the purpose of qualifying the protected person for need-based government benefits; the value of the conservatorship estate, including the amount to be transferred to the trust, does not exceed $50,000; the purpose of establishing the conservatorship was to create the trust; or, the conservator shows other good cause to the court.

v. **Changing Beneficiaries of Life Insurance and Annuities.** The conservator must obtain court approval prior to electing options, changing beneficiaries or surrendering for cash any life insurance and annuity policies.

vi. **Disclaimers.** The Conservator cannot disclaim any interest the protected person may have by testate or intestate successor or by inter vivos transfer. ORS 125.440(4). Exercise abundant caution with disclaimers due to potential public benefits eligibility issues. Even with court approval, the disclaimer may be treated as a transfer of an asset for less than fair market value.

vii. **Annuity Contracts or Contracts for Life Care.** 125.440(5) requires prior court approval before authorizing, directing or ratifying any annuity contract or contract for life care.

viii. **Discharge.** ORS 125.230 requires prior court approval before being discharged as conservator. It does not matter whether the discharge is because of the death of the protected person or because the protected person has regained financial capability.

b. **Voidable Transactions.**

i. Any sale or encumbrance of the conservatorship assets to a conservator, the spouse, agent or attorney of the conservator, or any corporation or trust in which the conservator has a substantial beneficial interest, or any transaction that is otherwise affected by a substantial conflict of interest is voidable unless it is first approved by the court. ORS 125.450. In practice anytime a family member might receive payment, obtain court approval first.

c. **Counsel for Protected Person.** The court may appoint counsel for a respondent or protected person and may act on a motion or petition or upon its own authority at any time. ORS 125.025(3). Be conscious of ethical considerations when representing a protected person and consider court appointment if not appointed on the motion of the court.
IX. Claims

a. A claim in a protective proceeding may be presented to the conservator or filed by the claimant with the court. The claim must state the basis of the claim, the name and address of the claimant and of the claimant's attorney, if the claimant is represented by an attorney in respect to the claim, and the amount claimed. ORS 125.495(2)(a). Nearly any credit card statement, utility bill or any other creditor's notice will comply with these requirements. Even if the requirements are not strictly met, the conservator, or the court, may waive any defect in form if the claim, properly stated, is a valid and absolute obligation of the estate. ORS 125.495(4).

b. A claimant may not bring an action on a claim until 60 days have elapsed from the claimant's first presentment or it has been disallowed. ORS 125.500(1). If it is a secured obligation, the claimant cannot foreclose or repossess until at least 30 days after the claim is presented and after notice of intent to foreclose, repossess, or whatever action is planned against the security. The court can shorten this time period for cause. ORS 125.500(2).

c. In response to nonpayment or disallowance, a claimant may either bring a separate action on the claim, or may request a summary determination on the claim within the conservatorship matter. If a claimant elects to request a summary determination hearing, the conservator may send a notice to the claimant requiring the claimant to file a separate action. If the claimant does not file a separate action within 60 days after service of the notice, the claim is barred. ORS 125.510(2). A summary determination hearing is without a jury and cannot be appealed. ORS 125.510(3).

d. Unpaid creditors are not among those who are required to be given notice of accountings in conservatorships. ORS 125.475(5). This is unlike accounts in estate proceedings.

X. Accountings

a. UTCR. Follow the UTCR guidelines and supplemental local rules for accountings. The time for filing annual and final accounts is 60 days after the appointment date or date of death of the protected person. A sample annual/final account is attached as Form 2-12.

b. Disclosures. Always disclose in the accounting anything that has happened which could be perceived as a conflict of interest by the fiduciary. UTCR 9.170.

c. Conservator Fees. Fees of the conservator must be approved by the court before they are paid unless the conservator is a trust company. ORS 125.095(2)(b). Conservator fee statements must be detailed and reasonable. If you are representing the conservator who is requesting
fees, review the billing records to identify potential issues. Prepare a
detailed declaration in support of the conservator’s fees and costs.

d. Attorney Fees. Comply with UTCR when requesting fees in the
accounting. In addition, ORS 125.098 sets forth the factors for the
court to consider in allowing attorney fees. You must address these
factors in your declaration. A sample declaration for attorney fees and
costs that complies with the UTCR and ORS 125.098 is attached as
Form 2-13.

e. Contested Accountings. The conservator bears the initial burden of
proving the accounting. “At a hearing on a ward’s objections to the
conservator’s final account, the conservator has the burden to sustain
the accounting,” Sheard v. Franks, 60 Or App 65, at 68 (1982). Avoid
objections by explaining any unusual transactions that have occurred
during the accounting year. Freely share information with interested
persons upon request. Such information will likely be discoverable or
necessary to prove the accounting. The conservator should keep
receipts for transactions. Cancelled checks may not be adequate to

XI. Terminating and Closing

a. After Death. If the conservator has possession of the decedent’s will,
then the conservator must deliver the will to the personal
representative nominated in the will or to the court, advising the
personal representative named in the will that it has been delivered to
the court. After the death of the protected person, the conservator
shall retain and administer the estate for delivery to the personal
representative of the decedent or other persons entitled to the estate.
ORS 125.530.

b. After Majority or Regaining Capability. Coordinate with the party
receiving assets to facilitate efficient closing of the conservatorship.

c. Insufficient Assets. ORS 125.535 allows a conservatorship with a
value of not more than $10,000 to be terminated and the money
delivered to whoever is named in the order to receive the money. In
practice, maintaining a conservatorship with less than $10,000 is not
economical. The Social Security Administration and the Veteran’s
Administration will allow benefits to be received and managed by a
representative payee or custodian. ORS 125.315(1)(f) also allows a
guardian to handle funds of the protected person for the purpose of
providing for daily needs. For this reason, a guardianship may
continue to be necessary upon termination of the conservatorship.
Make sure the client or successor manager has been appointed in
these roles prior to termination and identify in your judgment who
the income will be delivered to and in what capacity.
i. Practice Tip. Do not wait until you are spent down to close a conservatorship. Project out how many months the conservatorship has remaining with funds and make sure that you file well in advance of running out of funds.

d. Terminating by Judgment. A protected person is entitled to the same rights and procedures provided in the original proceedings when a motion to terminate the protective proceeding is filed. ORS 125.090. ORS 125.090(3) requires a general judgment be entered terminating a protective proceeding. Be sure to file receipts signed by the personal representative or person receiving the property. After receipts are filed, a supplemental judgment is filed terminating the proceeding. A sample general judgment and supplemental judgment closing a conservatorship are included as Forms 2-14 and 2-15.

XII. Temporary Conservators.

a. Temporary Conservators. ORS 125.600 sets forth the procedure for appointment of a temporary conservator. The court must find by clear and convincing evidence that the respondent is financial incapable or a minor and that there is an immediate and serious danger to the estate of the respondent and that the welfare of the respondent requires immediate action. The duration of the temporary conservatorship is limited to 30 days which may be extended by the court for an additional 30 day period upon good cause shown. Notice of a petition to extend the temporary appointment beyond 30 days must also be given as set forth above. ORS 125.605(3). The petition and notice requirements for appointment of a temporary conservator are the same as set forth above except that notice must be given to the respondent at least two days prior to the appointment. The court may waive the requirement that notice be given prior to appointment if the court finds immediate and serious danger to respondent. ORS 125.605(2). The temporary conservator must report to the court about his or her activities upon termination or expiration of the temporary conservator unless the temporary conservator becomes the permanent conservator, in which case the report may be included in the first annual accounting. ORS 125.610.

i. Practice Tip. Be mindful of how to address the bond in a temporary proceeding. The Letters of temporary conservatorship cannot issue until the bond is filed with the court. Purchase in advance carries risk because the premium is due upon purchase. Some counties may waive bond but many require bonding of assets. If you do not wish to pre-purchase the bond, work with your bonding company to have the bond ready to go upon appointment. With e-filing, the bond can be e-mailed and e-filed promptly allowing the temporary conservator to obtain Letters in a timely fashion.
XIII. Other Protective Order and Limited Conservatorships.

a. The Court may enter a protective order without the appointment of a fiduciary or in addition to the appointment of a fiduciary upon a determination that grounds exist for appointment of a fiduciary. ORS 125.650 sets forth the circumstances for a protective order. Consider using this provision when you have a one-time transaction that must be completed, but there is no need for an on-going conservatorship. The court may also allow a limited conservatorship for a specific purpose. Whether you choose a protective order or limited conservatorship may depend on your county. Make sure to explain clearly to the court why the limited court action is in the best interest of the protected person and set forth the procedure for closing of the matter. For example, if the requested action is sale of the residence, state that the limited action will close upon filing of the closing statement with the court.
IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF ____________________

Probate Department

In the Matter of the Proposed Conservatorship of

_______________, Respondent.

PETITION FOR APPOINTMENT OF A CONSERVATOR OF AN ADULT FOR AN INDEFINITE PERIOD; ORS 21.180(x)
[filing fee based on value of estate]

_______________, petitioner, alleges as follows:

1. The following information is given with regard to the respondent, the petitioner, and the proposed conservator:

Respondent Information:

Name: _____________________
Age: _____________________
Birth date: _____________________
Residence Address: _____________________
Current Location: _____________________
Telephone: _____________________
Chapter 2—Conservatorships

Petitioner Information:

Name: _____________________
Birth date: _____________________
Address: _____________________
Telephone: _____________________
Relationship to respondent: _____________________

Proposed Conservator’s Information:

Name: _____________________
Birth date: _____________________
Address: _____________________
Telephone: _____________________
Relationship to respondent: _____________________

2. [The proposed conservator has not been convicted of any crime, has not filed or received protection under the bankruptcy laws, and has not had a state professional or occupational license revoked or canceled.] OR [Attached hereto as Exhibit 1 and incorporated by this reference is a Professional Fiduciary Disclosure Statement for ________________ required by ORS 125.240, including further information required by ORS 125.055.]

3. The proposed conservator for an indefinite period is qualified, suitable and willing to serve as conservator.

4. The proposed conservator [is/is not] a public or private agency that provides services to respondent and [is/is not] an employee of such an agency.
5.

Respondent is present in ____________ County, Oregon, at the time this action is commenced, and venue for this proceeding lies in ____________ County. No other court in the state of Oregon has acquired jurisdiction in this matter.

6.

Upon reasonable investigation, the names, addresses and relationships to the respondent of persons entitled to notice of this petition are:

(a) Any Fiduciary appointed for the respondent by a court of any state: ____________________;

(b) Any trustee established by or for the respondent: ____________________;

(c) Any appointed health care representative under ORS 127.505-127.0660: ____________________;

(d) Any person acting as attorney-in-fact for the respondent under a power of attorney: ____________________;

(e) Family members of the respondent entitled to notice per ORS 125.060:

______________________________

______________________________

(f) United State Department of Veterans’ Affairs
100 SW Main St. Floor 2
Portland, OR 97204

(g) Oregon State Office of the Long Term Care Ombudsman
3855 Wolverine NE, St. 6
Salem, OR 97305-1251

(h) Oregon Department of Human Services
Seniors and People with Disabilities
500 Summer St. NE, E-13
Salem, OR 97301
Notice as required by ORS 125.060 will be provided to the respondent and all interested parties.

7.

The name, address and telephone number of the respondent’s treating physician is as follows:

Name: ______________________
Address: ______________________
Telephone: ______________________

8.

In addition to the physician above, the following persons have information to support a finding that respondent is financially incapable:

Name: ______________________
Address: ______________________
Telephone: ______________________
Interest/Relationship: ______________________

9.

The respondent is unable to manage [his/her] financial resources effectively due to [his/her] incapacity and the respondent has money or property that requires management or protection. The respondent is unable to take the actions necessary to obtain, administer and dispose of [his/her] real and personal property, business property, benefits and income. The facts that support this request for a conservator are as follows: ______________________.

10.

The proposed conservator will exercise control over the respondent’s estate. A general description of the respondent’s assets, income and other property known to the petition at this time which is in need of protection is as follows:
Petitioner estimates that the total value of the assets to be protected in connection with the proceeding is $_________. [Petitioner requests that the court enter an order restricting the respondent’s real property, such that it may not be hypothecated, transferred, leased for a term of greater than one year, or otherwise encumbered without further order of the court.] [Petitioner request that a bond be posted initially in the amount of $________, presenting the value of the remaining unrestricted assets plus one year of estimated income.] [Petitioner requests that bond be initially set in the amount of $________. Petitioner will file the appropriate pleadings with respect to bonding, upon investigation and discovery of respondent’s additional assets.]

To the best of Petitioner’s knowledge, the respondent is not receiving money paid or payable by the United States through the Department of Veterans Affairs. The respondent is not receiving assistance from the state of Oregon through the Seniors and People with Disabilities of the Department of Human Resources.

///

///
12. [Petitioner requests the court, pursuant to ORS 125.025(7)-(8), enter an order suspending/revoking any powers of attorney, durable powers of attorney or other grant of financial agency or financial decision making authority for the respondent.]

13. No court visitor has been appointed in this matter.

14. Petitioner has employed __________, of __________, to represent the Petitioner in this matter, and will seek court approval of reimbursement to Petitioner, from the protected person’s estate, advanced costs and reasonable attorney fees, in an amount to be shown in a separate motion and declaration for fees, to be submitted with notice to interested persons after appointment of the Conservator for an indefinite period.

15. [The appointment of __________ will be made in reliance on the representation by __________ that __________ will personally act as the primary financial and health care decision maker for the Protected Person. In the absence of emergency circumstances making such notification impossible, __________, shall notify the Court and all interested persons not less than 90 days in advance of a proposed change of the persons acting as primary decision makers. In emergency circumstances where advance notice is not possible, __________ shall notify the Court and all interested persons not less than 3 business days after __________ ceases to act as the primary decision maker for the Protected Person. Upon such notice and without prior hearing, the Court may remove __________ as Conservator or take such other action as the Court deems appropriate for the welfare of the Protected Person. Failure by __________ to comply with these notice requirements will result in immediate removal of __________ as Conservator.]
WHEREFORE, Petitioner prays for a Limited Judgment and Order of this Court as follows:

(a) Appointing ____________ as Conservator for ____________ for an indefinite period, with the authority to exercise the powers and duties of a conservator set forth in ORS Chapter 125;

(b) Setting bond of the conservatorship at $__________, which represents the estimated value of the respondent’s unrestricted property, plus one year of estimated income;

(c) [Restricting the real property located at ____________, such that the property cannot be hypothecated, transferred, or otherwise encumbered until further order of the court;]

(d) Establishing that the appointment of ____________ as Conservator for an indefinite period will be contingent upon ____________ complying with the conditions described in paragraph [insert correct paragraph number] above which are reincorporated herein;

(e) Directing that Letters of Conservatorship issue to ____________ upon filing of a surety bond approved by the Court; and,

(f) For such other relief as seems to the Court to be just and equitable.

I HEREBY DECLARE THAT THE ABOVE STATEMENT IS TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF, AND THAT I UNDERSTAND IT IS MADE FOR USE AS EVIDENCE IN COURT AND IS SUBJECT TO PENALTY FOR PERJURY.

DATED: this ______ day of ________, 2017.

__________________________
Petitioner
<table>
<thead>
<tr>
<th>PROPOSED CONSERVATOR:</th>
<th>ATTORNEY FOR PROPOSED CONSERVATOR:</th>
</tr>
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<tbody>
<tr>
<td>Name</td>
<td>Name, OSB#</td>
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<td>Address</td>
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IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF ________________

Probate Department

In the Matter of the Proposed Conservatorship of ________________,

) Case No. ________________

) NOTICE TO RESPONDENT OF TIME FOR FILING OBJECTIONS TO PETITION FOR

) APPOINTMENT OF A

) CONSERVATORSHIP OF AN

) ADULT FOR AN INDEFINITE PERIOD

Respondent.

To: RESPONDENT’S NAME AND ADDRESS

______________, your ________________ (relationship to respondent), [or that an agency or business that provides guardianship services] has asked a judge to appoint him/her as your conservator for an indefinite period to have the power to make decisions for you. The Judge has been asked to give ________________ the authority to make the following decisions for you:

___ Medical and health care decisions, including decisions on which doctors you will see and what medications and treatments you will receive.

___ Residential decisions, including decisions on whether you can stay
where you are currently living or be moved to another place.

Financial decisions, including decisions on paying your bills and decisions about how your money is spent.

Other decisions: ____________________________


YOU MUST TELL SOMEONE AT THE COURTHOUSE BEFORE _______________ IF YOU OPPOSE HAVING SOMEONE ELSE MAKE THESE DECISIONS FOR YOU.

OBJECTIONS:

You can write to the Judge if you don’t want someone else making decisions for you. The Judge’s address is: [Multnomah County Circuit Court, 1021 SW Fourth Avenue, Portland, OR 97204] [Insert appropriate address.]

You have the right to object to the appointment of a conservator by saying you want to continue to make your own decisions. If you do not want another person, agency or business making decisions for you, you can object. If you do not want _____________ to make these decisions for you, you can object. If you do not want your money to be used to pay for these expenses, you can object.

You can object any time after the Judge has appointed a conservator. You

Page 2 of 5 – NOTICE TO RESPONDENT OF TIME FOR FILING OBJECTIONS TO PETITION FOR APPOINTMENT OF CONSERVATOR OF AN ADULT FOR INDEFINITE PERIOD

GUARDIANSHIPS AND CONSERVATORSHIPS

LAW FIRM
ATTORNEY
Address
Phone Number, Fax Number
E-mail Address

Guardianships and Conservatorships 2–24
can ask the Judge at any time to limit the kinds of decisions that the conservator makes for you so that you can make more decisions for yourself. You can also ask the Judge at any time to end the conservatorship.

**THE HEARING:**

The Judge will hold a hearing if you do not want a conservator, do not want this particular individual/agency to act as your conservator or do not want your money used this way. At the hearing, the Judge will listen to what you and others have to say about whether you need someone else to make decisions for you, who that person should be, and whether your money should be spent on these things. You can have your witnesses tell the Judge why you do not need a conservator and you can bring in records and other information about why you think that you do not need a conservator. You can ask your witnesses questions and other witnesses questions.

**THE COURT VISITOR:**

The Judge may appoint someone to investigate whether you need a conservator to make decisions for you. This person is called a “visitor.” The Visitor works for the Judge and does not work for the person who filed the petition asking the Judge to appoint a conservator for you, for you, or for any other party. The Visitor will come and talk to you about the conservatorship process, about whether you think that you need a conservator and about who you would want to be your conservator if the Judge decides that you need a conservator. The Visitor will talk to other people who have information about whether you need a conservator.
conservator. The Visitor will make a report to the Judge about whether what the
petition says is true, whether the Visitor thinks that you need a conservator,
whether the person proposed as your conservator is able and willing to be your
conservator, who would be the best conservator for you, and what decisions the
conservator should make for you. If there is a hearing about whether to appoint a
conservator for you, the Court Visitor will be in court to testify.

You can tell the Visitor if you don’t want someone else making decisions for
you when the Visitor comes to talk with you about this matter.

LEGAL SERVICES:

You can call a lawyer if you don’t want someone else making decisions for
you. If you don’t have a lawyer, you can ask the Judge whether a lawyer can be
appointed for you. There may be free or low-cost legal services or other relevant
services in your local area that may be helpful to you in the conservatorship
proceeding. For information about these services, you can contact Legal Aid,
Portland Regional Office, 520 SW 6th Avenue, Suite 700, Portland, OR 97204
(503) 224-4086 or 1-800-228-6958, and ask to talk to people who can help you
find legal services or other types of services.
OBSESSION FORM:

You can mark the blue sheet (Respondent’s Objection) that is attached to this form if you do not want someone else to make your decisions for you. You can give the blue sheet to the visitor when the visitor comes to talk with you about this, you can show it to your attorney or you can mail it to the Judge.

DATED: this ____ day of ____________, 201__.

_________________________________________________________________

Attorney, OSB #__________,
Attorney for Petitioner

PETITIONER:                              ATTORNEY FOR PETITIONER:
Name                        Name, OSB#
Address                    Address
Telephone Number           Telephone Number
                                      Fax Number
                                      E-mail Address
IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF ________________
Probate Department

In the Matter of the Proposed Conservatorship of ________________, Respondent.

Case No. _____________

RESPONDENT’S OBJECTION

I object to the petition for the following reasons:

___ I do not want anyone else making any of my decisions for me.

___ I do not want ______________ to make any decisions for me.

___ I do not want ______________ to make the following decisions for me:__

______________________________________________________________

______________________________________________________________

______________________________________________________________

DATED: _______________, 201__.

_____________________________, Respondent

GIVE TO THE VISITOR OR MAIL TO: ____________ County Circuit Court, [Complete address Inserted here].
IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF _________

Probate Department

In the Matter of the Proposed Conservatorship of

_____________________,

) NOTICE OF TIME FOR FILING
) OBJECTIONS TO PETITION FOR
) APPOINTMENT OF CONSERVATOR
) OF AN ADULT FOR AN INDEFINITE
) PERIOD

_____________________,

) Case No. _____________

Respondent. )

TO: NAME
ADDRESS

NOTICE IS HEREBY GIVEN that _____________ has filed a Petition seeking his/her appointment as Conservator for _____________. A copy of the Petition for Appointment of a Conservator of an Adult for an Indefinite Period accompanies this Notice.

Any objections to the petition must be filed in the above-referenced court proceeding on or before ____________. Objections may be made in writing by mailing or delivering the objections to the Court at the following address:

Department of Probate

_________________ County Circuit Court

Address

Address

Any objection filed must also be served on the attorney for the Petitioner in this matter at:

__________________

__________________
The name, address and telephone number of the Petitioner and proposed Conservator is:

<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
<th>Telephone Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>_____________</td>
<td>________________</td>
<td>________________</td>
</tr>
<tr>
<td>Phone: _______</td>
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</table>

**NOTICE:** If you wish to receive copies of future filings in this case, you must inform the court and the person named as petitioner in this notice. You must inform the court by filing a request for notice and paying any applicable fee. The request for notice must be in writing, must clearly indicate that you wish to receive future filings in the proceedings and must contain your name, address and phone number. You must notify the person named as petitioner by mailing a copy of the request to the petitioner. Unless you take these steps, you will receive no further copies of the filings in this case.

DATED: this _____ day of ______________, 201__.

__________________________
Attorney, OSB #_____________
Attorney for Petitioner and Proposed Conservator

<table>
<thead>
<tr>
<th>PETITIONER:</th>
<th>ATTORNEY FOR PETITIONER:</th>
</tr>
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<tbody>
<tr>
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</tbody>
</table>
IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF ________________

Probate Department

In the Matter of the Proposed Conservatorship of

________________________,
Respondent.

Case No. __________

PROOF OF SERVICE OF NOTICE OF TIME FOR FILING OBJECTIONS TO PETITION FOR APPOINTMENT OF CONSERVATOR OF AN ADULT FOR AN INDEFINITE PERIOD

I, ___________, attorney for ________________, Petitioner, hereby state that on __________, 20__, I served the following:

1. Notice of Time for Filing Objections to Petition for Appointment of Conservator of an Adult for an Indefinite Period;

2. Petition for Appointment of Conservator of an Adult for an Indefinite Period with attached Disclosure Statement; and,

3. [Consent to Serve as Conservator],

by depositing true copies thereof in the U.S. Mail in Portland, Oregon, enclosed in an envelope, with postage prepaid thereon, addressed to the persons/entities at their last known mailing address as follows:

NAME
ADDRESS

NAME
ADDRESS
The date of mailing was not less than 15 days prior to the deadline for filing objections in the above-captioned protective proceeding.

I HEREBY DECLARE THAT THE ABOVE STATEMENT IS TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF, AND THAT I UNDERSTAND IT IS MADE FOR USE AS EVIDENCE IN COURT AND IS SUBJECT TO PENALTY FOR PERJURY.

DATED this ___ day of ____________, 20__. 

OREGON ELDER LAW

______________________________
Attorney, OSB #__________
Attorney for Petitioner & Proposed Conservator

PETITIONER:
Name
Address
Telephone Number

ATTORNEY FOR PETITIONER:
Name, OSB#
Address
Telephone Number
Fax Number
E-mail Address
IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF ______________

Probate Department

In the Matter of the Conservatorship of ______________________________

Case No. ______________

LIMITED JUDGMENT APPOINTING GUARDIAN AND CONSERVATOR OF AN ADULT FOR AN INDEFINITE PERIOD

Respondent.

This matter came before the Court upon the Petition of ______________ for entry of a

Limited Judgment appointing it as conservator for an indefinite period for the Respondent, ______________.

1. It appears to the Court from the records and files herein that:

   (a) Venue is properly in this court and no other court in this State has acquired jurisdiction of this matter.

   (b) Notices as required by ORS 125.060 have been given to persons entitled thereto. The time for filing objections has expired and no objections have been filed.

2. The Court finds by clear and convincing evidence that:

   (a) ______________ is financially incapable and has money and property that
requires management and protection.

(b) _____________ is qualified and suitable to act as conservator for
___________, and is willing to serve.

NOW THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED THAT:

1. _____________ is appointed as conservator for an indefinite period for
___________;

2. _____________ shall have all the statutory powers and duties of a
conservator pursuant to ORS 125;

3. _____________ shall furnish a bond, conditioned upon faithful discharge of
all duties of the conservator, in the amount of $_____, pending further order of this
Court;

4. [The real property located at _____________, is restricted, such that the
property cannot be hypothecated, transferred, or otherwise encumbered until further order
of the court];

5. [The appointment of _____________ will be made in reliance on the
representation by _____________ that _____________ will personally act as the
primary decision maker for the Protected Person. In the absence of emergency
circumstances making such notification impossible, _____________ shall notify the
Court and all interested persons not less than 90 days in advance of a proposed change of
the persons acting as primary decision maker. In emergency circumstances where
advance notice is not possible, _____________ shall notify the Court and all interested
persons not less than 3 business days after _____________ ceases to act as the primary
decision maker for the Protected Person. Upon such notice and without prior hearing, the
Court may remove ______________ as conservator or take such other action as the Court
deems appropriate for the welfare of the Protected Person. Failure by ______________ to
comply with these notice requirements will result in immediate removal of
______________ as conservator]; and,

6. Letters of Conservatorship shall issue to ______________ in the manner
provided by law upon filing of the surety bond required herein.
CERTIFICATE UNDER UTCR 5.100

The undersigned counsel for the fiduciary hereby certifies as follows with respect to the
Limited Judgment Appointing Conservator of an Adult for an Indefinite Period, filed herewith:

(a) This matter is an uncontested protective proceeding and therefore service of the proposed Order is not required pursuant to subsection (3)(d) of UTCR 5.100.

(b) This proposed order or judgment is ready for judicial signature because:

1. [ ] Each opposing party affected by this order or judgment has stipulated to the order or judgment, as shown by each opposing party's signature on the document being submitted.

2. [ ] Each opposing party affected by this order or judgment has approved the order or judgment, as shown by signature on the document being submitted or by written confirmation of approval sent to me.

3. [ ] I have served a copy of this order or judgment on all parties entitled to service and:

   A. [ ] No objection has been served on me.

   B. [ ] I received objections that I could not resolve with the opposing party despite reasonable efforts to do so. I have filed a copy of the objections I received and indicated which objections remain unresolved.

   C. [ ] After conferring about objections, [role and name of opposing party] agreed to independently file any remaining objection.

4. [ ] The relief sought is against an opposing party who has been found in default.

5. [ ] An order of default is being requested with this proposed judgment.

6. [XX ] Service is not required pursuant to subsection (3) of this rule, or by statute, rule, or otherwise.

7. [ ] This is a proposed judgment that includes an award of punitive damages and notice has been served on the Director of the Crime Victims' Assistance Section as required by subsection (4) of this rule.

DATED: this______ day of ____________, 2017.

__________________________________________
Attorney, OSB No. ____________
After Recording Return to:

Address
Xxx
xxx

ABSTRACT OF REAL PROPERTY
(ORS 125.470(3))

Pursuant to ORS 125.470(3), the following information is provided regarding real property subject to a protected proceeding in ____________ County Circuit Court, State of Oregon, under case number xxx-xxxxx as follows:

1.

The name of the Protected Person is: [Name of Protected Person]

2.

The following real property is subject to the protected proceeding: Residence and real property located at [Address], more particularly described as:

[Insert Legal Description]

3.

A Conservatorship proceeding has been established in the Circuit Court of the State of Oregon, County of [County], Probate Department case number [case number].

4.

The Guardian and Conservator for [protected person] is:

Conservator
Address
Address
5. Attorney for the Guardian and Conservator is:

Attorney, Bar Number
Firm Address
Telephone Number

6. The sale, encumbrance or other transfer of the real property owned by [Protected Person] is prohibited without prior Court approval.

DATED this ____ day of____________

______________________________
Signature

STATE OF OREGON)
) ss.
County of [County] )

The foregoing instrument was acknowledged before me this ____ day of ____________, by [Name].

______________________________
Notary Public for Oregon
IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF ____________
Probate Department

In the Matter of the Conservatorship of ____________,
Protected Person.

Case No. ____________

ACKNOWLEDGMENT OF RESTRICTION OF ASSETS

As an authorized representative, I acknowledge receipt of a copy of the Limited Judgment entered by this Court on ____________, which restricts access to the conservatorship assets described below. This financial institution will not allow any withdrawal of principal or income from these assets or use of the assets as security of any obligation without specific prior order of the Court.

The assets now on deposit with our financial institution that are subject to the restrictions ordered by the Court are:

<table>
<thead>
<tr>
<th>Account Number</th>
<th>Value of Account Assets</th>
<th>Type of Account</th>
<th>Maturity</th>
</tr>
</thead>
<tbody>
<tr>
<td>_____________</td>
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</table>

The name of the holder of the accounts shown on our records is: ____________, Conservator for ____________.

It is understood that the Conservator may do the following without Court order:

(a) Transfer restricted assets to other accounts with this financial institution that are subject to the restrictions stated above;

(b) Change the investments of assets, as long as all assets remain in an
account with this financial institution subject to the restrictions stated above; and,

(c) Reinvest, buy, sell, and otherwise trade in securities and investments within the restricted account(s) and to transfer money and securities among said account(s).

This financial institution agrees to abide by the restrictions set out in the aforementioned Order. It is understood that if assets are removed from a restricted account without prior Order or Judgment from this Court, this financial institution shall be required to pay the value of those assets to the estate.

DATED: ____________________.

__________________________________________
Printed Name: ______________________________

Title: ______________________________

Name of Financial Institution

__________________________________________

Address and Telephone Number

Note: This document must be signed by an officer or person authorized to bind the institution.
Date

Client Name
Address

Re: Conservatorship of _________________

___________ County Circuit Court Case No. ___________

Dear Client:

As you know, the ____________ County Court appointed you as Conservator for ____________. Enclosed please find a copy of the signed Limited Judgment. We have requested the bond and will forward it on for your signature upon receipt. Once we file the bond with the Court, we will request your Letters of Conservatorship and will provide them to you.

The Letters of Conservatorship is evidence of your authority to manage __________’s assets on his/her behalf. You can make photocopies of the Letters of Conservatorship for others who may need proof of your authority to make financial decisions for ___________, but please retain the original in your possession.

Now that you have been appointed as Conservator, I am writing to provide you with the information you need to properly manage __________’s finances and fulfill your responsibilities to the Court. The following is a list of dates for you to calendar with regard to the above-referenced conservatorship:

Appointment Date: ___________________

Non-Professional Fiduciary Training: ____________ (15 days from appt) (Registration deadline)

______________ (60 days from appt) (Completion deadline)

Inventory Due: ____________ (90 days from appointment date)

Tax Returns: April 15th of each year

Annual Accounting Due: _____ of each year

(60 days after the anniversary of your appointment)
Non-Professional Fiduciary Education and Training

The Court requires all non-professional fiduciaries to participate in a training course, which introduces the roles and responsibilities of a fiduciary. You must register for this training by __________, no later than 15 days following your appointment as Conservator. The fee for the training is $100. The course is available to attend in person, or you may register for an online course. More information regarding this training can be located online at http://www.guardian-partners.org/. The training must be completed by __________, no later than 60 days following your appointment.

General Duties & Responsibilities. As a Court appointed fiduciary, you must be prudent and responsible in managing ________’s assets. You are held to a high duty of loyalty and have the obligation to protect their interests. You cannot take any personal advantage or profit from your position as fiduciary (with the exception of reasonable compensation for your services). You must not make cash expenditures, use a credit card, make Automated Teller Machine (ATM) or counter withdrawals, lend or borrow funds, or purchase certain types of investments. Be sure to speak with me specifically if you have any questions about your duties or any specific transactions.

Enclosed is a document entitled “Duties of Conservator.” This is included as a general guide regarding your duties as Conservator. If you have any questions regarding any of this information, please contact us for clarification.

Assets of the Conservatorship. Your first duty as Conservator is to take possession of ________’s assets. You will need to notify the financial institutions where ________ has accounts and provide them with a copy of your Letters of Conservatorship so that the accounts can be re-titled into the name of the conservatorship as shown below. Conservatorship accounts should be registered under __________’s Social Security Number and titled as follows:

“Conservatorship of __________
__________, Conservator”

You should go to the post office and redirect all of __________’s mail to your address. Please do keep a careful eye on __________’s mail to confirm that there are no additional resources.

Managing Assets. You must keep detailed records for all income and expenses. For deposits, you will need to record the date of deposit, source of funds, and amount. I also suggest making a copy of each deposit for easy reference for the annual accounting. Each disbursement must include date of transaction, check number, payee, and a brief description for the expenditure, and amount. You should reconcile the account each month.

Cancelled checks (or images thereof) for every disbursement must be filed with the Court to substantiate all expenses. In my experience, failure to secure the vouchers early in the conservatorship is a common cause for delay at the annual accounting. When opening the
conservatorship account, please confirm that images of checks will be included in the monthly bank statements. If this is not an option please establish online access to the account and print copies of the checks each month. Occasionally, the Court requests receipts for purchased items. Be sure to keep these to make them available at the end of each year. **Every month please send me copies of all bank statements, account registers, and checks written from the account.**

By way of reminder, please do not make any withdrawals from the conservatorship accounts for payment of your fees or attorney fees without prior Court approval. **Also, your assets must not be commingled with conservatorship funds.** As you know, you will be held liable for any misuse or misappropriation of funds from the conservatorship account(s), restricted or otherwise.

**Inventory – due ___________.** The assets of the conservatorship must be reported to the Court on an “Inventory.” The purpose of filing an Inventory to identify the nature and value of all of ______’s assets as of your date of appointment. Please provide me with the information needed to prepare the Inventory. The value on the Inventory should be your date of appointment as Conservator, __________. Please request documentation showing the account balances as of this date and confirm that you have a complete transaction history dating back to your date of appointment.

**Annual Accounting – due ___________ of each year.** Your annual accounting is due no later than ________ each year. Your first accounting will cover the period beginning __________ (the date of your appointment as Conservator) through __________ (one year from the date of appointment), and will be due no later than __________. Please keep records for all income and expenses of this conservatorship. Your financial records must be detailed and include: (1) an itemized list of current assets; (2) account registers and reconciliation reports; (3) bank statements; and (4) cancelled checks.

**Creditor Claims.** ________’s bills and other financial obligations are referred to as “claims” in the context of a conservatorship. It is your duty to verify the validity of each claim before remitting payment from the conservatorship accounts. Valid claims can be paid from the conservatorship accounts when due. If you believe a claim is incorrect or not valid, you should let me know immediately so we can take action to deny a claim in whole or in part. If the assets of the conservatorship are not sufficient to pay ongoing expenses, we will need to pay creditors in accordance with a statutory list of preferences.

**Taxes.** You should retain the services of a certified public accountant and/or licensed tax preparer to assist you with preparation of ______’s individual income tax returns. You will need to let your tax preparer know you are serving as Conservator for ________ and must report all income and deductions. As stated above, any fees paid to you may be deductible on ________’s income tax return. You will need to accurately report those amounts to the CPA for the conservatorship. Any fees received by you are considered taxable income and must be reported on your individual income tax returns as well.
Conservator Fees. You must obtain Court approval before you are authorized to pay yourself for services provided in your respective fiduciary capacities. Fiduciary fees are usually requested at the time of filing the annual accounting. To request a fee for your services, please keep detailed records of all time expended and activities. You will need to provide the following information to the Court:

1. Date of service;
2. Detailed description of services provided;
3. Length of time to complete the activity; and
4. Hourly rate charged.

Attorney Fees. As you know, my firm bills on an hourly basis. My fees can only be paid from __________’s funds after the Court authorizes payment. My practice is to submit my first request for fees at the time of filing Inventory and subsequent requests are submitted at the time of filing the annual accountings. [Costs incurred by my office are not subject to Court approval and should be paid each month or as incurred.]

Termination of Conservatorship. The conservatorship will end either upon __________’s deaths or when the assets are reduced to $10,000 or less. It is important to be sensitive to the depletion of __________’s assets. The issue is also important if timely application has to be made for public benefits. In the latter event, please let me know when assets reach $25,000 so we can look at future planning and termination of the conservatorship. In either case, you must file a final accounting before the Court will terminate the conservatorship.

Please keep this letter with your records for the protective proceeding so that you can refer to it. If you have questions or concerns about the information in this letter, or if you have other questions, please call me.

Cordially,

ATTORNEY
Attorney at Law
GENERAL DUTIES OF CONSERVATOR

The purpose of this document is to summarize your duties as a Conservator for (the protected person). If you have any questions about specific rights or duties involved in the conservatorship, please contact our office.

You must exercise scrupulous good faith in the management of ’s affairs. Everything you do must be for his/her benefit and to protect his/her economic interest. The following list describes some of your important duties:

1. Take possession of all the property of the protected person and the income arising from that property.

2. Within 90 days of your appointment, you must file with the Court an inventory of all property of the protected person. This must include all property of the protected person that you know about or that is in your possession. A copy of the Inventory must be served on the protected person, personally or by mail.

3. Make prudent investments with the conservatorship assets.

4. Pay, contest, or settle claims submitted against the conservatorship estate.

5. Prepare and submit necessary tax returns.

6. Set up restricted conservatorship checking, savings, and/or investment accounts to hold assets that are restricted by the Court.

7. Set up a conservatorship checking, savings, and/or investment accounts to hold unrestricted conservatorship assets. All income from whatever source should be deposited into the conservatorship checking account and all disbursements are to be made by checks drawn on the conservatorship checking account, with appropriate entries made in the checkbook ledger. You need to retain all bank statements and canceled checks for the annual accountings.

8. You must carefully account for all income and expenditures and prepare and file with the Court annual accountings within sixty (60) days of the anniversary date of your appointment. If all assets are restricted, an annual report of assets may be filed in lieu of a formal accounting. The annual report is due within thirty (30) days of the anniversary date of your appointment.

9. The accounting must include a list of disbursements, including check numbers, in chronological order, as well as statements from depositories showing current balances and a list of all income received.
10. Copies of the accountings with notice of the time to file objections must be given to the protected person, any person who has filed a request for notice in the proceeding, any fiduciary who has been appointed for the protected person and any other person the Court requires.

11. Be extremely cautious about entering into any transaction in which there is a potential conflict of interest. Any sale or encumbrance of the conservatorship assets to a Conservator, the spouse, agent or attorney of the Conservator, or any corporation or trust in which the Conservator has a substantial beneficial interest, or any transaction that is otherwise affected by a substantial conflict of interest is voidable unless it is first approved by the Court.

12. When managing the conservatorship assets, take into consideration the estate plan of the protected person, including a review of any will, beneficiary designations, or joint ownership arrangements. You should consult your attorney before making any changes, and should consider whether to obtain Court approval before making changes which would impact the protected person’s estate plan.

13. You must request and obtain Court approval before you sell the protected person’s house, manufactured home, or other property where the protected person resides or last resided, regardless whether the protected person currently is residing there or whether the protected person intends or desires to return there.

14. You must request and obtain Court approval before any payments of compensation are made to you, or an attorney for you, as Conservator.

15. You must request and obtain Court approval before you withdraw any funds from the restricted conservatorship account(s).

16. You must request and obtain Court approval before you establish any trusts for the property of the conservatorship estate. You may not establish any trust which has the effect of terminating the conservatorship.

17. You must request and obtain Court approval before you elect options, change beneficiaries or surrender for cash any life insurance or annuity policies.

18. You must request and obtain Court approval before you disclaim any interest the protected person may have by testate or intestate succession or by inter vivos transfer.

19. You must request and obtain Court approval before you authorize, direct or ratify any annuity contract or contract for life care.

20. You must request and obtain Court approval before you resign as Conservator regardless whether the protected person is still living. If you wish to resign while the protected person is alive, the conservatorship must either be terminated, or a successor Conservator
must be appointed, and a final account filed and approved, before the Court will discharge you.

21. When the Court is satisfied that the protected person’s disability no longer exists (or attains the age of majority), you must pay all claims and expenses of administration, and you must file a final accounting with the Court. You must then distribute all funds and properties to the protected person as soon as possible.

22. Upon the death of the protected person, you must deliver to the Court any Will of the decedent which has come into your possession, you must inform the personal representative or a beneficiary named in the Will that you have done so, and you must preserve the conservatorship estate for delivery to the personal representative of the estate of the deceased protected person or such other person(s) entitled to the estate.

I have read these duties and understand that I must fulfill these duties as Conservator for ___________________.

DATED: ____________________

_________________________, Conservator
## Chapter 2—Conservatorships

**Form 2-10**

**IN THE CIRCUIT COURT OF THE STATE OF OREGON**

**FOR THE COUNTY OF _____________**

Probate Department

In the Matter of the Conservatorship of

NAME,)

Protected Person. )

______________________________

__________, the duly appointed Conservator in the above-captioned matter, hereby certifies that the following is a complete inventory of all the property of the Protected Person, including monthly income, which has come into its possession or knowledge, with an estimate of the respective true cash value of the property as of the date of the Conservator’s appointment, ____________.

<table>
<thead>
<tr>
<th>REAL PROPERTY</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Real Property located at _____________________________, legally described as _________________________</td>
<td>$______</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>BANK ACCOUNTS</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Bank Name, Account No.</td>
<td>$______</td>
</tr>
<tr>
<td>Bank Name, Account No.</td>
<td>$______</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>INVESTMENT ACCOUNTS</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Financial Co., Account No.</td>
<td>$______</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>RETIREMENT ACCOUNTS</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Financial Co., Account No.</td>
<td>$______</td>
</tr>
<tr>
<td>PERSONAL PROPERTY</td>
<td></td>
</tr>
<tr>
<td>-------------------</td>
<td></td>
</tr>
<tr>
<td>Miscellaneous household goods, furnishings, equipment and all personal items, clothing and other articles of personal and domestic use located in protected person’s residence. <em>de minimis</em></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>TOTAL ASSETS</th>
<th>$_____</th>
</tr>
</thead>
<tbody>
<tr>
<td>ANNUAL INCOME</td>
<td>$_____</td>
</tr>
<tr>
<td>TOTAL ASSETS PLUS ANNUAL INCOME</td>
<td>$_____</td>
</tr>
</tbody>
</table>
| LESS RESTRICTED ASSETS | $(_____)
| TOTAL AMOUNT SUBJECT TO BOND | $_____ |

I HEREBY DECLARE THAT THE ABOVE STATEMENT IS TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF, AND THAT I UNDERSTAND IT IS MADE FOR USE AS EVIDENCE IN COURT AND IS SUBJECT TO PENALTY FOR PERJURY.

DATED the ____ day of ______________, 20____.

__________________________________________
Conservator for __________

<table>
<thead>
<tr>
<th>CONSERVATOR:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name</td>
</tr>
<tr>
<td>Address</td>
</tr>
<tr>
<td>Telephone Number</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ATTORNEY FOR CONSERVATOR:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name, OSB#</td>
</tr>
<tr>
<td>Address</td>
</tr>
<tr>
<td>Telephone Number</td>
</tr>
<tr>
<td>Fax Number</td>
</tr>
<tr>
<td>E-mail Address</td>
</tr>
</tbody>
</table>
IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

Probate Department

In the Matter of the Conservatorship of ____________________________

Case No. ____________

____________________________________

SUPPLEMENTAL INVENTORY

Protected Person.

I, __________, the duly appointed Conservator in the above-captioned matter, do hereby certify that the following is a Inventory of all the property of the Protected Person, including monthly income, which has come into my possession or knowledge, with my estimate of the respective true cash value of the property as of my original appointment date of ____________.

The Supplemental Inventory is being filed herein due to the discovery of an additional asset of the Protected Person.

<table>
<thead>
<tr>
<th>REAL PROPERTY</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Real Property located at ____________________________, legally described as ____________________________</td>
<td>$_____</td>
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</table>

<table>
<thead>
<tr>
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<th></th>
</tr>
</thead>
</table>

Page 1 of 2

SUPPLEMENTAL INVENTORY

LAW FIRM
ATTORNEY
Address
Phone Number, Fax Number
E-mail Address
### Financial Co., Account No.

| $_____ |

### PERSONAL PROPERTY

| Miscellaneous household goods, furnishings, equipment and all personal items, clothing and other articles of personal and domestic use located in protected person’s residence. | $_____ |

### TOTAL ASSETS

| $_____ |

### ANNUAL INCOME

| $_____ |

### TOTAL ASSETS PLUS ANNUAL INCOME

| $_____ |

### LESS RESTRICTED ASSETS

| ($_____ ) |

### TOTAL AMOUNT SUBJECT TO BOND

| $_____ |

---

I HEREBY DECLARE THAT THE ABOVE STATEMENT IS TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF, AND THAT I UNDERSTAND IT IS MADE FOR USE AS EVIDENCE IN COURT AND IS SUBJECT TO PENALTY FOR PERJURY.

DATED the _____ day of ____________, 20__.

__________________________

__________________________, Conservator

---

PROPOSED CONSERVATOR:

Name

Address

Telephone Number

ATTORNEY FOR CONSERVATOR:

Name, OSB#

Address

Telephone Number

Fax Number

E-mail Address
FORM 2-12

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF ___________________
Probate Department

In the Matter of the Conservatorship of ____________________________
Case No. ___________


Filing Fee: $32/268/$531/$1,056
Value: $________

_____________, Conservator for _____________, hereby presents this [First/Final] Annual Account covering the period of _____________, through ____________ (‘the accounting period).

1. Bonding and Asset Restrictions. The Court set the initial bond in the amount of [amount of bond] representing the value of unrestricted assets for the first reporting period.

   [Provide narrative of changes to bond and any restriction of assets.]

   (a) Value of assets on last date of this accounting period $_______
   (b) Plus estimated income $_______
   (c) Total assets and estimated income $_______
   (d) Less value of restricted assets and income ($_______)
   (e) Less attorney fees & costs ($_______)
   (g) Unrestricted assets and income requiring bond $_______
2. **Change in Bond.** The Fiduciary requests the Court [increase/decrease] the bond to $_______, which represents the value of unrestricted assets for the next accounting period. [In final account, request exoneration of bond.]

3. **Asset Schedule.** The asset schedule, attached as Exhibit 1 and hereby incorporated by this reference, is a complete and accurate statement of all assets owned by the conservatorship at any time during the account period and the Fiduciary’s estimate of the value of each asset.

4. **Receipts and Disbursements.** Accurate schedules of funds received in and disbursed from each depository account of the conservatorship during the account period are provided in the attached Exhibits 2 through 5, each hereby incorporated by this reference.

5. **Exhibits.** The following Exhibits are attached to this accounting:

<table>
<thead>
<tr>
<th>Exhibit No.</th>
<th>Account</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Asset Schedule</td>
</tr>
<tr>
<td>2</td>
<td>Financial Institution, Account No.</td>
</tr>
<tr>
<td></td>
<td>Receipts and Disbursement Reports</td>
</tr>
<tr>
<td></td>
<td>Statements</td>
</tr>
<tr>
<td>3</td>
<td>Financial Institution, Account No.</td>
</tr>
<tr>
<td></td>
<td>Receipts and Disbursement Reports</td>
</tr>
<tr>
<td></td>
<td>Statements</td>
</tr>
<tr>
<td>4</td>
<td>Financial Institution, Account No.</td>
</tr>
<tr>
<td></td>
<td>Receipt and Disbursement Reports</td>
</tr>
<tr>
<td></td>
<td>Statements</td>
</tr>
<tr>
<td>5</td>
<td>Financial Institution, Account No.</td>
</tr>
<tr>
<td></td>
<td>Receipt and Disbursement Reports</td>
</tr>
<tr>
<td></td>
<td>Statements</td>
</tr>
</tbody>
</table>
6. **Changes During the Accounting Period.** During the accounting period, the following changes in the assets or financial circumstances occurred:

(a) **Exhibit 2 – Financial Institution, Account No.** Receipts during this accounting period include _____________. Disbursements from this account include _____________.

(b) **Exhibit 3 – Financial Institution, Account No.** Receipts during this accounting period include _____________. Disbursements from this account include _____________.

(c) **Exhibit 4 – Financial Institution, Account No.** Receipts during this accounting period include _____________. Disbursements from this account include _____________.

(d) **Exhibit 5 – Financial Institution, Account No.** Receipts during this accounting period include _____________. Disbursements from this account include _____________.

7. **Vouchers.** Vouchers are filed herewith under the following separate captions:

a. **Exhibit 6 - Vouchers. Financial Institution, Account No.**

8. **Fiduciary Disclosures.** There are no transactions during this accounting period for which disclosure is required.

9. **Conservator Fees and Costs.** _____________ has provided substantial services to the Protected Person in its capacity as Conservator. The Conservator requests a fee services provided during the period beginning ____________, through ____________, in the amount of
Chapter 2—Conservatorships

1. $______. A Declaration of Conservator in Support of Payment of Fees is filed concurrently herewith.

10. Attorney Fees and Costs. __________ of __________ represented the Conservator during this accounting period. The fees and costs of __________ are detailed in the Declaration in Support of Payment of Attorney Fees and Costs, filed concurrently with this accounting. Reasonable compensation for the services of __________ is $______, consisting of $____ as fees for services provided, and $____ as costs incurred for the period beginning __________ through __________.

11. Notices. Notice as required by ORS 125.060(3), will be provided to the persons entitled thereto.

12. Taxes. The Conservator has retained the services of an accountant to prepare and timely file annual income tax returns for the Protected Person.

WHEREFORE, the fiduciary prays for an Order of this Court, after notice as required by law:

1. Approving this [First/Final] Annual Account and all actions of the Conservator;

2. Directing payment to __________ of fiduciary fees in the amount of $_____ and costs of $______, totaling $________;

3. Approving and authorizing payment of $______ for attorney fees, plus costs of $______, for a total of $______, from the assets of the Protected Person to __________ of __________, for reasonable and appropriate legal services rendered to the Fiduciary during the period beginning __________ through __________; and,
4. [Increasing/decreasing/exonerating] the amount of Bond to $_______.

I HEREBY DECLARE THAT THE ABOVE STATEMENT IS TRUE TO THE
BEST OF MY KNOWLEDGE AND BELIEF, AND THAT I UNDERSTAND IT IS MADE
FOR USE AS EVIDENCE IN COURT AND IS SUBJECT TO PENALTY FOR
PERJURY.

DATED this _____ day of ___________, 20___.

________________________________________
Conservator for ____________

<table>
<thead>
<tr>
<th>CONSERVATOR:</th>
<th>ATTORNEY FOR CONSERVATOR:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name</td>
<td>Name, OSB#</td>
</tr>
<tr>
<td>Address</td>
<td>Address</td>
</tr>
<tr>
<td>Telephone Number</td>
<td>Telephone Number</td>
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<tr>
<td></td>
<td>Fax Number</td>
</tr>
<tr>
<td></td>
<td>E-mail Address</td>
</tr>
</tbody>
</table>
IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF ________________ -

Probate Department

In the Matter of the Conservatorship of ) Case No.

PROTECTED PERSON,

Protected Person.

____________________________________

DECLARATION OF ATTORNEY NAME
IN SUPPORT OF PAYMENT OF
ATTORNEY FEES AND COSTS

I, Attorney name, attorney for the Conservator, conservator name, offer the following facts in support of an award of reasonable and necessary attorney fees and reimbursement of costs:

1. I make this Declaration pursuant to ORS 125.095, ORS 125.098 and UTCR 9.060(1) in support of an Limited Judgment directing payment of attorney fees and reimbursement of costs advanced in the amount of $__________. I have personal knowledge regarding the amount of time and effort devoted to the representation of the conservator in this protective proceeding. This amount constitutes reasonable attorney fees for the legal services necessary to establish and administer a protective proceeding of this size and complexity based on fees for similar legal services performed in [County] County, Oregon.

2. An invoice showing attorney fees and costs in the amount of $__________ is attached and incorporated by reference herein as Exhibit 1.
3. The specific and relevant factors supporting an award and the amount of legal fees pursuant to ORS 125.098(2) are set forth below:

(a) The Benefit to the Person Subject to the Protected Proceeding by the Petitioner’s Actions in the Proceeding: Customize

(b) The objective reasonableness of the position asserted by the party: Customize

(c) The party’s self-interest in the outcome of the proceeding: Customize.

(d) Whether the relief sought by the party was granted in whole or in part: Customize

(e) The conduct of the party in the transactions or occurrences that gave rise to the need for a protective proceeding: Customize.

(f) The extent to which an award of attorney fees in the proceeding would deter others from asserting good faith positions in similar proceedings: Customize

(g) The extent to which an award of attorney fees in the proceeding would deter others from asserting meritless positions in similar proceedings: Customize

(h) The objective reasonableness of the party and the diligence of the party and the attorney during the proceeding: Customize

(i) The objective reasonableness of the party and the diligence of the party in pursuing settlement of the dispute: Customize

(j) Any other factor the court may consider appropriate under the circumstances of the proceeding: Customize

4. The specific and relevant factors supporting an award and the amount of legal fees pursuant to ORS 125.098(3) are set forth below:

(a) The Time and labor required in the proceeding, the novelty and difficulty of the questions involved, and the skill needed to provide the legal services: The number of hours and services rendered in this matter for each attorney and legal assistant, and the hourly rates for each, are summarized as follows:
## Guardianships and Conservatorships

### Chapter 2—Conservatorships

#### Declaration of Attorney Name in Support of Payment of Attorney Fees and Costs

<table>
<thead>
<tr>
<th>Name</th>
<th>Position</th>
<th>Hourly Rate</th>
<th>Number of Hours</th>
<th>Fees</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Attorney</td>
<td>$___</td>
<td>___</td>
<td>$______</td>
</tr>
<tr>
<td></td>
<td>Legal Assistant</td>
<td>$___</td>
<td>___</td>
<td>$______</td>
</tr>
</tbody>
</table>

**Costs**

$______

**Total Charges:** $3,648.80

The labor required, including a description of the novelty and difficulty of the issues involved include the following: *Customize*

- **(b)** The likelihood that the acceptance of the employment of behalf of the party by the attorney would preclude the attorney from other employment, when the likelihood should be apparent or was made apparent to the party: *Customize*

- **(c)** The fee customarily charged by an attorney in the locality for similar legal services: *Customize*

- **(d)** The time limitations imposed by the party or the circumstances of the proceeding: *Customize*

- **(e)** The experience, reputation, and ability of the lawyer performing the service: *Customize*

- **(f)** The amount of the attorney fees requested relative to the estate of the person subject to the protective proceeding, whether or not the estate of the person subject to the protective proceeding is subject to the direct or indirect control of a conservator: *Customize*

5.

I believe that an award totaling $_______ consisting of $_______ for incurred legal services and $_______ for costs incurred is reasonable based upon the complexity of the issues, the responsibility undertaken, and the results achieved for the Protected Person.

I HEREBY DECLARE THAT THE ABOVE STATEMENT IS TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF, AND THAT I UNDERSTAND IT IS MADE.
FOR USE AS EVIDENCE IN THE COURT AND IS SUBJECT TO PENALTY FOR PERJURY.

DATED: this ___ day of _____________

____________________________________
Attorney Name, OSB No. xxxxxx
Attorney for Conservator

CONSERVATOR:  
Name  
Address  
Telephone Number

ATTORNEY FOR CONSERVATOR:  
Name, OSB#  
Address  
Telephone Number  
Fax Number  
E-mail Address
Chapter 2—Conservatorships

FORM 2-14

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF ___________

Probate Department

In the Matter of the Conservatorship of ________________,

) Case No. 15PR00831
) GENERAL JUDGMENT APPROVING
) CONSERVATOR’S FIRST AND FINAL
) ACCOUNTING, RELEASE OF
) RESTRICTION, EXONERATION OF
) BOND AND PAYMENT OF FIDUCIARY
) FEES AND EXPENSES AND ATTORNEY
) FEES AND COSTS ON BEHALF OF THE
) CONSERVATOR

THIS MATTER CAME BEFORE THE COURT upon the filing of the Conservator’s First and Final Accounting by ________________, the duly appointed Conservator for _____________. The Court being fully advised thereon, it appears from the records and files herein that:

1. Notices as required by law have been given to the persons entitled thereto; the time for filing objections has expired; and no objections have been filed herein.

2. Expenses of administration have been incurred for which sufficient funds exist for payment. Pursuant to ORS 125.520(1) fiduciary and attorney fees and costs incurred in the administration of a Conservatorship are a priority claim.
IT IS HEREBY ORDERED AND ADJUDGED that:

1. This *First and Final Accounting* and all actions of the Conservator are approved;
2. The restriction on all the Protected Person’s real properties are released and for purposes of management and administration by the Personal Representative of the Estate of _________ (_________ County Circuit Court Case No. __________);
3. Fees for services provided by the Conservator for the Protected Person are approved and the Conservator is authorized and directed to pay __________ for fiduciary fees and costs;
4. Fees for services provided by the attorney for the Conservator are approved and the Conservator is authorized and directed to pay __________ of __________ the sum of $_______ for legal services and expenses on behalf of the Conservator;
5. All remaining conservatorship assets, after payment of administrative expenses and debts of the conservatorship estate, including but not limited to the approved fiduciary and attorney fees and costs, shall be forwarded to __________ in his/her role as Personal Representative of the Estate of ___________; and,
6. Upon the filing of receipts therefore, a general judgment may be filed discharging the Conservator, exonerating the Conservator’s bond and closing the conservatorship proceeding.

**CONSERVATOR:**

Name  
Address  
Telephone Number  

**ATTORNEY FOR CONSERVATOR:**

Name, OSB#  
Address  
Telephone Number  
Fax Number  
E-mail Address
FORM 2-15

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

Probate Department

IN the Matter of the Conservatorship of

Case No. __________

) SUPPLEMENTAL JUDGMENT
) DISCHARGING CONSERVATOR,
) EXONERATING BOND, AND CLOSING
) CONSERVATORSHIP

Protected Person.

THIS MATTER CAME BEFORE THE COURT upon a Petition of __________,
Conservator for ____________ , for a Supplemental Judgment closing the above-captioned
conservatorship.

IT FURTHER APPEARING from the records and files herein that the Conservator has
performed all of the acts required and the conservatorship has been fully administered.

Now, therefore, IT IS HEREBY ADJUDGED that:

1. ____________ is hereby discharged as Conservator;

2. The bond of the Conservator is exonerated; and,

3. The conservatorship proceeding is hereby closed.

____________________________________

Page 1 of 3     SUPPLEMENTAL JUDGMENT DISCHARGING CONSERVATOR, EXONERATING BOND, AND CLOSING CONSERVATORSHIP

LAW FIRM
ATTORNEY
Address
Phone Number, Fax Number
E-mail Address

Guardianships and Conservatorships 2–67
<table>
<thead>
<tr>
<th>CONSERVATOR:</th>
<th>ATTORNEY FOR CONSERVATOR:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name</td>
<td>Name, OSB#</td>
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<tr>
<td>Address</td>
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<td>Telephone Number</td>
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</tbody>
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CERTIFICATE UNDER UTCR 5.100

The undersigned counsel for the fiduciary hereby certifies as follows with respect to the Supplemental Judgment Discharging Conservator, Exonerating Bond and Closing Conservatorship, filed herewith:

(a) This matter is an uncontested protective proceeding and therefore service of the proposed Order is not required pursuant to subsection (3)(d) of UTCR 5.100.

(b) This proposed order or judgment is ready for judicial signature because:

1. [ ] Each opposing party affected by this order or judgment has stipulated to the order or judgment, as shown by each opposing party's signature on the document being submitted.

2. [ ] Each opposing party affected by this order or judgment has approved the order or judgment, as shown by signature on the document being submitted or by written confirmation of approval sent to me.

3. [ ] I have served a copy of this order or judgment on all parties entitled to service and:

   A. [ ] No objection has been served on me.

   B. [ ] I received objections that I could not resolve with the opposing party despite reasonable efforts to do so. I have filed a copy of the objections I received and indicated which objections remain unresolved.

   C. [ ] After conferring about objections, [role and name of opposing party] agreed to independently file any remaining objection.

4. [ ] The relief sought is against an opposing party who has been found in default.

5. [ ] An order of default is being requested with this proposed judgment.

6. [XX] Service is not required pursuant to subsection (3) of this rule, or by statute, rule, or otherwise.

7. [ ] This is a proposed judgment that includes an award of punitive damages and notice has been served on the Director of the Crime Victims' Assistance Section as required by subsection (4) of this rule.

DATED: this______ day of __________________, 20___.

Attorney, OSB No. __________
FORM 2-16

Conservatorship Checklist

Name of Fiduciary: ________________________________
Address: _______________________________________
Home Number: ____________________________ Cell: _______________________

<table>
<thead>
<tr>
<th>Guardianship and Conservatorship of ______</th>
<th>Protected Person’s SSN:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Protected Person’s DOB:</td>
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</tr>
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</table>

<table>
<thead>
<tr>
<th>Case No:</th>
<th>Appointment Date:</th>
</tr>
</thead>
<tbody>
<tr>
<td>County:</td>
<td>Inventory Due Date:</td>
</tr>
<tr>
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</tr>
<tr>
<td>Guardian’s Report Due Date:</td>
<td>Annual Accounting Due Date:</td>
</tr>
</tbody>
</table>

Email: __________________________________________

<table>
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<tr>
<th>Due Date:</th>
<th>Date Done:</th>
</tr>
</thead>
</table>

1. **Initiation of Conservatorship**
   A. Conflict Check (Have we ever represented Respondent?) ____________
   B. Representation Agreement signed? _________________________________
   C. Retainer? Source of Funds? _________________________________
   D. Pre-Bond Approval signed and sent? _______________________________

2. **Petition**
   A. Petition sent to Court? _________________________________
   B. Filing Fee obtained? _________________________________

3. **Notices**
   A. Notice to Respondent w/blue objection paper served? ____________
   B. Notice to Interested Persons sent out? ____________
      Spouse, parents, adult children of respondent (or most closely related), any person co-habitating with respondent, Fiduciary nominated by respondent, Trustee, Health Care representative, POA, OR Other, required by court: Department of Veteran’s Affairs, Office of Long Term Care Ombudsman
      **OBJECTION DATE (15 days plus 3 for mailing):** ____________
   C. Proof of Service and original Notice sent to court? ____________
Chapter 2—Conservatorships

4. **Order/ Limited Judgment**
   A. Objections to Petition?
   
   B. If no, Submit Order/Limited Judgment:
   
   C. Date Limited Judgment signed:

5. **Bond/ Letters of Conservatorship**
   A. Limited Judgment sent to Court Bonds?
   
   B. Bond signed by Conservator?
   
   C. Bond sent to court and Request Letters of Conservatorship?
   
   D. Date Letters of Conservatorship received:
   
   E. Indemnity Agreement sent to Court Bonds
   
   F. Send out Conservator’s Appointment packet?
   (Duties of a Conservator, Inventory, Authorization to release information, Abstract of Real Property)
   
   G. File Acknowledgment of Restriction of Assets
   1) Asset Restriction  2) File Abstract

6. **Inventory (90 days after appointment)**
   A. Send original Inventory to court

7. **Accounting (Due 60 days after Conservatorship Appointment Date)**
   A. Letter sent to client requesting statements @ appointment date anniversary?
   
   B. Send Accounting to court?
   
   C. Send out Notice of time for filing objections?
   
   D. Send Proof of Notice and Notice to court?
   
   E. Objection Date:
   
   F. Objection’s Received?
   
   G. Send Order Approving Accounting to court
   
   H. Approved costs and fees Paid:

///
///
///
///
### 2nd Year

1. **Accounting (Due 60 days after Conservatorship Appointment Date)**
   - A. Letter sent to client requesting statements @ appointment date anniversary? 
     - Due Date: [Date]
     - Date Done: [Date]
   - B. File Accounting w/court? 
     - Date: [Date]
   - C. Send out Notice of time for filing objections? 
     - Date: [Date]
   - D. File Proof of Notice and Notice w/court? 
     - Date: [Date]
   - E. Objection Date: 
     - Date: [Date]
   - F. Objection’s Received? 
     - Date: [Date]
   - G. File Order Approving Accounting w/court 
     - Date: [Date]
   - H: Approved costs and fees Paid: 
     - Date: [Date]

### 3rd Year

1. **Accounting (Due 60 days after Conservatorship Appointment Date)**
   - A. Letter sent to client requesting statements @ appointment date anniversary? 
     - Date: [Date]
   - B. File Accounting w/court? 
     - Date: [Date]
   - C. Send out Notice of time for filing objections? 
     - Date: [Date]
   - D. File Proof of Notice and Notice w/court? 
     - Date: [Date]
   - E. Objection Date: 
     - Date: [Date]
   - F. Objection’s Received? 
     - Date: [Date]
   - G. File Order Approving Accounting w/court 
     - Date: [Date]
   - H: Approved costs and fees Paid: 
     - Date: [Date]

### 4th Year

1. **Accounting (Due 60 days after Conservatorship Appointment Date)**
   - A. Letter sent to client requesting statements @ appointment date anniversary? 
     - Date: [Date]
   - B. File Accounting w/court? 
     - Date: [Date]
   - C. Send out Notice of time for filing objections? 
     - Date: [Date]
   - D. File Proof of Notice and Notice w/court? 
     - Date: [Date]
   - E. Objection Date: 
     - Date: [Date]
   - F. Objection’s Received? 
     - Date: [Date]
   - G. File Order Approving Accounting w/court 
     - Date: [Date]
   - H: Approved costs and fees Paid: 
     - Date: [Date]
1. **Closing of Conservatorship**
   A. Letter to client to request statements for final accounting? __________
   B. Send Final Accounting to the Court. __________
   C. Notice sent out. __________
   D. **OBJECTION DATE (15 days plus 3 for mailing):** __________
   E. Proof of Service and original Notice sent to court __________
   F. Objections received? __________
   G. Order Approving Final Account Sent to the Court __________
   H. Fees received? __________
   I. File Receipts with the Court. __________
   J. Submit General Judgment closing Conservatorship and Discharging the Conservator? __________
   K. Send copy of General Judgment to client? __________
Conservatorship Basics

Why Conservatorships?
Wait! Is a conservatorship necessary?

- Power of attorney or trust?
- Alternative forms of management?
- Is there sufficient capacity to execute documents?

The importance of careful conflict screening

- Former Clients – ORPC 1.9
- Current Clients/Joint Representation – ORPC 1.7
- Do they know you don’t represent them? Following up in writing if necessary.
- Releases of Information.

Who is my client?
Fees and Costs
ORS 125.095

- The conversation.
- The value of a retainer from the personal funds of your client.

The Client's Story

We need a conservatorship. Now what?
- Pre-bond approval
- Gathering and verifying facts
- The narrative
Starting the Process - Court Filings

Your introduction to the Court – The Petition for Appointment of a Conservator
- Statutory requirements, ORS 125.055
- Notice to Respondent
- Notices to Interested Persons
- Have it all ready!

Notice on Respondent

- Notice to Respondent, attached blue sheet notice, and copy of the petition
- Personal service and using process servers
- Upon service, filing of Proof of Service
Notice to Interested Persons

- ORS 125.060
  - Tier 1 and 2 notices
- Broad requirements
- Err on the side of caution
- Declaration of Mailing Notice

First Steps Upon Appointment

- Order/file your bond
- Request Letters of Conservatorship
- Complete detailed instructions to client
- Advise regarding class requirements (Multnomah and Clackamas County)
Bonding and Restriction of Assets

Inventory

- Date of Appointment Values
- Amended and Supplemental Inventories
- Documenting Beginning Values
The Estate Plan

I. What is the Estate Plan, if any?

I. How will establishing the conservatorship potentially impact the Estate Plan?

I. How to address estate planning implications and is court approval necessary?

I. Joint Accounts – what to do?

Actions Requiring Court Approval

- Sale of the Principal Residence
- Payment of Fees and Costs for Attorney and Fiduciary
- Release of Future Interests and Survivorship Interests
- Creation of Trusts
- Changing Beneficiaries (Certain Assets)
- Disclaimers
- Life Care Contracts
- Discharge
Claims

- Presentation of Claims
- Disallowance of Claims - Timeline
- Summary Determination or Separate Action?

Accountings

- Follow the UTCR and Supplemental Local Rules (EFT and ACH Transactions)
- Watch for County Specific Practices
- Attorney Fees
- Fiduciary Fees
Termination

- Reasons for Termination
- Deadline for Filing of Final Accounting
- Planning for Insufficient Assets

Temporary Conservatorships

- Legal Standard for Temporary Conservatorship
- Notice Requirements
- Waiver of Notice
- Bonding Considerations
Limited Conservatorships and Other Protective Orders

- Examples of Use
  - Medicaid Planning and Special Needs Trusts
  - Termination

Questions?
Chapter 3

Advising Lay Fiduciaries—Presentation Slides

Leathan Teal
Educational Manager
Guardian Partners
Portland, Oregon
Our Mission

“Guardian Partners provides education, case monitoring and resources to Oregon Guardians and their families on behalf of the Court System. These efforts prevent abuse and increase quality of life for elder adults, disabled adults and children under Guardianship care.”
Our History

Founded in 2013 as Special Advocates for Vulnerable Oregonians (SAVO) at the behest of the Multnomah County Chief Probate Judge Katherine Tennyson.

Two main programs:

- Volunteer Guardianship Monitoring
- Classes for Court-appointed non-professional fiduciaries

Volunteer Monitoring

Worked with Oregon legislature in 2014 to amend ORS 125.120, which allows judges to appoint volunteer monitors (“special advocates”) to Guardianships.

Monitoring is intended to provide an independent source of information to the Court.

Volunteer monitors are trained in effective Guardianship and how to identify abusive situations.

Monitors also work to provide resources and referrals to Guardians to help make Guardianships as successful as possible.
Monitoring Expanding

2014 – Guardianships Monitoring Pilot Program starts in Multnomah County

2016 – First Guardianship Monitoring cases in Lane and Marion counties

2017 – Guardianship Monitoring expanded to Clackamas County

Case Report
Chapter 3—Advising Lay Fiduciaries—Presentation Slides

2016 Monitoring

• **145 Case Reports** filed (74% increase over 2015)
• **35** active trained volunteer case monitors
• Case Monitors donated **5,460 hours** of time

![Diagram showing case results]

Classes

![Image of a class session]
Classes for Court-appointed non-professional fiduciaries:

- Guardians of Adults
- Guardians of Minors
- Conservators
- Personal Representatives
- Trustees* (very rare)

Classes Expanding

2014 – First Guardianship/Conservatorship classes held

2015 – Clackamas County begins requiring classes
First Personal Representatives classes held

2016 – Created separate Guardians of Minors class
Lane County begins requiring classes
  for Guardians and Conservators

2017 – Marion County begins requiring classes
  for Guardians and Conservators
Guardians of Minors class expended to 4 hours and begins
being required by the Multnomah County Family Court
Class Availability

Guardianship/Conservatorship Classes held monthly in Portland, Salem, and Eugene.

Personal Representatives Classes held in Portland 4-5 times a month.

Online versions of all of our classes are available for people who live outside of the presiding county or have transportation/mobility issues that make attending a live class difficult. We also have our classes available on DVD if watching an online video is a problem for a fiduciary.

We strongly encourage fiduciaries to attend a live class if at all possible.

Lane and Marion counties require prior approval from the Court to take a class online or on DVD.
Guardianship Class

Our Guardianship class is designed to introduce Court-appointed non-professional Guardians to their basic duties and responsibilities to both their Protected Persons and to the Court.

The class was developed and is delivered by Guardian Partners, a non-profit that assists the Oregon Courts in the protection of vulnerable Oregonians by monitoring, training, and supporting Guardians, other fiduciaries, and families.

*Our class does not constitute legal advice. We advise all fiduciaries to seek the advice of a qualified attorney, especially if they have questions specific to their case.*

Course Components

The Guardianship Class is taught by an Oregon Guardianship Attorney or a certified professional Guardian.

The class is 90 minutes long.

Course materials comprise:

- Course PowerPoint
- Guardian Partners developed handouts
- Text of Selected Statutory Provisions from ORS 125, regarding Court-appointed fiduciaries
- Literature from other organizations, including the DHS State Unit on Aging developed ‘Your First Year as a Guardian’ guide
- Self-assessment and evaluation, which we use as feedback to improve the class.
Certificate of Completion

If a Court-appointed fiduciary submits a complete, paid registration and attends a full class, Guardian Partners’ staff files a Certificate of Completion with the Court on their behalf under the case number they provide.

The fiduciary receives an emailed courtesy copy of the filing.

Overview

The class covers:

- What Guardians must and must not do and timelines for action
- How Guardians make decisions about health and daily life
- Vocabulary the Guardian will likely need to know
- A little about managing money in case there is no Conservator in the case
- When the Guardian needs an attorney, and advice on working with an attorney to ensure a smooth Guardianship
- Where to find helpful resources
A Court-appointed **fiduciary** is a person who has agreed to act for and on behalf of another person, creating a special **relationship** of trust and confidence. A fiduciary is an officer of the Court.

**Fiduciary Role, Court Oversight**

- Guardians and Conservators, as fiduciaries, have special powers, but the Court has final say. All decisions can be reviewed by the Court and others.

- Everything they do must be for the benefit of the Protected Person, and to protect her or his interests (not the Guardians).
What are Guardianships and Conservatorships in Oregon?

Legal (Court) processes in which a person is given legal authority by the Court to make decisions for another person. Laws in Oregon: ORS 125 (https://www.oregonlaws.org/ors/chapter/125)

- **Guardians**: Health care decisions*, where the person will live, some other life decisions
- **Conservators**: Financial decisions, paying bills, property and income, whether to sell real estate
- Some Guardians are authorized to manage limited financial affairs

*Unless someone else has a valid Advance Directive authority

Guardianship: What Do You Do?

Check your Limited Judgment and Letters of Guardianship for specific limits and expectations. Generally, Guardians can and must:

- Decide where the Protected Person will live
- Make medical decisions from among the best choices available
- Authorize services to improve well-being, independence, and quality of life
- For children, make school and parental visit decisions, prepare the child for independent adult life.
Guardianship: **What you CANNOT do**

You CANNOT:

- Accept gifts from the Protected Person (free meals, possessions, money) without Court approval.
- Borrow money from or lend money to the Protected Person (even for everyday purchases).
- Charge room and board without getting prior written Court approval.
- Manage Social Security (or SSI) benefits without Court approval.
- Authorize a sterilization or ECT (electroconvulsive therapy) without a Court order.

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Guardianship: **Protected Persons Rights**

*Unless restricted*, an **adult** Protected Person can:

1. Hire their own attorney.
2. Vote.
3. Choose their friends, personal relationships, religious beliefs.
4. Participate in their own decision-making and make the decisions they are able to make, even if they need help and explanations.
5. Participate in their own care planning.
6. Make *safe and reasoned* choices about personal intimacy and sex, when able.
### How Guardians Make Decisions

**Person-Centered Planning (PCP)** is a set of approaches designed to assist someone to plan their life and supports:

- Focused on the individual, and their needs/desires
- Advocacy for the needs and choices of the person
- Maximizing abilities, not disabilities
- Choice and independence, respect
- Education and rehabilitation for best functioning and quality life
- A team approach that includes the Protected Person; making decisions *with* them, not *for* them
- Honoring basic legal rights and personal values.

### Building Independence

- **Least Restrictive Choice.** Guardians must make that choice that best meets the needs of the person while placing the least restrictions on his or her freedom, rights, and ability to control his or her environment.

- **People Change.** The amount of help and direction that a person needs may be different tomorrow. Children grow up. Adults recover abilities, learn new skills, and abilities change. Guardians help with this process, and educate care team members.
Guardianship Decisions: Two Approaches

When possible, make the decision that reflects the Protected Person’s past and current life values as much as possible, (their values, not yours).

If that is not possible, or produces extremely unsafe choices, make the best decision possible given what we DO know about the person and what most knowledgeable people would think would be best for this person.

Guardianship Decisions: Substituted *Judgment*, not *Values*

- Values of the Guardian are **NOT** a factor in the decision.
- Decisions are based on past and current values as long as the Protected Person is:
  - Reasonably safe
  - The decision doesn’t put him or her at high risk
- Some risk is part of life. We are looking to balance risk with growth and independence.
**Guardianship Decisions: Maximizing Independence**

**Placements:**
Facility placements are based on the needs and desires of the Protected Person; not for convenience, and not without considering all other options.

**Adults retain their rights to associate with friends and family unless there is a serious problem.**
- Is there a clear danger? Drugs? Violence?
- Is there a way to make contact or a visit safer?
- What does the Protected Person want?

If you are considering restricting access to visitors or placement in a facility, especially a locked facility, talk with your attorney first.

**Guardianship Decisions: Protecting from Abuse at Any Age**

**Problems Arise When:**
- The Protected Person is a target of abuse or exploitation
- There is someone in the picture who is violent, a substance abuser, or is going to do something dangerous
- Another family member (or the biological parents) think that their opinions trump those of the Guardian or the Court.

If you see these problems coming, talk with your attorney. You are the person charged with protecting your person from abuse.

*Handouts on restraining orders and reporting abuse are provided with your training materials.*
Guardianship Decisions:
ASK for Help!

If you are not sure how to balance what the Protected Person wants with what is possible or reasonable, ask for help from:

- Your attorney
- Care managers, social workers, therapists
- Teachers, learning specialists, counselors, therapists
- Medical specialists and the person’s physician
- Ask for a second opinion
- The Court. In special situations your attorney can petition the Court for assistance or approval.

Guardians MUST:

- Put the Protected Person’s needs first. Make sure that needed services and care are in place.
- Be available for problem-solving and medical decisions.
- NOT force their own personal views on the Protected Person, or allow others to do so.
- Coordinate with care team members and medical professionals to make sure that as needs change, so does care.
- Stay actively involved, so everyone knows who you are.
**Guardianship: Money Management**

*Some* Guardians are authorized to manage up to $10,000 in assets. If so, it is written in the Limited Judgment.

**If you manage money:**

- Protected Person funds must be in a separate account, used only for the benefit of the protected person.
- Do not put your money in this account.
- No lending or borrowing between you and the protected person
- Keep records (like Quicken or a check register), save all receipts.
- You need Court permission to manage social security or SSI. Be aware the SSA has *more* rules that you’ll need to follow.

---

**Guardianship: Your Attorney**

**Talk with Your Attorney if:**

- You will be absent or ill and need to delegate your authority to someone else
- You are thinking about moving your Protected Person to a different living situation (You will need to file a legal move notice with the Court to move an adult)
- You are considering restricting visitors or personal mail for your Protected Person
- You have special problems like immigration or serious family conflict.
- Your Protected Person is doing something that might be dangerous to themselves or others
Guardianships: Most Common Mistakes

1. Changing the living situation without legal notice.
2. Not filing Guardian Reports on time or at all.
4. Restricting visitors or mail without a good reason.
5. Not knowing your responsibilities.

Questions?
Guardian Partners' Programs 10/4/2017

For more information:
Visit our website, guardian-partners.org
Email Leathan Teal at leathan@guardian-partners.org
Call us at 971-409-1358

Thank you!
Chapter 4A

UTCR 5.100 Continuing Confusion—Presentation Slides

The Honorable Paula Bechtold
Coos County Circuit Court
Coos Bay, Oregon
UTCR 5.100
CONTINUING CONFUSION

Certificate of Readiness

Good Examples of Proper Presentation

[a bonus for attending today!]
## Chapter 4B

**Establishing Guardianships and Conservatorships; Contested Proceedings; Accounting Tips from the Court**

*The Honorable Claudia Burton*
Marion County Circuit Court
Salem, Oregon

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### Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>I. Establishing Guardianships and Conservatorships</td>
<td>4B–1</td>
</tr>
<tr>
<td>A. Procedure</td>
<td>4B–1</td>
</tr>
<tr>
<td>B. Statutory Requirements for the Petition</td>
<td>4B–1</td>
</tr>
<tr>
<td>II. Contested Proceedings</td>
<td>4B–2</td>
</tr>
<tr>
<td>A. For Everyone</td>
<td>4B–2</td>
</tr>
<tr>
<td>B. If You Represent Petitioner</td>
<td>4B–4</td>
</tr>
<tr>
<td>C. If You Represent Respondent/Objector</td>
<td>4B–5</td>
</tr>
<tr>
<td>Accounting Tips from the Court</td>
<td>4B–7</td>
</tr>
<tr>
<td>Inquiries Regarding Status of a Submitted Order</td>
<td>4B–9</td>
</tr>
<tr>
<td>Inventory</td>
<td>4B–9</td>
</tr>
<tr>
<td>UTCR 9.160</td>
<td>4B–9</td>
</tr>
<tr>
<td>Asset Schedule</td>
<td>4B–9</td>
</tr>
<tr>
<td>Receipts and Disbursements</td>
<td>4B–9</td>
</tr>
<tr>
<td>Transfers</td>
<td>4B–10</td>
</tr>
<tr>
<td>Vouchers</td>
<td>4B–10</td>
</tr>
<tr>
<td>Narrative</td>
<td>4B–11</td>
</tr>
<tr>
<td>Required Disclosures</td>
<td>4B–11</td>
</tr>
<tr>
<td>Transactions Which Require Prior Court Approval</td>
<td>4B–11</td>
</tr>
<tr>
<td>NSF Charges</td>
<td>4B–12</td>
</tr>
<tr>
<td>Amended/Corrected Accountings</td>
<td>4B–12</td>
</tr>
<tr>
<td>Anything Else We Want</td>
<td>4B–12</td>
</tr>
</tbody>
</table>
I. ESTABLISHING GUARDIANSHIPS AND CONSERVATORSHIPS

A. Procedure

The probate commissioner reviews petitions for guardianships and conservatorships and can sign orders appointing if everything is in order and there are no objections.

B. Statutory Requirements for the Petition

1. Most of what needs to be in the petition is laid out in ORS 125.055. **Allege specific facts about the need for a guardian or conservator.**

   Standard: “incapacitated” for guardian 125.005(5) (5) “Incapacitated” means a condition in which a person’s ability to receive and evaluate information effectively or to communicate decisions is impaired to such an extent that the person presently lacks the capacity to meet the essential requirements for the person’s physical health or safety. “Meeting the essential requirements for physical health and safety” means those actions necessary to provide the health care, food, shelter, clothing, personal hygiene and other care without which serious physical injury or illness is likely to occur.

   “Financially Incapable” for conservator 125.005(3) (3) “Financially incapable” means a condition in which a person is unable to manage financial resources of the person effectively for reasons including, but not limited to, mental illness, mental retardation, physical illness or disability, chronic use of drugs or controlled substances, chronic intoxication, confinement, detention by a foreign power or disappearance. “Manage financial resources” means those actions necessary to obtain, administer and dispose of real and personal property, intangible property, business property, benefits and income.

   2. For temporary fiduciaries, we need an explanation of the circumstances creating immediate and serious danger to the life or health of the respondent (guardianships) or the estate of a respondent (conservatorships) and requiring immediate action. **Allege specific facts, not just the conclusion.** ORS 125.600(1), (2). NOT TV dinners or even just failure to take most meds.

   3. Aside from statutory/procedural requirements, the biggest issues that concern the court will be in a guardianship, what kind of care does the respondent need, how will the guardianship promote that, and is the guardian appropriate? In a conservatorship, what are the respondent’s assets, will they be adequately protected (bond/restriction), and is the conservator appropriate? Factors relating to appropriateness of the fiduciary: criminal history, bankruptcy (less important in guardianship than conservatorship), financial entanglement with the protected person
(e.g., owes the protected person money or has been receiving some form of financial support from the protected person).

4. When to consider a professional fiduciary -- more often than most people think. When the family is in conflict about who should be the decision-maker; when the protected person is potentially dangerous; when family members are alienated, burned out, or have other major stresses in their life (illness, business problems, divorce...). Especially consider a professional conservator more often. Even wonderful well-meaning family members who will make great guardians often do not have the financial management skills to be conservators. The record-keeping in order to produce an accounting, the requirement to segregate assets, and general fiduciary responsibilities are often beyond the ability of family members.

II. CONTESTED PROCEEDINGS

A. For Everyone

First and foremost, contested guardianship and conservatorship proceedings have more in common with any other type of bench hearing or trial than not. The rules of evidence and civil procedure apply. ORS 125.050.

The comment most frequently echoed by members of the bench with whom I spoke was the applicability of the rules of evidence. Do not assume that you will be able to present hearsay evidence, copies of out-of-state convictions that are not properly authenticated, etc.

In particular, the visitor’s report is hearsay itself, and is also rife with hearsay statements made to the visitor. This presents a dilemma for courts and attorneys because there is no specific exception to the hearsay rule for the visitor’s report, and yet the visitor’s report is statutorily required, so it seems odd to disregard it. Different courts will handle this in different ways. If the visitor is qualified as an expert, much of the hearsay contained in the visitor’s report may come in as the basis for expert opinion. ORE 703 (ORS 40.415). Another possibility is that the visitor’s direct observations will come in, but the statements to the visitor by other persons will not. It is wise to talk with opposing counsel and perhaps request a status conference with the court if you need clarification on what will be admissible in order to prepare for what witnesses you need to have.

If you want to have witnesses testify by phone, make sure that you obtain a stipulation from opposing counsel or file a motion as required by ORS 45.400(1). Plan in advance as the statute requires the motion to be filed 30 days ahead of trial unless the court shortens the time. Once you have determined that you will be permitted, either by stipulation or by order, to have a witness testify by phone, be sure to contact court staff in advance and make arrangements. Do not automatically assume that a
Phone will be available in the courtroom or that you will be permitted to make a long distance phone call.

If your client needs some kind of accommodation (i.e., your client has trouble hearing or needs an interpreter), be sure you notify the judge’s staff at least two days before the hearing so the court can make arrangements. Do not assume that an interpreter or audio equipment will be available.

Remember that only a few counties have judges or court referees who hear probate matters on a regular basis. Much of the time you will be appearing before a judge who handles probate issues only occasionally. If you do not know for a fact that the judge regularly hears probate matters (and probably even if you do because judge assignments can get changed at the last minute for a variety of reasons), a short trial memo (emphasis on the word short) setting out a few basics such as the statutory standard for incapacity and the clear and convincing burden of proof will be helpful to the judge. Make sure that you provide the trial memo enough in advance that the judge will actually have time to read it, not 10 minutes before the hearing is scheduled to start. Also, check with the judge’s staff as to where to deliver the memo. A document that is e-filed may not get to the judge’s office for a couple of days. Judges vary on whether they want a bench copy delivered or emailed to their chambers. If your case presents any issues beyond the basic should a fiduciary be appointed, even a judge who regularly hears probate matters will appreciate a short trial memo outlining the particular issues in your case.

Be realistic in your communication with the court regarding how much time you are going to need for hearing. If you tell court staff that you can get the hearing done in an hour and then you call 5 witnesses and the other side also has five witnesses, you will have an unhappy judge on your hands. On the other hand, do not demand more time than you really need, especially if you are requesting an emergency hearing on a temporary order under ORS 125.605(5). Do not expect that the court will be able to free up a full day of trial time for you within two judicial days.

If you are requesting a hearing within two judicial days as required under ORS 125.605(5), call, fax, or e-mail the judge’s staff (taking into account the preferences expressed by your court), don’t just file in your objection. If you just file in the objection, staff may not even see it within two judicial days, much less set up a hearing.

Also, make sure that you check before telling the court you are available for a certain date and time for hearing. After the judge’s staff has spent time on the phone talking to all the lawyers and issued notices, neither the judge nor her staff will be pleased if you request that it all be done over again because you neglected to confirm the availability of your most important witness. If the hearing needs to be held in 2 judicial days, you are going to need to be there whatever time the court has available. The court doesn’t have flexibility when it has to re-arrange the docket on short notice.
Avoid ex parte contact with the court. Many probate attorneys are used to being able to call or write to the court fairly freely, because most probate matters are uncontested. Once you are involved in a contested case, do not put yourself or the court at risk of an ethical violation.

If you are calling experts, a c.v. for the court’s review is helpful.

Watch for conflicts. If you were mother’s long-time attorney and she is now incapacitated, can you represent her daughter as petitioner? Does the respondent have capacity to waive that conflict? Are you a fact witness as to mother’s capacity?

B. If You Represent Petitioner

Do not just rely on the visitor’s report or testimony, even if you have ensured that it will be admitted. Your burden of proof is clear and convincing evidence. ORS 125.305(1); ORS 125.400. If it is apparent that the visitor’s opinion was heavily influenced by, for example, reports that senior services staff had found rotting food and urine-soaked carpets in the protected person’s residence, be prepared to call those senior services staff as witnesses. Even assuming that the visitor’s report or testimony regarding what he or she was told by senior services overcomes the hearsay obstacle, the court may well find that such evidence is not clear and convincing.

On the other hand, a protective proceeding is unlike other contested proceedings in that, in theory at least, everyone is interested in the welfare of the protected person. There is a reason that protective proceedings are captioned “In the Matter of...” instead of “Smith v. Jones.” Put on the evidence that you need to meet your burden of proof, but avoid being overly aggressive or putting the proposed protected person on the defensive. If your client appears to be a child bent on punishing her parents for her dysfunctional childhood now that they are old and helpless, this will not go over well with the court. If the judge feels that mother could probably use someone to manage her funds, but that the proposed conservator will be harsh and controlling, the judge may decline to appoint her. Neither will it look good for you to humiliate the respondent.

Make sure that the proposed fiduciary is appropriate. Look up his or her history on Odyssey, and make sure that he or she will be bondable if it appears a bond will be required. Have the proposed fiduciary in court so the court can make its own determination of whether he or she is appropriate. Remember your burden is not just to prove that the respondent needs a fiduciary, but also that the proposed fiduciary is appropriate. ORS 125.305(1)(c).

ORS 125.080(2) mandates a hearing if an objection is filed and the objection is not withdrawn. If the objector does not show up to the hearing, but also does not withdraw the objections, be prepared to go ahead with a prima facie case. Discuss with the court how the court wishes to proceed in light of the statute. The court might wish to simply allow you to make an offer of proof as to what the witnesses would testify.
C. If You Represent Respondent/Objector

If you represent a family member who agrees that Mom needs a guardian, but doesn’t think it should be her sister, file a cross-petition. The court cannot appoint any fiduciary who has not been named in a petition which has been properly served. Spady v. Hawkins, 155 Or App 454 (1998). If there is no cross-petition, the court’s only options will be to appoint or not appoint the fiduciary named in the petition. If everyone is in agreement that the respondent needs a fiduciary, it will be difficult for the court to refuse to appoint the named fiduciary unless there is evidence that the named fiduciary is so bad that the protected person would be better off with no fiduciary.

If you represent the respondent, and respondent came to you of his or her own accord, you should consider requesting that you be appointed by the court. Aside from the question of whether the respondent has capacity to retain you, there is also the question of whether the respondent can contract to pay you. A protected person for whom a conservator has been appointed cannot convey or encumber his or her estate or make any contract affecting his or her estate. ORS 125.455(2). The court may find that the respondent wanted to be represented by you, but did not have capacity to contract to pay for your services. There is the question of whether your request that the court appoint you somehow signals to the court that you yourself question your client’s capacity (i.e., that you can you think the client meets the legal criteria for appointment of a fiduciary). Most courts want the respondent to be represented, and will not hold a request that you be formally appointed against you in that manner. If a conservatorship is pending, you can point out to the court that dilemma that ORS 125.455(2) presents in that if your client loses and a conservator is appointed, his or her fee agreement with you may not be enforceable.

Make sure you point out to the court that the clear and convincing evidence standard applies and is the petitioner’s burden of proof.
ACCOUNTING TIPS FROM THE COURT

Claudia M. Burton, Circuit Court Judge
Angela M. Keffer, Probate Commissioner

Marion County Probate
October 7, 2016
Inquiries Regarding Status of a Submitted Order

**These are a major time problem for court staff.** If at all possible, please wait for your confirmation card or conformed copy to come back. If you have OSCI access, you can check yourself. Please do not inquire about the status of an order unless a) it has been at least three weeks since it was submitted; or b) it was submitted as an "ASAP" order. If you do need to make an inquiry, please do so by calling (503) 588-5141, rather than via e-mail.

Please remember that we have over 2,000 open files. If you do not have access through OSCI, **you will not get your conformed copy back if you do not provide us with a stamped addressed envelope and a copy of the document if you want a conformed copy.**

**Inventory**

If the accounting is the first, the court begins its review with your inventory. Therefore, please make sure that your inventory is correct before you file the first annual accounting. If necessary, file an amended inventory with the first annual accounting. The inventory should list all of the assets and their value as of the date the fiduciary was appointed. If the conservator established a conservatorship checking account a week after being appointed, that asset should not appear on the inventory. Similarly, if that conservatorship checking account was funded by closing out a savings account, the savings account should be listed on the inventory. You must provide account identification numbers for all accounts; these may be truncated (last 4 digits).

**UTCR 9.160**

Pursuant to Marion County SLR 9.161, accountings are required to be in UTCR 9.160 format. The form itself is included in the appendix of forms to the UTCR. Note that the rule requires that type not be smaller than 10 point.

**Asset Schedule**

The first step in the court's review is to compare the assets listed in the inventory (or last year's asset schedule) with the current asset schedule. The first column of the asset schedule should include the same assets and same values as the inventory, or the ending value of last year's asset schedule. If they don't match, the court will want to know why. The court also looks to see which assets have gone away (we will then review, for example, the closing statement on a real property sale) and which new assets have been acquired.

**Receipts & Disbursements**

Be sure to itemize receipts and disbursements separately, as required by UTCR 9.160, as well as providing the total of each list of receipts and disbursements at the end of
each list. You must list receipts and disbursements for all accounts, including CDs and investment accounts. Otherwise the court has no way of knowing whether money came out of an investment account. For investment accounts, it is sufficient to show for each month “gain in investment value” or “loss in investment value”. The court may request all the brokerage statements for any given accounting period.

List all transactions that occurred during the accounting period, and do not list transactions outside of the accounting period. In other words, if the accounting period ends on May 1, a check written on April 30 should be listed, but a check written May 2 should not be listed, even if it is shown on the bank statement that confirms the ending balance on May 1.

Remember that each transaction needs to include an explanation of the source of any deposits and the purpose of any disbursements. UTCR 9.160(3)(b), (c). We need to know the source of deposits to ensure that there is not an asset that should be included in the accounting (such as an additional savings or investment account) or an income source of which the court is unaware and which should be bonded. It should be obvious why we need to know the purpose of any disbursements, but an amazing number of accountings will simply show a payment to "Mary Smith," a name which is nowhere to be found in the petition or the visitor’s report, with no explanation of who this person is or why she is being paid money. Also, sometimes there was an explanation entered into the computer, but it does not print due to column width. If the conservator is reimbursing him/herself for expenses paid on behalf of the protected person, the conservator should be prepared to provide receipts if requested.

Transfers

During review, the court tracks transfers to ensure that money removed from one account actually shows up in the other account. This, in addition to the requirement contained in UTCR 9.160(3)(e), is the reason that the sending/receiving account must be identified for any transfers. "Transfer to checking" is not acceptable, especially if there are multiple checking accounts. Instead, please use "transfer to Wells Fargo 1234," where "1234" are the last four digits of the receiving account number. Please ensure that the information is not cut off when the accounting is printed. Often we receive accountings which simply say "transfer to" and the rest is cut off due to column width.

Vouchers

We generally do not want to look at the checks; however they should be available for court review if requested. The court may accept a scanned image of the check, but, depending on the circumstances, may require an original. Please remember to make your request to waive the filing of vouchers, within the body of the accounting as required per ORS 116.083(2)(d) or ORS 125.475(3), respectively, as well as in your proposed order of judgment.
We do require bank statements confirming the opening and closing balances for each account. See UTCR 9.180(2). We require that the closing statement show the balance on the closing date of the accounting. If the closing balance on the depository statement is not the same as the closing balance in the accounting, provide a reconciliation explaining why (e.g., a check that did not clear). Bank statements showing deposits of transferred funds or liquidated assets (e.g., car sold) are also helpful and may be required on a case-by-case basis.

Please note that a screen print showing account balances through online access to the account will not be accepted in lieu of a statement from the financial institution. If the financial institution does not provide statements (as is common with certificates of deposit), request that the financial institution fill out and sign a "Certification of Funds on Deposit" form. This form was developed by a group of probate judges in conjunction with the Oregon Bankers Association, and the bankers have committed that their member institutions will comply with requests to provide the form. You may download the form at: http://courts.oregon.gov/Marion/docs/Services/certification_of_assets_3.pdf. You will need one for both the opening and closing dates of the accounting period (or opening/closing of the account).

Remember that for real estate transactions, a copy of the closing statement from escrow is required. UTCR 9.160(3)(d).

Narrative

The narrative is required by UTCR 9.160(4). Please use the narrative to explain any transactions that are not otherwise obvious. For example, the sale of an asset such as a house or car should be described and there should be a reference to the exhibit where the court will find the corresponding deposit or closing statement. If a CD was cashed in early to pay for care and an early withdrawal penalty resulted, the narrative would be the place to explain that. If personal property such as a classic car or jewelry is sold for substantially less than the item was valued in the inventory, please explain why (e.g., the 1963 Camaro wasn’t in such good condition after all).

Required Disclosures

Please comply with UTCR 9.170 regarding transactions which must be disclosed in the narrative of the accounting. This includes ALL GIFTS unless they were previously approved by the court, even if the gift did not require prior court approval.

Transactions Which Require Prior Court Approval

Remember we are only human and do not have total recall of all files. If the court previously approved a transaction which requires court approval (e.g., gift over statutory amounts, payment of fiduciary or attorney’s fees, sale of the protected person’s residence, creation of a trust, etc.), it is extremely helpful if the listing of the transaction
includes a reference to the date of the order approving the transaction. This saves us much time searching through the file.

Be sure you know which transactions require prior approval. If you find in preparing the accounting that one of these has inadvertently occurred, file a motion asking for approval with the accounting and provide an explanation of why the transaction occurred without prior approval. The most common ones we see are: payments to the fiduciary or the attorney for the fiduciary (ORS 125.095(3)); gifts of over $250 in a calendar year to one individual or exceeding an aggregate total of $1000 in a calendar year (ORS 125.435); sale of the protected person's residence (ORS 125.430); payment of room and board to a conservator who is also the guardian (ORS 125.320(2)); and creation of trusts (ORS 125.440(2)). Other limitations are listed in ORS 125.440.

NSF Charges

The fiduciary is charged with properly managing the protected person’s finances. Absent some unusual situation like fraud or the protected person continuing to access accounts without the fiduciary’s knowledge, there should not be bank fees for bounced checks, late payment fees, etc. The fiduciary will be expected to explain any such charges and will generally be required to reimburse the protected person for them unless due to circumstances beyond the fiduciary’s control.

Amended/Corrected Accountings

The court may not approve attorney’s or conservator’s fees for responding to the court’s inquiries concerning an accounting, or filing a corrected or amended accounting. If the need for additional information, correction, or amendment, is due to an obvious error or omission (e.g., gift over limits made with no order approving; NSF charges; accounts don’t balance) the court’s view is that the fiduciary, not the protected person, should bear the cost of correcting the mistake. Alerting your client to this possibility may motivate the fiduciary to do a better job of getting you the information in the first place.

Anything Else We Want

Please keep in mind that ORS 125.475(2)(g) provides that an accounting must include any other information the court requires. From time to time, based on the particular circumstances of the accounting in question, we may request other information or documents.
Chapter 5
Ethics Issues in Contested Cases

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Contents

I. Representation of a Client with Diminished or Diminishing Capacity ........................................... 5–1
   A. Determining Capacity ................................................................. 5–2
   B. Duty to Diminished Capacity Client ........................................ 5–2
   C. Communication with and Taking Direction from a Diminished Capacity Client ................ 5–2
   D. Substituted Judgment ................................................................. 5–4
   E. What If GAL/Guardian Is Appointed for the Incapacitated Client ................................ 5–4
   F. What Steps Should/Can Lawyer Take to Protect a Client with Diminished Capacity? ........ 5–5
   G. Disclosure of Confidential Information ...................................... 5–6

II. Conflicts of Interest: When Multiple Interests Collide ................................................................. 5–7
   A. Identify and Clarify Who Is a Client ............................................ 5–7
   B. Determining Who Are/Were Clients from Fact Pattern Nos. 1 and 2 ......................... 5–8
   C. Continuing Duty to Reassess Conflicts ........................................ 5–9

III. Determining If There Is a Conflict ................................................................................................. 5–10
   A. The Basic Rules ............................................................................ 5–10
   B. A Lawyer Must Exercise Reasonable Care in Determining If There Is a Conflict of Interest 5–12
   C. The Importance of Identifying Current Client vs. Former Client ............................... 5–13
   D. Can Informed Consent in Writing Save the Day? ..................................... 5–14
   E. Can’t I Just Fire Someone? ............................................................. 5–15
   F. When to Withdraw ........................................................................ 5–15
   G. Wading Through the Madness—Application of the Above Rules and Laws to Fact Patterns Nos. 1 and 2 ................................................................. 5–15

IV. Getting Paid, Ethically ..................................................................................................................... 5–16
   A. Attorney A .................................................................................... 5–17
   B. Attorney B .................................................................................... 5–19
   C. Attorney C .................................................................................... 5–20

V. Working with Self-Represented Parties ......................................................................................... 5–21
Farmer Bob, your long time client, comes in to see you (he is driven to your office by daughter Suzi) to change his trust to favor Suzi in distribution of the farm property and family corporation upon his death. Suzi tells you that Farmer Bob wants to name her as his agent on a power of attorney and appoint her as health care representative on his Advance Directive. Prior to the appointment, Suzi has told you that Farmer Bob’s having memory issues, seems confused at times, and that she is worried about him. You meet with Farmer Bob alone and he is very confused and disoriented. At one point during the meeting, Farmer Bob asks you who you are. You then invite Suzi into the meeting and explain that you are uncomfortable assisting Farmer Bob in making the requested changes to his estate plan. Suzi is upset and mentions she is worried that her brother will try and kick her off the farm and remove her as President of the family business if these changes are not made. Suzi asks you what the options are and you explain to her and Farmer Bob that a petition for appointment of a guardian and conservator could be prepared and filed seeking appointment of Suzi as Farmer Bob’s guardian and conservator. You draft and file the petition.

Upon receiving notice of the petition, Joe files an objection to the appointment of his sister Suzi as Farmer Bob’s guardian and conservator. You suggest a joint family meeting to try and resolve who should be the guardian and conservator for Farmer Bob. You suggest and it is agreed that a certain professional fiduciary should be appointed. You prepare and everyone, including Farmer Bob, signs a stipulated judgment appointing a professional fiduciary whom you have periodically represented over the years. The professional fiduciary is appointed. Upon review of the financial records, the professional conservator uncovers that Farmer Bob has been paying Suzi and her son for the past two years, $4,000 a month for “caregiving” services. The professional conservator discloses to son Joe what is going on. Son Joe is very upset. The conservator cuts off the care payments to daughter Suzi and her son and instead hires professional in-home caregivers. Farmer Bob calls you and asks you to file paperwork to remove the professional fiduciary. You can hear Suzi prompting Farmer Bob in the background.

I. REPRESENTATION OF A CLIENT WITH DIMINISHED OR DIMINISHING CAPACITY. Determining the Client’s ability to evaluate the attorney’s advice
and to give direction is difficult, but essential to the attorney-client relationship.

A. DETERMINING CAPACITY. Professional evaluation or just trust your gut? See Oregon Formal Ethics Opinion No. 2005-159; The Oregon State Bar Publication The Ethical Oregon Lawyer Chapter 18 entitled “Representing Clients with Diminished Capacity and Disability” by Michael Levelle and the American Bar Association in conjunction with the American Psychological Association publication Assessment of Older Adults with Diminished Capacity: A Handbook for Lawyers.

B. DUTY TO DIMINISHED CAPACITY CLIENT. Maintaining a regular client-lawyer relationship.

Oregon RPC 1.14(a) provides:

Client with Diminished Capacity (a) When a client’s capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

“A normal client-lawyer relationship presumes that there can be effective communication between client and lawyer, and that the client, after consultation with the lawyer, can make considered decisions about the objectives of the representation and the means of achieving those objectives.” ABA Formal Ethics Opinion 96-404 p. 1. (footnote omitted).

C. COMMUNICATION WITH AND TAKING DIRECTION FROM A DIMINISHED CAPACITY CLIENT.

RPC 1.2 SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND LAWYER *** “a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such
action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter.”

RPC 1.4 COMMUNICATION
(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information
(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

RPC 2.1 ADVISOR
In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.


- Adjust representation to accommodate a client’s limited capacity. Summarize your meeting with a written memorandum, draw simple flow charts for client to refer to, repeat and repeat again, speak clearly and slowly, don’t pile on too much information at once, take breaks if needed.

- “In determining whether the client can adequately act in his or her own interests, the lawyer needs to examine whether the client can give direction on the decisions that the lawyer must ethically defer to the client. Short of a client’s being totally noncommunicative or unavailable due to his or her condition, a lawyer can most often explain the decisions that the client faces in simple terms and elicit a sufficient response to allow the lawyer to proceed with the representation.” Oregon Formal Ethics Opinion 2005-159 p. 4.
• NOTE that RPC 1.14 appears to contemplate two different fact scenarios that may require, or limit, certain actions of a lawyer representing clients. Under RPC 1.14(a) the language refers to a client whose capacity to make adequately considered decisions is diminished, yet by implication, can at some level still make such decisions. In that situation, to the extent possible the lawyer is to maintain a normal lawyer client relationship. Under RPC 1.14(b) the language refers to a client whose capacity is so diminished that they “cannot adequately act in the client’s own interest” and “is at risk of substantial physical, financial or other harm unless action is taken…” Only then can the lawyer take further action that in most situations would be unethical, e.g. the release of confidential information or causing a protective proceeding to be filed. The distinction between the two might be characterized as difficulty in making reasoned decisions on the one hand and the inability to do so on the other.

D. SUBSTITUTED JUDGMENT. A lawyer should not to substitute his or her judgment for the client—You know what’s best vs. doing what your client directs. RPC 1.2, supra, requires that a lawyer abide by the directions of the client concerning the objectives of the representation and consult with the client regarding such.

- “...the lawyer should always seek the lawful objectives of the client and should not substitute the lawyer’s judgment for the client’s in decisions that are the responsibility of the client. However, the lawyer may make other necessary decisions consistent with the client’s direction on these essential issues.” Oregon Formal Ethics Opinion 2005-159 p. 4.

E. WHAT IF GAL/GUARDIAN IS APPOINTED FOR THE INCAPACITATED CLIENT.

Generally, the GAL/Guardian’s authority essentially substitutes for the incapacitated person’s authority when they are granted fiduciary authority to act upon the protected person’s interests. However,
fiduciary principles require that the GAL/Guardian must attempt to make decisions based on what the ward/protected person would have wanted had the ward/protected person not lacked capacity. OSB Formal Ethics Opinion No. 2005-159 pp. 4 and 5.

Note however that a protected person still has a right to contact and retain counsel. ORS 125.300(3). As the lawyer for the Ward/protected person, you may have a duty to make sure the GAL/Guardian is acting accordingly and when appropriate challenge the decisions and actions of the appointed fiduciary. A common issue in representing protected persons is what role or actions should counsel take if your client is not directing you to do so, or is incapable of doing so? Should counsel file objections to the fiduciary’s actions when the client has not directed them to do so? Does whether the lack of direction from the client comes from diminished capacity causing complacency or diminished capacity causing inability to protect one’s self make a difference? In these situations are the actions of the attorney still bound by RPC 1.14?

F. WHAT STEPS SHOULD/CAN LAWYER TAKE TO PROTECT A CLIENT WITH DIMINISHED CAPACITY?

RPC 1.14(b) and (c) provides:

(b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client’s own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.

(c) Information relating to the representation of a client with diminished capacity is protected by RPC 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized
under RPC 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client’s interests.

- Consider least restrictive alternatives. ORS 125.150(7)(c): Power of Attorney with mandatory accountings to the lawyer; Advance Directives, Declaration for Mental Health Treatment, Revocable Trust are examples.

G. DISCLOSURE OF CONFIDENTIAL INFORMATION.

ORS 40.225 (b)/OEC 503(2) provides: "Confidential communication" means a communication not intended to be disclosed to third persons other than those to whom disclosure is in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.

RPC 1.6 provides in part:

Confidentiality of Information

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

(1) to disclose the intention of the lawyer’s client to commit a crime and the information necessary to prevent the crime;

(2) to prevent reasonably certain death or substantial bodily harm;
(3) to secure legal advice about the lawyer’s compliance with these Rules;

(4) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer’s representation of the client;

(5) to comply with other law, court order, or as permitted by these Rules; or

RPC 1.8(B) provides:

(b) A lawyer shall not use information relating to representation of client to the disadvantage of the client unless the client gives informed consent, confirmed in writing, except as permitted or required under these Rules.

- In light of the above, should/can lawyer advise Suzi to retain an attorney to prepare and file a petition to appoint Guardian and Conservator for Farmer Bob knowing Farmer Bob would oppose the petition? Can lawyer then disclose to Suzi’s attorney what the lawyer’s opinion is of Farmer Bob’s capacity or even that the lawyer thinks appointment of a Guardian and Conservator would be a good idea?

II. CONFLICTS OF INTEREST: WHEN MULTIPLE INTERESTS COLLIDE.

A. IDENTIFY AND CLARIFY WHO IS A CLIENT: Has there been ongoing representation and an ongoing relationship or is this one-matter the basis for the relationship and the one matter has come to an end? Does the client have a reasonable expectation of a lawyer-client relationship based on past history of work, phone conversation(s),...
family meeting(s), drafting a joint agreement for multiple unrepresented parties? See OSB Formal Ethics Opinion No. 2005-11.

ORS 40.225 (1)(a)/OEC 503(1) provides: "Client" means a person, public officer, corporation, association or other organization or entity, either public or private, who is rendered professional legal services by a lawyer, or who consults a lawyer with a view to obtaining professional legal services from the lawyer.”

“See In re Weidner, 310 Or. 757, 770, 801 P.2d 828 (1990) ("[T]o establish that the lawyer-client relationship exists based on reasonable expectation, a putative client's subjective * * * intention or expectation must be accompanied by evidence of objective facts on which a reasonable person would rely as supporting existence of that intent."); Kidney Association of Oregon v. Ferguson, 315 Or. 135, 145, 843 P.2d 442 (1992) ("The existence of a lawyer-client relationship primarily is determined by the reasonable expectation of the client that the lawyer will perform legal work in the client's behalf."); In re Spencer, 335 Or. 71, 84, 58 P.3d 228 (2002) (" 'The modern trend in Oregon and elsewhere is to find the existence of an attorney-client relationship whenever the would-be client reasonably believes under the circumstances that the client is entitled to look to the lawyer for advice.’ " (quoting the Ethical Oregon Lawyer, 6.3 (Oregon CLE 1991))).” Crimson Trace Corp. v. Davis Wright Tremaine LLP, 355 Or 476, 326 P3d 1181 (2014)

Practice Tip: When faced with the “family meeting” always communicate in writing who is your client. Advise other parties who are not your client to seek counsel if have questions about their legal rights in regard to the proceeding or your representation of your client, most often the elderly parent.

B. DETERMINING WHO ARE/WERE CLIENTS FROM FACT PATTERN NOS. 1 & 2.

Farmer Bob: What are his reasonable expectations? Long relationship, your firm has handled all of Farmer Bob’s real estate
matters, you retain Farmer Bob’s original estate planning documents in your office safe, your handled administration of the estate when Farmer Bob’s wife passed away although that was years ago, you send Farmer Bob periodic reminders to update his estate plan even though he hasn’t done so in years, his financial planner sends you updated financial information and copies of beneficiary forms for his life insurance and IRA’s are all factors, but really it comes down to what Farmer Bob reasonably believes.

**Practice Tip:** Meet with Farmer Bob alone. If Farmer Bob gives his permission, later invite family members in to the meeting. Make sure you discuss first though with Farmer Bob what you can and can’t disclose to family members. For example, if Farmer Bob tells you his doctor gave him a mini-mental exam that he did not pass, but then tells you not to tell the children. If family members are present at meeting with client, verbally state you represent only Farmer Bob and will advocate for only his interests. Later, confirm in writing with family members and that if they have questions, to seek advice from separate counsel.

**Suzi.** At what point, if ever, does Suzi become your client? At what point, if ever, does Suzi stop being your client?

**Professional Fiduciary:** At what point, if ever, does the professional fiduciary become your client? Can she be your client if Farmer Bob is also your client and/or Suzi is or was your client?

**Son Joe:** Does son Joe have a reasonable expectation that you are the “family” lawyer and thus, his lawyer as well?

**C. CONTINUING DUTY TO REASSESS CONFLICTS.**

If the family meeting described in Fact Pattern No. 2 changed the dynamics, the lawyer may need to reassess potential conflicts and respond accordingly. See OSB Formal Ethics Opinions Nos. 2005-122 and 2005-40. Also, see OSB Formal Ethics Opinion 2005-62 regarding representation of successor personal representative in light of
representation of Farmer Bob and Suzi and representation of the Professional Fiduciary.

III. DETERMINING IF THERE IS A CONFLICT.

A. THE BASIC RULES.

RPC 1.7 provides:

Conflict of Interest: Current Clients

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a current conflict of interest. A current conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client;

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer’s responsibilities to another client, a former client or a third person or by a personal interest of the lawyer; or

(3) the lawyer is related to another lawyer, as parent, child, sibling, spouse or domestic partner, in a matter adverse to a person whom the lawyer knows is represented by the other lawyer in the same matter.

(b) Notwithstanding the existence of a current conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;
(3) the representation does not obligate the lawyer to contend for something on behalf of one client that the lawyer has a duty to oppose on behalf of another client; and

(4) each affected client gives informed consent, confirmed in writing.

See In re Cherry, 20 DB Rptr 59 (2006) “The Accused failed to recognize the conflict of interest posed by her personal beliefs that her client was not the best choice to serve as [minor]’s guardian and conservator when she continued the representation. The Accused acted with knowledge and intent when she encouraged other persons to intervene, and failed to act to notify and protect [client] when she knew other persons intended to seek her removal as [minor]’s guardian and conservator, which was contrary to her client’s wishes.” Stipulation for 30 day Suspension.

RPC 1.9 provides:

RPC 1.9 Duties to Former Clients

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person’s interests are materially adverse to the interests of the former client unless each affected client gives informed consent, confirmed in writing.

(b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client:

(1) whose interests are materially adverse to that person; and
(2)  about whom the lawyer had acquired information protected by RPC 1.6 and 1.9(c) that is material to the matter, unless each affected client gives informed consent, confirmed in writing.

(c)  A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1)  use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or

(2)  reveal information relating to the representation except as these Rules would permit or require with respect to a client.”

Note that a motive to assist a former client is no basis for taking action that constitutes a conflict of interest. An attorney who represented a Petitioner in seeking the appointment of a guardian and conservator over a former client was reprimanded due to the conflict of interest. In determining the appropriate sanction the Board noted, “The Accused was attempting to remedy a situation in which it appeared that [former client] was unable to act adequately in her own interest. She also sought ethics advice from the Bar before undertaking to represent [petitioner]. Nevertheless, she should not have represented a third party as a petitioner in the conservatorship matter after having represented [former client]. In re Snell, 15 DB Rptr 166,169 (2001).

B. A LAWYER MUST EXERCISE REASONABLE CARE IN DETERMINING IF THERE IS A CONFLICT OF INTEREST.

RPC 1.0(h) provides:
(h) “Knowingly,” “known,” or “knows” denotes actual knowledge of the fact in question, except that for purposes of determining a lawyer’s knowledge of the existence of a conflict of interest, all facts which the lawyer knew, or by the exercise of reasonable care should have known, will be attributed to the lawyer. A person’s knowledge may be inferred from circumstances.

C. THE IMPORTANCE OF IDENTIFYING CURRENT CLIENT VS. FORMER CLIENT.

Most former client conflicts are waivable while current client conflicts are strictly governed and harder to waive.

(a) A current client has full veto power in your representation in a matter that would adversely affect the current client. In these cases, a lawyer must carefully consider whether lawyer can proceed even with informed consent. It will depend on whether the matter is related vs. unrelated. The latter may be waivable if each party gives informed consent confirmed in writing, while the former is not even with informed consent. RPC 1.7(b)(4). Also see OSB Formal Ethics Opinion Nos. 2005-122, 2005-77 and 2005-40.

Also consider RPC 1.8(B) which provides: “(b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, confirmed in writing, except as permitted or required under these Rules.”

(b) A former client has limited veto power when representation is adverse to former client in same matter (significantly connected set of facts) or a substantially related matter (lawyer learned confidences and secrets from former client that could be used adversely to the former client). For a list of matter-specific former client conflicts see OSB CLE publication Conflicts and Confidentiality After Death by Peter R. Jarvis, presented on June 14, 2013 p. 9-11-12. For a list of information
specific former client conflicts see OSB CLE publication Conflicts and Confidentiality After Death by Peter R. Jarvis, presented on June 14, 2013 p. 9-12-13.

D. CAN INFORMED CONSENT IN WRITING SAVE THE DAY?

RPC 1.0 (g) provides:

(g) “Informed consent” denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct. When informed consent is required by these Rules to be confirmed in writing or to be given in a writing signed by the client, the lawyer shall give and the writing shall reflect a recommendation that the client seek independent legal advice to determine if consent should be given.

A conflict cannot be waived when the lawyer does not reasonably believe the lawyer will be able to provide competent and diligent representation to each affected client; when the representation is prohibited by law; or when the representation obligates the lawyer advocate for something on behalf of one client that the lawyer has a duty to oppose on behalf of another client. RPC 1.7(b) (1)-(3). For a list of cases where the court has found a nonwaivable conflict see OSB CLE publication Conflicts and Confidentiality After Death by Peter R. Jarvis, presented on June 14, 2013 p. 9-17.

Does a lawyer have a duty to take additional steps to ensure Farmer Bob understands the informed consent and writing? Yes, because consent is invalid if not informed consent.
E. CAN’T I JUST FIRE SOMEONE?

No, a lawyer cannot just get rid of the hot potato to solve her conflict problem.

F. WHEN TO WITHDRAW.

When it just doesn’t feel right. Trust your gut and/or phone a friend/the OSB PLF. The sour lemon test. This may require court approval.

RPC 1.16 DECLINING OR TERMINATING REPRESENTATION

“(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if: (1) the representation will result in violation of the Rules of Professional Conduct or other law; ***

(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.”

When a conflict is evident, a delay in seeking to withdraw can cause prejudice to client and be unethical conduct on the part of the lawyer. See In re Cherry, 20 DB Rptr 59 (2006) “The Accused failed to take reasonable steps to avoid foreseeable prejudice to the rights of [client], including giving due notice to [client]; and allowing [client] time for employment of other counsel.”

G. WADING THROUGH THE MADNESS – APPLICATION OF THE ABOVE RULES AND LAWS TO FACT PATTERNS NOS. 1 AND 2.

1. If after Suzi files the petition at your direction, can you then oppose her on behalf of Farmer Bob in a hearing following Farmer Bob’s objection expressed to the Court Visitor. Can
you represent Farmer Bob in preparing a Withdrawal of his Objection if he changes his mind?

2. Is representation of Farmer Bob in motion to remove the professional fiduciary a conflict of interest? What if after her appointment, professional fiduciary retains other counsel? What if you prepared and filed the inventory? Can you argue unrelated matter as removal only effects professional fiduciary’s financial interest? Should you persuade professional fiduciary to resign? What if you think retaining the professional fiduciary and cutting off the payments to Suzi and her son is in Farmer Bob’s best interest, but he is adamant he wants Suzi to be his conservator and for her and his grandson to be paid for caregiving services and then some!

3. How does the fact that you heard Suzi apparently prompting him on the phone affect your representation of Farmer Bob? What should, and what can you do, about your concerns over whether Suzi is wrongfully influencing Farmer Bob? Does your answer change based on your perception of Farmer Bob’s capacity? If you truly believe that Suzi is wrongfully taking advantage of him, how do Farmer Bob’s explanations given to you in confidence affect your actions? For example, what if Farmer Bob told you that he knew that Suzi was taking financial advantage of the situation, but that he liked her and her son’s company at the farm; or he instead told you that he hated that she was getting the money, but he was scared she would do something drastic if he allowed it to be cut off, and told you not to tell anyone this.

IV. GETTING PAID, ETHICALLY.

Professional fiduciary is appointed as conservator for protected person who has diminished capacity. Professional fiduciary is represented by attorney A. Protected person, on his own, hires Attorney B to remove step-son trustee as co-trustee of a marital trust funded upon death of Protected Person’s wife from assets titled in the wife’s name. The Protected Person is the named co-trustee.
and sole beneficiary of the trust during his lifetime. Attorney B files petition to remove Step-son Co-Trustee even though Attorney B knows a conservator has been appointed for her client. Step-son retains Attorney C to defend the removal action. Attorney C gets paid from the trust without filing a petition for approval of fees. Attorney B also lets her client pay her out of a personal checking account of the protected person that has not yet come under control of the conservator.

RPC 1.5 FEES “(a) A lawyer shall not enter into an agreement for, charge or collect an illegal or clearly excessive fee or a clearly excessive amount for expenses.”

ORS 130.615 (1) A vacancy in a trusteeship occurs if: *** (f) A guardian or conservator is appointed for an individual serving as trustee.

ORS 130.610 (2) If a vacancy occurs in a cotrusteeship, the remaining cotrustee or cotrustees may act for the trust.

A. ATTORNEY A.

(a) The professional fiduciary’s attorney may be paid from the funds of the person subject to a protective proceeding because the services of the attorney are on behalf of the professional fiduciary. ORS 125.095(1).

ORS 125.095 “(1) Funds of a person subject to a protective proceeding may be used to pay reasonable fees, costs and disbursements to any visitor, attorney, physician, fiduciary or temporary fiduciary for services related to the protective proceeding or for services provided on behalf of a fiduciary, respondent, petitioner, cross-petitioner, objector or protected person.”

(b) Prior to Attorney A being paid its fee from the funds of the protected person, Attorney A must have court approval. ORS 125.095(2)(c).
(c) Prior court approval is required before the payment of fees from the funds of a person subject to a protective proceeding when the payment is to:

***.

(d) Any attorney who has provided services relating to a protective proceeding, including services provided in preparation or anticipation of the filing of a petition in a protective proceeding.”

_In re Odman, 22 DB Rptr 34 (2008)_ (payment to conservator’s attorney from assets of protected person without court authorization violated former rule DR 2-106(A) (near identical language to the current ORPC Rule 1.5: “A lawyer shall not enter into an agreement for, charge or collect an illegal or clearly excessive fee.”))

(e) In a petition requesting court approval of attorney fees, the petition must list the following factors per ORS 125.098(2), for court consideration:

(1) The benefit to the person subject to the protective proceeding by the party’s actions in the proceeding, which factor shall be given the greatest weight in the court’s consideration under this section.

(2) The objective reasonableness of the position asserted by the party.

(3) The party’s self-interest in the outcome of the proceeding.

(4) Whether the relief sought by the party was granted in whole or in part, subject to the respondent’s right to contest the proceeding.

(5) The conduct of the party in the transactions or occurrences that gave rise to the need for a protective proceeding, including any conduct of the party that was reckless, willful, malicious, in bad faith or illegal.
(6) The extent to which an award of attorney fees in the proceeding would deter others from asserting good faith positions in similar proceedings.

(7) The extent to which an award of attorney fees in the proceeding would deter others from asserting meritless positions in similar proceedings.

(8) The objective reasonableness of the party and the diligence of the party and the attorney during the proceeding.

(9) The objective reasonableness of the party and the diligence of the party in pursuing settlement of the dispute.

(10) Any other factor the court may consider appropriate under the circumstances of the proceeding.

B. Attorney B

(a) Under ORS 125.300(3), A protected person retains the right to retain counsel.

ORS 125.300 *** “(3) A protected person retains all legal and civil rights provided by law except those that have been expressly limited by court order or specifically granted to the guardian by the court. Rights retained by the person include but are not limited to the right to contact and retain counsel and to have access to personal records.”

Cf. ORS 125.455...”(2) Except as provided in this section and ORS 125.420, a protected person for whom a conservator has been appointed cannot convey or encumber the estate of the protected person or make any contract or election affecting the estate of the protected person.”

Query: Washington State requires the Court to approve the appointment of counsel for a protected person. Would this be a good idea in Oregon?
(b) Because there is a conservator Attorney B may not let the protected person pay attorney fees from the protected person’s checking account.

**Practice Tip:** The conservator is responsible for marshalling the protected person’s assets. The conservator may seek disgorgement of any fees paid out of protected person’s checking account after the appointment of the conservator.

(c) To be paid, Attorney B must comply with ORS 125.095 and request court approval for her fees. Attorney B must show the court attorney fees are proper under the factors listed in ORS 125.098.

(d) Depending on the terms of the Trust, it may be possible for Attorney B to seek payment directly from the Trustee, and bypass seeking approval in the protective proceedings. Alternatively, Attorney B may seek fees in the Trust proceeding. ORS 130.815.

C. Attorney C

(a) The trust is a separate entity from the protected person. Attorney C may have her fees paid out of the trust. No court approval needed. ORS 130.815 and ORS 130.640.

(b) ORS 130.815. Attorney fees and costs. In a judicial proceeding involving the validity or administration of a trust, the court may award costs and expenses and reasonable attorney’s fees to any party, to be paid by another party or from the trust.

(c) ORS 130.640. Reimbursement of expenses.

(1) A trustee is entitled to be reimbursed out of the trust property, with reasonable interest if appropriate, for:

(2) Expenses that were properly incurred in the administration of the trust;
(3) To the extent necessary to prevent unjust enrichment of the trust, expenses that were not properly incurred in the administration of the trust.

(4) A trustee is entitled to be reimbursed out of the trust property or from property that has been distributed from the trust, with reasonable interest, for an advance of money made by the trustee for the protection of the trust.

*In re Altstatt*, 321 Or. 324, 333, 897 P.2d 1164, (1995) ("... this court has held that estate lawyers who take attorney fees from an estate without obtaining prior court approval engage in unethical conduct.")

If the Trust in question was instead a revocable trust previously created and funded solely by the Protected Person, can Attorney C be paid without Court approval?

V. **WORKING WITH SELF-REPRESENTED PARTIES.**

Joe is a self-represented party.

A. You must not give legal advice to Joe. Joe does not want Suzi appointed guardian and conservator. Joe calls you to express his concern and asks you what he should do. You suggest a family meeting to reach an agreement among family members. It is agreed that a professional fiduciary will be appointed.

(a) RPC 4.3 In dealing on behalf of a client or the lawyer’s own interests with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer’s role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable
possibility of being in conflict with the interests of the client or
the lawyer’s own interests.

(b) In re Bauer, 283 Or 55, 581 P2d 511 (1978) (lawyer not guilty of
violating former DR 7- 104(A)(2) because no advice was given). In a
disciplinary matter, attorney Bauer was accused of
unethical conduct in a real estate transaction that closed at his
office. The accusers alleged Bauer had not disclosed he
represented the other party to the transaction. However, the
evidence showed Bauer disclosed to the accuser that he
represented the other party, he advised the accusers that they
could have their own attorney examine the transaction
documents, and he did not give legal advice to the accusers.

(c) In re Jeffery, 321 Or 360, 372, 898 P2d 752 (1995) (lawyer
violated former DR 7- 104(A)(2) for communicating with
unrepresented party with adverse interests). In a disciplinary
matter, attorney Jeffery was found to have communicated
inappropriately with an unrepresented party by giving legal
advice to an unrepresented codefendant whose interests were
adverse to Jeffery’s client.

(d) See also Oregon Formal Ethics Opinion No 2005-16,
Communicating with Unrepresented Persons.

B. Prior to having Joe sign a stipulated judgment appointing a
professional fiduciary you should advise Joe in writing of the
desirability of seeking independent legal counsel and provide a
reasonable opportunity for Joe to seek independent legal counsel.

RPC 1.8(h)(2). A lawyer shall not: settle a claim or potential claim for
such liability with an unrepresented client or former client unless
that person is advised in writing of the desirability of seeking and is
given a reasonable opportunity to seek the advice of independent
legal counsel in connection therewith.

See also Oregon Formal Ethics Opinion No 2005-42, Communicating
with Unrepresented Persons: Prospective Defendant. Lawyer may
negotiate a settlement between client and prospective defendant if lawyer abides by RPC 4.3.

If Joe misunderstands your role as Farmer Bob/Suzi’s attorney, you should make reasonable efforts to correct the misunderstanding.

Note Oregon Professional Rules of Conduct are available on-line at www.osbar.org/docs/rulesregs/orpc.pdf

You can reach the Oregon State Bar Professional Liability Fund at www.osbplf.org
or call 503-639-6911 or toll free at 1-800-452-1639
# Chapter 6

## Oregon Elder Abuse Reporting Requirements

**Mark Johnson Roberts**  
Oregon State Bar  
Tigard, Oregon

## Contents

<table>
<thead>
<tr>
<th>Question</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Questions and Answers About Mandatory Elder Abuse Reporting for Lawyers</td>
<td>6–1</td>
</tr>
<tr>
<td>Question 1: What Is Mandatory Elder Abuse Reporting?</td>
<td>6–1</td>
</tr>
<tr>
<td>Question 2: What Are Lawyers Required to Do?</td>
<td>6–1</td>
</tr>
<tr>
<td>Question 3: What Is “Reasonable Cause?”</td>
<td>6–2</td>
</tr>
<tr>
<td>Question 4: What Is “Comes in Contact?”</td>
<td>6–4</td>
</tr>
<tr>
<td>Question 5: What Is Elder Abuse?</td>
<td>6–5</td>
</tr>
<tr>
<td>Question 6: Are There Any Exceptions to the Reporting Requirement?</td>
<td>6–6</td>
</tr>
<tr>
<td>Question 7: What If Someone Expresses the Intent to Commit an Act of Elder Abuse?</td>
<td>6–10</td>
</tr>
<tr>
<td>Question 8: Are Lawyers Obligated to Report Elder Abuse Occurring Outside of Oregon?</td>
<td>6–11</td>
</tr>
<tr>
<td>Question 9: What Type of Report Is Required and to Whom Must It Be Made?</td>
<td>6–11</td>
</tr>
<tr>
<td>Question 10: Are Elder Abuse Reports Confidential?</td>
<td>6–12</td>
</tr>
<tr>
<td>Question 11: What If I Am Wrong, and There Really Was No Abuse?</td>
<td>6–13</td>
</tr>
<tr>
<td>Question 12: Are Lawyers Liable for Not Reporting Elder Abuse?</td>
<td>6–13</td>
</tr>
<tr>
<td>Question 13: What Does the Law Require the Oregon State Bar to Do in Connection with Elder Abuse Reporting?</td>
<td>6–14</td>
</tr>
<tr>
<td>Question 14: Are Lawyers Also Mandatory Reporters of Child Abuse?</td>
<td>6–14</td>
</tr>
<tr>
<td>Question 15: Are Lawyers Mandatory Reporters of Abuse in Other Contexts?</td>
<td>6–14</td>
</tr>
<tr>
<td>Appendix A—Oregon Revised Statutes 2015—Reporting of Elder Abuse</td>
<td>6–17</td>
</tr>
<tr>
<td>Appendix B—Oregon Revised Statutes 2015—Privileges</td>
<td>6–25</td>
</tr>
<tr>
<td>Appendix C—Selected Oregon Rules of Professional Conduct.</td>
<td>6–27</td>
</tr>
<tr>
<td>Appendix D—NCALL Fact Sheet: Changes Due to Normal Aging and Potential for Abuse/ Neglect</td>
<td>6–29</td>
</tr>
<tr>
<td>Presentation Slides</td>
<td>6–33</td>
</tr>
</tbody>
</table>
QUESTIONS AND ANSWERS ABOUT
MANDATORY ELDER ABUSE REPORTING FOR LAWYERS
Oregon State Bar General Counsel’s Office

Question 1: What is Mandatory Elder Abuse Reporting?

The Oregon elder abuse reporting law is found at ORS 124.050 to ORS 124.095. It imposes a legal obligation on certain “public and private officials” to report elder abuse. Lawyers are included in the definition of “public or private officials” having a duty to report. ORS 124.050(9). Physicians; dentists; optometrists; chiropractors; nurses; police officers; firefighters; Department of Human Services (DHS) and Oregon Health Authority workers; owners and employees of adult foster care facilities; clergy; social workers; psychologists, counselors, and psychotherapists; physical, speech and occupational therapists; audiologists; speech pathologists; senior center workers; information and referral or outreach workers and members of the Legislative Assembly are among the other mandatory reporters.

Oregon is in the midst of a demographic shift: As baby boomers age, our population as a whole is aging. Each year, over 50,000 Oregonians turn 65 years old. The median age of Oregon’s population was 30.3 in 1980, but is forecast to rise to 39.7 by 2020. With advancing age come declining health and greater reliance on family members and caregivers. And elder abuse is a significant problem. In 2014, DHS investigated and substantiated over 2,500 instances of elder abuse in Oregon. Nationally, one in ten elders living at home is subject to abuse, neglect, or exploitation.

Question 2: What Are Lawyers Required To Do?

Elder abuse reporting is a 24-hour-a-day, 7-day-a-week responsibility. Reporting is required whenever a lawyer has “reasonable cause to believe that any person 65 years of age or older with whom the [lawyer] comes in contact has suffered abuse, or that any person with whom the [lawyer] comes in contact has abused a person 65 years of age or older ... .”

Elder Abuse Reporting
Oregon State Bar General Counsel’s Office
Last Updated March 2016
ORS 124.060. The administrative rules encourage voluntary reporting in situations where reporting is not mandated. OAR 411-020-0020(2). Failure to report as required by the statute is a Class A violation. ORS 124.990. The penalty for a Class A violation is a maximum fine of $2,000. ORS 153.018(2)(a).

Oregon Rule of Professional Conduct (RPC) 1.6(a) prohibits a lawyer from revealing information relating to the representation of a client.\(^1\) RPC 1.6(b)(5) permits, but does not require, a lawyer to disclose information relating to the representation of a client when required by law. A lawyer may report elder abuse as required by law without violating the lawyer’s ethical duty of confidentiality to a client.

Note that when one of the exceptions to reporting applies (Question 6, below), the law does not require reporting, and therefore would not permit a lawyer to disclose information protected by RPC 1.6. In addition, RPC 1.6(b)(5) permits disclosure only to the extent required by law; it does not give a lawyer permission to reveal information about elder abuse that the law does not require be reported. A lawyer cannot use the permission in the disciplinary rule to justify disclosing information about elder abuse that is not required to be reported by the exceptions in ORS 419B.010.

**Question 3: What Is “Reasonable Cause?”**

There are no reported cases applying or interpreting this term specifically in connection with the abuse reporting statutes. The Department of Human Services interprets “reasonable cause” in related statutes as being equivalent to “reasonable suspicion.” A.F. v. Dep’t of Human Res. ex rel. Child Protective Servs. Div., 251 Or App 576, 590, 98 P3d 1127 (2012); Berger v. State Office for Services to Children and Families, 195 Or App 587, 590, 98 P3d 1127 (2004). In that context, “‘[r]easonable suspicion’ means a reasonable belief given all of the circumstances, based upon specific and describable facts, that the suspicious physical injury may be the result of abuse.” The rule further explains:

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\(^1\) Lawyers similarly are required by ORS 9.460 to “maintain the confidences and secrets of ... clients consistent with the rules of professional conduct ... .” ORS 9.460 uses the terminology of former DR 4-101, which has been replaced by RPC 1.6.
“The belief must be subjectively and objectively reasonable. In other words, the person subjectively believes that the injury may be the result of abuse, and the belief is objectively reasonable considering all of the circumstances. The circumstances that may give rise to a reasonable belief may include, but not be limited to, observations, interviews, experience, and training. The fact that there are possible non-abuse explanations for the injury does not negate reasonable suspicion.”

OAR 413-015-0115(37). Similarly, “reasonable suspicion” for an officer to stop an individual in the criminal law context is defined as “a belief that is reasonable under the totality of the circumstances existing at the time and place the peace officer acts.” ORS 131.605(5). The standard is an “objective test of observable facts” and requires the officer “to point to specific articulable facts that give rise to a reasonable inference that a person has committed a crime.” State v. Ehly, 317 Or 66, 80, 854 P2d 421 (1993).

By contrast, the standard of “probable cause” for arrest in the criminal law context is generally thought of as a higher standard than that of “reasonable suspicion.” “Probable cause” is defined by ORS 131.005(11) as a “substantial objective basis for believing that more likely than not an offense has been committed and a person to be arrested has committed it.” In State v. Childers, 13 Or App 622, 511 P2d 447 (1973), the court held that a police officer did not have probable cause to make a warrantless search for marijuana since he was uncertain whether he had smelled it. The court cited the probable cause standard as the existence of circumstances that would lead a reasonably prudent person to believe that an event had occurred, and distinguished it from “mere suspicion or belief ....” Id. at 629.

Interpreting “reasonable cause” in the context of obtaining a subpoena for bank records under ORS 192.565(6), the court in State v. Mckee, 89 Or App 94, 99, 747 P3d 395 (1987), held that a showing of reasonable cause required a recital of known facts, not mere conclusory statements. In another case, a merchant was found to have reasonable cause to detain a suspected shoplifter when the merchant saw the person leaving the store with unpaid-for goods.

A potential “floor” for “reasonable cause” is found in ORS 124.075, which provides immunity to reporters for criminal and civil liability. In order to qualify for immunity, the reporter must “participat[e] in good faith” in the reporting process, and have “reasonable grounds” for the making of the report. Outside the client representation context, attorneys are well advised to use this standard for determining when to make a report of potential elder abuse.

**Question 4: What Is “Comes In Contact?”**

“Comes in contact” is a more unfamiliar phrase that is also not defined in the statute or case law. A dictionary definition of “contact” includes “a touching or meeting” and “association or relationship (as in physical or mental or business or social meeting or communication).” *Webster’s Third New International Dictionary* 490 (unabridged ed 1993). That definition, and common usage, suggest that a lawyer is required to report elder abuse only when the lawyer has had some kind of physical or associational contact with a person who has abused an elder or with an elder who has been abused. This does not necessarily mean “in person” contact; telephone or even email or written contact would likely suffice.

The “comes in contact” requirement does not appear to modify the “reasonable cause” requirement. In other words, the statute does not appear to require reporting only when the lawyer learns of the abuse directly from the victim or the abuser. Reliable second- or third-hand information may provide reasonable cause to believe that abuse has occurred; reporting would then be required if the lawyer had come in contact with either the abuser or the victim. For example, if a neighbor tells a lawyer that she heard from another neighbor that an elder living down the street (with whom the lawyer has occasional contact) appears to have been abused,

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² The statute applied in *Delp*, which allows merchants to detain suspected shoplifters, has since been amended to require “probable cause” as opposed to “reasonable cause.” See ORS 131.655(1).

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Elder Abuse Reporting  
Oregon State Bar General Counsel’s Office  
Last Updated March 2016
the lawyer may have reasonable cause to believe that abuse occurred if the lawyer believes the neighbors are reliable sources of information.

It is sometimes suggested, under a broad reading of the statute and its purpose, that “contact” includes knowledge of abuse even without any physical or associational contact with the victim or the abuser. The Attorney General does not interpret the statute so broadly, opining in another context that “physicians, psychologists and social workers who serve as members of the board of directors of a self-help child abuse prevention organization, but who do not provide direct services, are not required to report suspected child abuse when they acquire that information indirectly in their official capacities as board members.” Attorney General Letter of Advice to Sen Margie Hendriksen (OP-5543) (June 12, 1984). The basis for the opinion lies primarily in the fact that the list of mandatory reporters in Oregon consists of professionals and service providers who are most likely to come into direct contact with victims or perpetrators of child abuse. “We believe that if the drafter of [the statute] had intended to impose a mandatory reporting duty, violation of which is punishable by a substantial fine ... , upon persons who merely have knowledge about child abuse, from whatever source, they would have said so clearly.” Id.

**Question 5: What Is Elder Abuse?**

The elder abuse reporting statute identifies the types of conduct that constitute elder abuse:

- **Infliction of Pain or Physical Injury:** Pain or injury caused by other than accidental means or apparently inconsistent with the explanation given for it. According to regulation, this includes force-feeding and all physical punishments. OAR 411-020-0002(a)(B)(ii). Physical abuse is presumed to injure and inflict pain upon someone who is non-responsive. See OAR 411-020-0002(a)(C).

- **Abandonment or Neglect:** This includes desertion as well as withholding caretaking responsibilities.
• **Financial Exploitation**: Defined in ORS 124.050(4). Wrongful taking of an elder’s property; a threat of taking that causes alarm to an elder; stealing or transferring account funds without authorization (even if jointly held); failing to use the elder’s resources effectively for their support.

• **Sex Abuse**: Commission of a crime enumerated in the statute, including both public and private indecency.

• **Involuntary Seclusion**: For convenience or discipline.

• **Wrongful Use of Physical or Chemical Restraints**: Authorized medical or legal uses are excluded.

ORS 124.050(1).

Lawyers, like many mandatory reporters, may not be experts in identifying abuse and are not expected to be. The law does not require lawyers to conduct investigations into suspected abuse, but lawyers should make reasonable inquiries where possible to follow up on initial observations or information that appears to involve elder abuse, to ensure that they have “reasonable cause” to believe that abuse has occurred. The intent of the statute is to get at-risk seniors into a regulatory system where the circumstances will be evaluated and, as necessary, addressed by qualified professionals. Hence, the standard for reporting is only “reasonable cause,” not “certainty.”

**Question 6: Are There Any Exceptions To The Reporting Requirement?**

There are three exceptions to the statutory reporting requirement:

• Lawyers, together with clergy, psychiatrists, and psychologists, are not required to report information “communicated by a person if the communication is privileged under ORS 40.225 to 40.295 [OEC 503 – OEC 295].” ORS 124.060.

• A lawyer is also not required to report elder abuse based on information communicated to the lawyer “in the course of representing a client if disclosure of the information would be detrimental to the client.” *Id.*

Elder Abuse Reporting  
Oregon State Bar General Counsel’s Office  
Last Updated March 2016
• “An elderly person who in good faith is voluntarily under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall, for this reason alone, not be considered subjected to abuse by reason of neglect ... .” ORS 124.095.

The effect of these statutory exceptions to the duty to report is that most of the information a lawyer will be required to report will be that learned outside the lawyer’s “official capacity.” For instance, witnessing an act of abuse in a public place will trigger the reporting obligation, despite the fact that the lawyer may not have a lot of information to report. Similarly, information that a non-client friend or neighbor is abusing an elder, or is a victim of abuse, must be reported.

A. Privileged Communications.

The first exception relates to statutory privileges. Lawyers are not required to report information that is “privileged under ORS 40.225 to 40.295.” ORS 40.225 is OEC 503, the lawyer-client privilege.3 The reference, however, encompasses thirteen other privileges: psychotherapist-patient (OEC 504), physician-patient (OEC 504-1), nurse-patient (OEC 504-2), school employee-student (OEC 504-3), clinical social worker-client (OEC 504-4), husband-wife (OEC 505), clergy-penitent (OEC 506), counselor-client (OEC 507), stenographer-employer

3 A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client. A “confidential communication” is one that is “not intended to be disclosed to third persons other than those to whom disclosure is in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.” Confidential communications include those (1) between the client or the client’s representative and the client’s lawyer or a representative of the lawyer, (2) between the client’s lawyer and the lawyer’s representative, (3) by the client or the client’s lawyer to a lawyer representing another in a matter of common interest, (4) between representatives of the client or between the client and a representative of a client, or (5) between lawyers representing the client. OEC 503.

Elder Abuse Reporting
Oregon State Bar General Counsel’s Office
Last Updated March 2016
(508A), public officer (OEC 509), disabled person—sign language interpreter (OEC 509-1), non-
English speaking person—interpreter (OEC 509-2), and informer (OEC 510).

Clearly, if a lawyer learns in a privileged communication with a client that the client has
abused an elder, the lawyer is not required to report. What, however, of information protected
by one of the other privileges contained in ORS 40.225 to 40.295? Can ORS 419B.010(1) be read
to also exempt a lawyer from reporting information that is protected by any one of the other
thirteen privileges even if it was not, for some reason, covered by the attorney-client privilege?
For instance, what if the lawyer receives a report containing the client’s disclosure to a
psychotherapist that the client committed abuse, but the client has never made the disclosure
directly to the lawyer. Is the lawyer exempted from reporting the information because it is
protected by the psychotherapist-patient privilege? Or is the psychotherapist-patient privilege
lost when the report is delivered to the lawyer? The first question to ask in a situation such as
the foregoing is whether the information continues to be privileged; if so, there remains the
unanswered question of whether a lawyer is excepted from reporting information protected by
the other privileges.

Although the plain language of the statute suggests that lawyers, psychiatrists,
psychologists and clergy are excused from reporting information protected by all the statutory
privileges, there is no authority interpreting the scope of the privilege exception. Given that
absence of authority and the broad protective purpose behind the statute, prudence may
dictate a less expansive reading.

B. Information Detrimental to Client if Disclosed.

The second exception to mandatory reporting applies only to lawyers, and tracks to
some extent a lawyer’s ethical obligation to protect confidential client information. Lawyers are
prohibited by RPC 1.6(a) from revealing “information relating to the representation of a client.”
“Information relating to the representation of a client” is defined in RPC 1.0(f) as both

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4 Also included is OEC 512, “privileged matter disclosed under compulsion or without
opportunity to claim privilege.”
“information protected by the lawyer-client privilege under applicable law” and “other information gained in a current or former professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client.”\(^5\)

Clearly then, “information relating to the representation” is not limited to information that is privileged because communicated by the client. Information protected under Oregon RPC 1.6 includes information learned from witnesses and other third parties as well as information imparted by the client that is, for some reason, not covered by the privilege. All that is required is that it be gained during the course of the professional relationship between the lawyer and the client, and either that the client has requested it be “held inviolate” or that it would be embarrassing or detrimental to the client if revealed.

In creating a statutory exception for only some of the information that would be protected by RPC 1.6, the legislature limited the reporting exception to information that would be detrimental (not merely embarrassing) to the client if disclosed. This appears to be the legislature’s way of reconciling the sanctity of the lawyer-client relationship with the interest of protecting elders from abuse. The legislature appears to have concluded that mere embarrassment to a client is not sufficient justification for the lawyer to ignore elder abuse.

C. **Treatment by Spiritual Means Through Prayer.**

This exception is not elaborated in case law or in regulation. Practitioners should note that it is very narrow. The treatment must be “voluntary”; beliefs of the caregiver are irrelevant to the determination of whether reporting is required. The treatment must be “through prayer.” It must be “in accordance with the tenets and practices of a recognized church or religious denomination” and conducted “by a duly accredited practitioner” of the church. Here as elsewhere, attorneys should err on the side of reporting and letting DHS evaluate the situation.

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\(^5\) These are the definitions, respectively, of “confidences” and “secrets” from former DR 4-101.
Question 7: What If Someone Expresses The Intent To Commit An Act Of Elder Abuse?

ORS 124.060 mandates reporting only when there is reasonable cause to believe that an elder “has suffered abuse” or that a person “has abused” a person 65 years of age or older.” It does not require advance reporting of possible future abuse, except where the future abuse constitutes “verbal abuse” under ORS 124.050(1)(f). “Verbal abuse” is defined in regulation to include “threatening significant physical harm or threatening or causing significant emotional harm to an adult.” OAR 411-020-0002(1)(d)(A).

If the situation does not involve “verbal abuse” within the meaning of ORS 124.050(1)(f), reporting may still be possible. RPC 1.6(b)(1) permits a lawyer to reveal confidential information to the extent the lawyer reasonably believes necessary “to disclose the intention of the lawyer’s client to commit a crime and the information necessary to prevent the crime.” There is also no lawyer-client privilege under OEC 503(4)(a) “if the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud.” RPC 1.6(b)(2) permits a lawyer to reveal information otherwise protected to the extent the lawyer reasonably believes necessary “to prevent reasonably certain death or substantial bodily harm,” whether or not a crime is involved. When used in reference to degree or extent, “substantial” denotes “a material matter of clear and weighty importance.” RPC 1.0(o).

It is not clear that all incidents of elder abuse identified in the statute constitute crimes. A lawyer whose client has expressed a clear intention to commit elder abuse in the future should ascertain first whether the intended conduct is a crime or if it puts a person at risk of reasonably certain death or substantial bodily harm. If so, the lawyer may disclose information necessary to prevent the intended conduct.

A voluntary report of suspected future abuse that is not required under ORS 124.060 is subject to the same statutory confidentiality and immunity as a mandatory report. See ORS 124.075; ORS 124.085; ORS 124.090.
Question 8: Are Lawyers Obligated to Report Elder Abuse Occurring Outside Of Oregon?

While all states have adopted some form of elder abuse prevention laws, the laws are not uniform and lawyers are not mandatory reporters in all jurisdictions. Lawyers who are licensed in multiple jurisdictions should be attentive to the statutory requirements of each jurisdiction as well as to the interplay between those statutory requirements and the disciplinary rules to which the lawyer is subject.

The scope of Oregon’s mandatory elder abuse reporting law is not clear with respect to incidents occurring outside of Oregon or involving abusers and victims who are not residents of Oregon. Nothing in the statute can be read to limit reporting only to incidents occurring within the state. The language of the statute sweeps broadly to include “any person 65 years of age or older” who has been abused and “any person” who has abused an elder.

A lawyer who wishes to act most cautiously should make a report to DHS of the out-of-state incident and allow DHS to determine whether and how to deal with the information. Reporting in that circumstance does not violate any ethical responsibility of the lawyer or violate any right of the persons involved; moreover, it is consistent with the policy behind the DHS regulation that encourages voluntary reporting. See OAR 411-020-0020(2).

Question 9: What Type Of Report Is Required And To Whom Must It Be Made?

The statute requires that “an oral report be made immediately by telephone or otherwise ...” ORS 124.065(1). Reports must be made to the local office of the Department of Human Services or a law enforcement agency within the county where the person making the report is located at the time of the contact. ORS 124.050(6) defines “law enforcement agency” to mean:

- a city or municipal police department,
- a county sheriff’s office,
- the Oregon State Police,
- a police department established by a university, or

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6 The statewide telephone number for reporting suspected abuse is 1-855-503-SAFE (7233).
any district attorney.

The report must contain, if known:

- the names and addresses of the elderly person and any persons responsible for care of the elderly person,
- the nature and extent of the abuse, including any evidence of previous abuse,
- the explanation given for the abuse, and
- any other information that might be helpful in establishing the cause of the abuse and the identity of the perpetrator.

ORS 124.065(1).

When a report of a potential crime is received by DHS, it is required to notify law enforcement. ORS 124.065(2); see also ORS 124.065(3). When law enforcement receives a report of elder abuse, it is required to notify both DHS and the law enforcement agency having jurisdiction. ORS 124.065(4).

Question 10: Are Elder Abuse Reports Confidential?

Notwithstanding Oregon’s public records law, “the names of the public or private official or any other person who made the complaint, the witnesses and the elderly persons, and the reports and records compiled under the [elder abuse reporting law], are confidential and are not accessible for public inspection. ORS 124.090(1). DHS is required to make the reports available in some circumstances and permitted to do so in other circumstances.

ORS 124.090(2). Recipients of records under DHS’s mandatory or permissive disclosure authority are also required to maintain the confidentiality of the records. ORS 124.090(3).

The confidentiality is not absolute, as a reporter may be required to testify in juvenile or criminal court proceedings relating to the report. In criminal proceedings, the alleged abuser’s constitutional right to confront witnesses would override the statutory confidentiality.

Confidentiality may be enhanced by reporting anonymously. While there is no requirement in the statute that the reporter identify him- or herself, it is also clear that the statute does not contemplate anonymous reporting, and it is likely not preferred by DHS. Law enforcement and DHS will accept anonymous reports. Because of the liability that can result

Elder Abuse Reporting
Oregon State Bar General Counsel’s Office
Last Updated March 2016
from not reporting, lawyers should weigh the desire for confidentiality with the possible need for proof that a report was in fact made as required.

**Question 11: What If I Am Wrong, And There Really Was No Abuse?**

A person who acts in good faith in making a report of elder abuse, and who has reasonable grounds for doing so, is immune from civil or criminal liability for making the report and for the content of the report. Reporters have the same immunity with respect to their participation in any judicial proceeding resulting from the report. ORS 124.075(1); see also *McDonald v. State of Oregon*, 71 Or App 751, 694 P2d 569 (1984) (negligence claim against teacher dismissed because plaintiffs failed to assert any facts to negate teacher’s good faith and reasonable grounds to report child abuse, notwithstanding the fact that the report was later determined to be unfounded).

The efficacy of the foregoing immunity provision may be open to question, based on the Oregon Supreme Court’s decision in *Smothers v. Gresham Transfer, Inc.*, 332 Or 83, 23 P3d 333 (2001). That case held that the exclusive remedy of the workers’ compensation statutes violated Article I, Section 10, of the Oregon Constitution, to the extent that it left the plaintiff without a remedy for an injury not compensable under the workers’ compensation system. Similarly, the immunity granted by ORS 124.075(1) may conflict with the arguable common-law right of an alleged abuser to sue the abuse reporter for defamation.

**Question 12: Are Lawyers Liable For Not Reporting Elder Abuse?**

As mentioned above, failure to report elder abuse when required under the statute is a Class A violation, punishable by a fine. The bar is aware of at least two cases in which a mandatory reporter (not a lawyer) was prosecuted for failing to report child abuse. In one case, the official informed the parents of the victim, who took immediate and apparently successful steps to protect her. The official also informed her supervisor. She was prosecuted for not reporting to DHS exactly as the statute required; she was eventually acquitted. In another case, a mother who was also a mandatory reporter was found to have violated her duty when she failed to immediately report the abuse of her own daughter. *See Dept of Human Servs. v. F.L.B.*, 255 Or App 709, 711–12, ___ P3d ___ (2013).
Civil liability is also a possibility. There are no reported cases in Oregon imposing liability on mandatory reporters for failure to report elder abuse, but at least one jury has rendered a verdict in favor of a plaintiff based in part on the defendant’s failure to report child abuse. See Shin v. Sunriver Prep. School, 199 Or App 352, 111 P3d 352 (2005). A statutory tort theory may provide the basis for liability because the mandatory reporting statute “imposes a duty to protect a specified group of persons.” Scovill v. City of Astoria, 324 Or 159, 172, 921 P2d 1312 (1996) (setting forth the statutory tort analysis in the context of the protective custody statute, ORS 430.399). In addition, the Court of Appeals has held that a child who had been sexually abused could state a claim for negligence against the Children’s Services Division (CSD) by alleging that CSD breached its statutory duty to investigate abuse allegations. Blachly v. Portland Police Dept., 135 Or App 109, 898 P2d 784 (1995).

**Question 13: What Does the Law Require the Oregon State Bar to Do in Connection with Elder Abuse Reporting?**

The bar is required to ensure that attorneys complete one hour of training every three years regarding their obligations under the mandatory elder abuse reporting law. ORS 9.114.

**Question 14: Are Lawyers also Mandatory Reporters of Child Abuse?**

Yes. The parameters are similar to the elder abuse reporting requirement. A lawyer must report child abuse when he or she has reasonable cause to believe child abuse has occurred, and the lawyer has had contact with the potential victim or the alleged abuser. ORS 419B.010(1). The threshold for reporting is low, and the scope of abuse encompassed within the law is broad. Additional information may be found in a separate Q&A sheet on child abuse reporting. An exception is provided for information acquired in a privileged context. See id.

**Question 15: Are Lawyers Mandatory Reporters of Abuse in Other Contexts?**

Yes. First, in certain contexts, lawyers must report suspected abuse of people with developmental disabilities or mental illness. ORS 430.765(1) provides, “Any public or private official who has reasonable cause to believe that any adult with whom the official comes in contact while acting in an official capacity, has suffered abuse, or that any person with whom the official comes in contact while acting in an official capacity has abused an adult shall report...”

Elder Abuse Reporting
Oregon State Bar General Counsel’s Office
Last Updated March 2016
or cause a report to be made in the manner required in ORS 430.743.” The legislature has defined “public or private official” to include attorneys. ORS 430.735(12)(i). Under the statute, “Adult” means any person 18 years of age or older with “(a) A developmental disability who is currently receiving services from a community program or facility or was previously determined eligible for services as an adult by a community program or facility; or (b) A mental illness who is receiving services from a community program or facility.” ORS 430.735(2).

In addition, ORS 441.640 requires any public or private official to report abuse of a resident of a long-term care facility. The definition of “public or private official” in this section includes legal counsel for the resident, guardian or family member of the resident. ORS 441.630(6)(h). Long-term care facility means “a facility with permanent facilities that include inpatient beds, providing medical services, including nursing services but excluding surgical procedures except as may be permitted by the rules of the director, to provide treatment for two or more unrelated patients.” ORS 442.015(2).
Chapter 6—Oregon Elder Abuse Reporting Requirements

APPENDIX A
OREGON REVISED STATUTES 2015
REPORTING OF ELDER ABUSE

124.050 Definitions for ORS 124.050 to 124.095. As used in ORS 124.050 to 124.095:

(1) “Abuse” means one or more of the following:
   (a) Any physical injury to an elderly person caused by other than accidental means, or which appears to be at variance with the explanation given of the injury.
   (b) Neglect.
   (c) Abandonment, including desertion or willful forsaking of an elderly person or the withdrawal or neglect of duties and obligations owed an elderly person by a caretaker or other person.
   (d) Willful infliction of physical pain or injury upon an elderly person.
   (e) An act that constitutes a crime under ORS 163.375, 163.405, 163.411, 163.415, 163.425, 163.427, 163.465, 163.467 or 163.525.
   (f) Verbal abuse.
   (g) Financial exploitation.
   (h) Sexual abuse.
   (i) Involuntary seclusion of an elderly person for the convenience of a caretaker or to discipline the person.
   (j) A wrongful use of a physical or chemical restraint of an elderly person, excluding an act of restraint prescribed by a physician licensed under ORS chapter 677 and any treatment activities that are consistent with an approved treatment plan or in connection with a court order.

(2) “Elderly person” means any person 65 years of age or older who is not subject to the provisions of ORS 441.640 to 441.665.

(3) “Facility” means:
   (a) A long term care facility as that term is defined in ORS 442.015.
   (b) A residential facility as that term is defined in ORS 443.400, including but not limited to an assisted living facility.
   (c) An adult foster home as that term is defined in ORS 443.705.
   (4) “Financial exploitation” means:
   (a) Wrongfully taking the assets, funds or property belonging to or intended for the use of an elderly person or a person with a disability.
   (b) Alarming an elderly person or a person with a disability by conveying a threat to wrongfully take or appropriate money or property of the person if the person would reasonably believe that the threat conveyed would be carried out.
   (c) Misappropriating, misusing or transferring without authorization any money from any account held jointly or singly by an elderly person or a person with a disability.
   (d) Failing to use the income or assets of an elderly person or a person with a disability effectively for the support and maintenance of the person.

(5) “Intimidation” means compelling or deterring conduct by threat.

(6) “Law enforcement agency” means:
   (a) Any city or municipal police department.
   (b) Any county sheriff’s office.
   (c) The Oregon State Police.
   (d) Any district attorney.
   (e) A police department established by a university under ORS 352.121 or 353.125.

(7) “Neglect” means failure to provide basic care or services that are necessary to maintain the health or safety of an elderly person.

(8) “Person with a disability” means a person described in:
   (a) ORS 410.040 (7); or
(b) ORS 410.715.
(9) “Public or private official” means:
(a) Physician or physician assistant
licensed under ORS chapter 677,
naturopathic physician or chiropractor,
including any intern or resident.
(b) Licensed practical nurse, registered
nurse, nurse practitioner, nurse’s aide,
home health aide or employee of an in-
home health service.
(c) Employee of the Department of
Human Services or community
developmental disabilities program.
(d) Employee of the Oregon Health
Authority, local health department or
community mental health program.
(e) Peace officer.
(f) Member of the clergy.
(g) Regulated social worker.
(h) Physical, speech or occupational
therapist.
(i) Senior center employee.
(j) Information and referral or outreach
worker.
(k) Licensed professional counselor or
licensed marriage and family therapist.
(l) Member of the Legislative Assembly.
(m) Firefighter or emergency medical
services provider.
(n) Psychologist.
(o) Provider of adult foster care or an
employee of the provider.
(p) Audiologist.
(q) Speech-language pathologist.
(r) Attorney.
(s) Dentist.
(t) Optometrist.
(u) Chiropractor.
(v) Personal support worker, as defined
by rule adopted by the Home Care
Commission.
(w) Home care worker, as defined in ORS
410.600.
(10) “Services” includes but is not
limited to the provision of food, clothing,
medicine, housing, medical services,
assistance with bathing or personal hygiene
or any other service essential to the well-
being of an elderly person.
(11)(a) “Sexual abuse” means:
(A) Sexual contact with an elderly person
who does not consent or is considered
incapable of consenting to a sexual act
under ORS 163.315;
(B) Verbal or physical harassment of a
sexual nature, including but not limited to
severe or pervasive exposure to sexually
explicit material or language;
(C) Sexual exploitation;
(D) Any sexual contact between an
employee of a facility or paid caregiver and
an elderly person served by the facility or
caregiver; or
(E) Any sexual contact that is achieved
through force, trickery, threat or coercion.
(b) “Sexual abuse” does not mean
consensual sexual contact between an
elderly person and:
(A) An employee of a facility who is also
the spouse of the elderly person; or
(B) A paid caregiver.
(12) “Sexual contact” has the meaning
given that term in ORS 163.305.
(13) “Verbal abuse” means to threaten
significant physical or emotional harm to an
elderly person or a person with a disability
through the use of:
(a) Derogatory or inappropriate names,
insults, verbal assaults, profanity or ridicule;
or
(b) Harassment, coercion, threats,
imimidation, humiliation, mental cruelty or
inappropriate sexual comments.

124.055 Policy. The Legislative Assembly
finds that for the purpose of preventing
abuse, safeguarding and enhancing the
welfare of elderly persons, it is necessary
and in the public interest to require
mandatory reports and investigations of allegedly abused elderly persons.

**124.060 Duty of officials to report; exception.** Any public or private official having reasonable cause to believe that any person 65 years of age or older with whom the official comes in contact has suffered abuse, or that any person with whom the official comes in contact has abused a person 65 years of age or older, shall report or cause a report to be made in the manner required in ORS 124.065. Nothing contained in ORS 40.225 to 40.295 affects the duty to report imposed by this section, except that a psychiatrist, psychologist, member of the clergy or attorney is not required to report such information communicated by a person if the communication is privileged under ORS 40.225 to 40.295. An attorney is not required to make a report under this section by reason of information communicated to the attorney in the course of representing a client if disclosure of the information would be detrimental to the client.

**124.065 Method of reporting; content; notice to law enforcement agency and to department.** (1) When a report is required under ORS 124.060, an oral report shall be made immediately by telephone or otherwise to the local office of the Department of Human Services or to a law enforcement agency within the county where the person making the report is at the time of contact. If known, such reports shall contain the names and addresses of the elderly person and any persons responsible for the care of the elderly person, the nature and the extent of the abuse (including any evidence of previous abuse), the explanation given for the abuse and any other information which the person making the report believes might be helpful in establishing the cause of the abuse and the identity of the perpetrator.

(2) When a report of a possible crime is received by the department under ORS 124.060, the department or the designee of the department shall notify the law enforcement agency having jurisdiction within the county where the report was made. If the department or the designee of the department is unable to gain access to the allegedly abused elderly person, the department or the designee of the department may contact the law enforcement agency for assistance and the agency shall provide assistance.

(3) If the department or the designee of the department determines that there is reason to believe a crime has been committed, the department or the designee of the department shall immediately notify the law enforcement agency having jurisdiction within the county where the report was made. The law enforcement agency shall confirm to the department or the designee of the department its receipt of the notification.

(4) When a report is received by a law enforcement agency, the agency shall immediately notify the law enforcement agency having jurisdiction if the receiving agency does not. The receiving agency shall also immediately notify the local office of the department in the county where the report was made.

**124.070 Duty to investigate; notice to law enforcement agency and department; written findings; review by district attorney.** (1) Upon receipt of the report required under ORS 124.060, the Department of Human Services or the law enforcement agency shall cause an investigation to be commenced promptly to determine the nature and cause of the abuse. The investigation shall include a visit
to the named elderly person and communication with those individuals having knowledge of the facts of the particular case. If the alleged abuse occurs in a residential facility, the department shall conduct an investigation regardless of whether the suspected abuser continues to be employed by the facility.

(2) If the department finds reasonable cause to believe that a crime has occurred, the department shall notify in writing the appropriate law enforcement agency. If the law enforcement agency conducting the investigation finds reasonable cause to believe that abuse has occurred, the agency shall notify the department in writing. Upon completion of the evaluation of each case, the department shall prepare written findings that include recommended action and a determination of whether protective services are needed.

(3) After receiving notification from the department that there is reasonable cause to believe that a crime has occurred, a law enforcement agency shall notify the department:

(a) That there will be no criminal investigation, including an explanation of why there will be no criminal investigation;
(b) That the investigative findings have been given to the district attorney for review; or
(c) That a criminal investigation will take place.

(4) If a law enforcement agency gives the findings of the department to the district attorney for review, the district attorney shall notify the department that the district attorney has received the findings and shall inform the department whether the findings have been received for review or for filing charges. A district attorney shall make the determination of whether to file charges within six months of receiving the findings of the department.

(5) If a district attorney files charges stemming from the findings of the department and the district attorney makes a determination not to proceed to trial, the district attorney shall notify the department of the determination and shall include information explaining the basis for the determination.

124.071 Deadline to complete abuse investigation; exception; written report required. (1) Investigations commenced by the Department of Human Services pursuant to ORS 124.070 must be completed by the department on or before 120 days after receipt of the report of abuse made under ORS 124.060, unless there is an ongoing concurrent criminal investigation, in which case the department may take a reasonable amount of additional time in which to complete the investigation.

(2) Upon completion of an investigation in accordance with subsection (1) of this section, a written report shall be prepared that includes information as required by rule adopted by the department, including but not limited to the following:

(a) The date and location of the report of abuse and of the incident of abuse that was reported;
(b) The dates that the investigation was commenced and completed and by what entity;
(c) A description of documents and records reviewed during the investigation;
(d) An identification of any witness statements that were obtained during the investigation; and
(e) A statement of the factual basis for any findings and a summary of the findings made as a result of the investigation.
Chapter 6—Oregon Elder Abuse Reporting Requirements

124.072 Required disclosure of protected health information to law enforcement agency; liability for disclosure. (1) Upon notice by a law enforcement agency that an investigation into abuse is being conducted under ORS 124.070, and without the consent of the named elderly person or of the named elderly person’s caretaker, fiduciary or other legal representative, a health care provider must:

(a) Permit the law enforcement agency to inspect and copy, or otherwise obtain, protected health information of the named elderly person; and

(b) Upon request of the law enforcement agency, consult with the agency about the protected health information.

(2) A health care provider who in good faith discloses protected health information under this section is not civilly or criminally liable under state law for the disclosure.

(3) For purposes of this section:

(a) “Health care provider” has the meaning given that term in ORS 192.556.

(b) “Protected health information” has the meaning given that term in ORS 192.556.

124.073 Training for abuse investigators. (1) The Department of Human Services shall:

(a) Using new or existing materials, develop and implement a training and continuing education curriculum for persons other than law enforcement officers required by law to investigate allegations of abuse under ORS 124.070 or 441.650. The curriculum shall address the areas of training and education necessary to facilitate the skills required to investigate reports of abuse, including, but not limited to, risk assessment, investigatory technique, evidence gathering and report writing.

(b) Using new or existing materials, develop and implement training for persons that provide care to vulnerable persons to facilitate awareness of the dynamics of abuse, abuse prevention strategies and early detection of abuse.

(2) For purposes of this section, “vulnerable person” means a person 65 years of age or older.

124.075 Immunity of person making report in good faith; identity confidential. (1) Anyone participating in good faith in the making of a report of elder abuse and who has reasonable grounds for making the report shall have immunity from any criminal or civil liability that might otherwise be incurred or imposed with respect to the making or content of such report. Any such participant shall have the same immunity with respect to participating in any judicial proceeding resulting from such report.

(2) The identity of the person making the report shall be treated as confidential information and shall be disclosed only with the consent of that person or by judicial process, or as required to perform the functions under ORS 124.070.

124.077 Immunity for disclosure to prospective employer. A person who has personal knowledge that an employee or former employee of the person was found by the Department of Human Services, a law enforcement agency or a court to have committed abuse under ORS 124.005 to 124.040, 124.050 to 124.095 or 124.100 to 124.140, is immune from civil liability for the disclosure to a prospective employer of the employee or former employee of known facts concerning the abuse.
124.080 Photographing of victim; photograph as record. (1) In carrying out its duties under ORS 124.070 a law enforcement agency or the Department of Human Services may photograph or cause to have photographed any victim who is the subject of the investigation for purposes of preserving evidence of the condition of the victim at the time of the investigation.

(2) For purposes of ORS 124.090, photographs taken under authority of subsection (1) of this section shall be considered records.

124.085 Catalog of abuse records; confidentiality. A proper record of complaints made under ORS 124.060 and 124.065 shall be maintained by the Department of Human Services. The department shall prepare reports in writing when investigation has shown that the condition of the elderly person was the result of abuse even if the cause remains unknown. The complaints and investigative reports shall be cataloged under the name of the victim but shall be treated as confidential information subject to ORS 124.090, and shall be disclosed only with the consent of that person or by judicial process.

124.087 Policies and guidelines to plan for development and standardization of certain resources and technologies. The Department of Human Services shall adopt policies and guidelines to plan for the development and standardization of resources and technologies to:

(1) Create a database, registry or other electronic record of reports of abuse made under ORS 124.060 and 441.640 and investigations of abuse conducted pursuant to ORS 124.070 and 441.650 with information including, but not limited to:

(a) The date and location of the report of abuse and the incident of abuse that was reported;

(b) If applicable, the date that the initial status report required under ORS 441.650 was completed and a summary of the information required to be contained in the initial status report as set forth in ORS 441.650;

(c) The date that the investigation was commenced and by what entity;

(d) Any actions taken during the course of the investigation, including but not limited to the actions required under ORS 441.650 (6);

(e) The date that a written report, including but not limited to the written report required under ORS 124.071 and 441.650 (6), was completed and a summary of the information contained in the written report; and

(f) The disposition of the report of abuse or the investigation of the report, including but not limited to the date and time that the investigation, if applicable, was completed and the date that a letter of determination under ORS 441.677 was prepared;

(2) Standardize procedures and protocols for making and responding to reports of abuse made under ORS 124.060 and 441.640;

(3) Standardize procedures and protocols for investigations of reports of abuse conducted pursuant to ORS 124.070 and 441.650; and

(4) Promote and coordinate communication and information sharing with law enforcement agencies regarding reports and investigations of abuse under ORS 124.060, 124.070, 441.640 and 441.650.
124.090 Confidentiality of records; exceptions. (1) Notwithstanding the provisions of ORS 192.410 to 192.505, the names of the public or private official or any other person who made the complaint, the witnesses and the elderly persons, and the reports and records compiled under the provisions of ORS 124.050 to 124.095, are confidential and are not accessible for public inspection.

(2) Notwithstanding subsection (1) of this section, the Department of Human Services or the department’s designee may, if appropriate, make the names of the witnesses and the elderly persons, and the reports and records compiled under ORS 124.050 to 124.095, available to:

(a) A law enforcement agency;

(b) A public agency that licenses or certifies residential facilities or licenses or certifies the persons practicing in the facilities;

(c) A public agency or private nonprofit agency or organization providing protective services for the elderly person;

(d) The Long Term Care Ombudsman;

(e) A public agency that licenses or certifies a person that has abused or is alleged to have abused an elderly person;

(f) A court pursuant to a court order or as provided in ORS 125.012; and

(g) An administrative law judge in an administrative proceeding when necessary to provide protective services as defined in ORS 410.040 to an elderly person, when in the best interests of the elderly person or when necessary to investigate, prevent or treat abuse of an elderly person.

(3) Information made available under subsection (2) of this section, and the recipient of the information, are otherwise subject to the confidentiality provisions of ORS 124.050 to 124.095.

124.095 Spiritual treatment not abuse. An elderly person who in good faith is voluntarily under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall, for this reason alone, not be considered subjected to abuse by reason of neglect under ORS 124.050 to 124.095.
Chapter 6—Oregon Elder Abuse Reporting Requirements

APPENDIX B
OREGON REVISED STATUTES 2015
PRIVILEGES

40.225 Rule 503. Lawyer-client privilege. (1) As used in this section, unless the context requires otherwise:
   (a) “Client” means a person, public officer, corporation, association or other organization or entity, either public or private, who is rendered professional legal services by a lawyer, or who consults a lawyer with a view to obtaining professional legal services from the lawyer.
   (b) “Confidential communication” means a communication not intended to be disclosed to third persons other than those to whom disclosure is in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.
   (c) “Lawyer” means a person authorized, or reasonably believed by the client to be authorized, to practice law in any state or nation.
   (d) “Representative of the client” means:
      (A) A principal, an officer or a director of the client; or
      (B) A person who has authority to obtain professional legal services, or to act on legal advice rendered, on behalf of the client, or a person who, for the purpose of effectuating legal representation for the client, makes or receives a confidential communication while acting in the person’s scope of employment for the client.
   (e) “Representative of the lawyer” means one employed to assist the lawyer in the rendition of professional legal services, but does not include a physician making a physical or mental examination under ORCP 44.

(2) A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client:
   (a) Between the client or the client’s representative and the client’s lawyer or a representative of the lawyer;
   (b) Between the client’s lawyer and the lawyer’s representative;
   (c) By the client or the client’s lawyer to a lawyer representing another in a matter of common interest;
   (d) Between representatives of the client or between the client and a representative of the client; or
   (e) Between lawyers representing the client.

(3) The privilege created by this section may be claimed by the client, a guardian or conservator of the client, the personal representative of a deceased client, or the successor, trustee, or similar representative of a corporation, association, or other organization, whether or not in existence. The person who was the lawyer or the lawyer’s representative at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the client.

(4) There is no privilege under this section:
   (a) If the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud;
   (b) As to a communication relevant to an issue between parties who claim through the same deceased client, regardless of whether the claims are by testate or intestate succession or by inter vivos transaction;
(c) As to a communication relevant to an issue of breach of duty by the lawyer to the client or by the client to the lawyer;
(d) As to a communication relevant to an issue concerning an attested document to which the lawyer is an attesting witness; or
(e) As to a communication relevant to a matter of common interest between two or more clients if the communication was made by any of them to a lawyer retained or consulted in common, when offered in an action between any of the clients.

(5) Notwithstanding ORS 40.280, a privilege is maintained under this section for a communication made to the office of public defense services established under ORS 151.216 for the purpose of seeking preauthorization for or payment of nonroutine fees or expenses under ORS 135.055.

(6) Notwithstanding subsection (4)(c) of this section and ORS 40.280, a privilege is maintained under this section for a communication that is made to the office of public defense services established under ORS 151.216 for the purpose of making, or providing information regarding, a complaint against a lawyer providing public defense services.

(7) Notwithstanding ORS 40.280, a privilege is maintained under this section for a communication ordered to be disclosed under ORS 192.410 to 192.505.

40.252 Rule 504-5. Communications revealing intent to commit certain crimes.
(1) In addition to any other limitations on privilege that may be imposed by law, there is no privilege under ORS 40.225, 40.230, 40.250 or 40.264 for communications if:
(a) In the professional judgment of the person receiving the communications, the communications reveal that the declarant has a clear and serious intent at the time the communications are made to subsequently commit a crime involving physical injury, a threat to the physical safety of any person, sexual abuse or death or involving an act described in ORS 167.322;
(b) In the professional judgment of the person receiving the communications, the declarant poses a danger of committing the crime; and
(c) The person receiving the communications makes a report to another person based on the communications.

(2) The provisions of this section do not create a duty to report any communication to any person.

(3) A person who discloses a communication described in subsection (1) of this section, or fails to disclose a communication described in subsection (1) of this section, is not liable to any other person in a civil action for any damage or injury arising out of the disclosure or failure to disclose.
APPENDIX C
Selected Oregon Rules of Professional Conduct
(As amended, effective February 19, 2015)

Rule 1.0 Terminology

(f) “Information relating to the representation of a client” denotes both information protected by the attorney-client privilege under applicable law, and other information gained in a current or former professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client.

Rule 1.6 Confidentiality of Information

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

(1) to disclose the intention of the lawyer’s client to commit a crime and the information necessary to prevent the crime;

(2) to prevent reasonably certain death or substantial bodily harm;

(3) to secure legal advice about the lawyer’s compliance with these Rules;

(4) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer’s representation of the client;

(5) to comply with other law, court order, or as permitted by these Rules; or

(6) in connection with the sale of a law practice under Rule 1.17 or to detect and resolve conflicts of interest arising from the lawyer’s change of employment or from changes in the composition or ownership of a firm. In those circumstances, a lawyer may disclose with respect to each affected client the client’s identity. the identities of any adverse parties, the nature and extent of the legal services involved, and fee and payment information, but only if the information revealed would not compromise the attorney-client privilege or otherwise prejudice any of the clients. The lawyer or lawyers receiving the information shall have the same responsibilities as the disclosing lawyer to preserve the information regardless of the outcome of the contemplated transaction.

(7) to comply with the terms of a diversion agreement, probation, conditional reinstatement or conditional admission pursuant to BR 2.10, BR 6.2, BR 8.7 or Rule for Admission Rule 6.15. A lawyer serving as a monitor of another lawyer on diversion, probation, conditional reinstatement or conditional admission shall have the same responsibilities as the monitored lawyer to preserve information relating to the representation of the monitored lawyer’s clients, except to the extent reasonably necessary to carry out the monitoring lawyer’s responsibilities under the terms of the diversion, probation, conditional

Rules of Professional Conduct (Feb 19, 2015)
reinstatement or conditional admission and in any proceeding relating thereto.
(c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.
Changes Due to Normal Aging and Potential for Abuse/Neglect

<table>
<thead>
<tr>
<th>Aging Process Changes</th>
<th>Normal Aging Outcomes</th>
<th>Implications For Potential Abuse</th>
</tr>
</thead>
<tbody>
<tr>
<td>Skin:</td>
<td>Skin becomes paper thin</td>
<td>Immobilization and neglect may cause bedsores, skin infection, bruises, skin laceration (potential for physical abuse)</td>
</tr>
<tr>
<td>Loss of skin thickness</td>
<td>decreased sweating, loss of skin water, dry skin</td>
<td></td>
</tr>
<tr>
<td>Atrophy of sweat glands and decreased blood flow</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Increased wrinkles and laxity of skin</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lung:</td>
<td>Reduced overall efficiency of gases exchanged</td>
<td>Immobilization and neglect may cause lung infection</td>
</tr>
<tr>
<td>Decreased lung tissue elasticity</td>
<td>Reduced ability to handle secretions and foreign particles</td>
<td>Decreased stamina may result in dependence and isolation</td>
</tr>
<tr>
<td>Decreased respiratory muscle strength</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Heart changes:</td>
<td>Decreased blood flow</td>
<td>Potential for falls/injuries, physical and psychological abuse</td>
</tr>
<tr>
<td>Heart valves thicken</td>
<td>Decreased responsiveness to stress, confusion, and disorientation</td>
<td></td>
</tr>
<tr>
<td>Increased fatty deposits in artery wall</td>
<td>Prone to loss of balance</td>
<td></td>
</tr>
<tr>
<td>Increased hardening, stiffening of blood vessels</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Decreased sensitivity to change in blood pressure</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gastric and intestinal:</td>
<td>Altered ability to taste sweet, sour, salt and bitter</td>
<td>Mal/under nutrition</td>
</tr>
<tr>
<td>Atrophy and decreased number of taste buds Decreased gastric secretion</td>
<td>Possible delay in vitamin and drug absorption</td>
<td>Fecal impaction (potential physical abuse)</td>
</tr>
<tr>
<td>Decreased gastric muscle tone</td>
<td>Altered motility</td>
<td>Change in how medications are absorbed, resulting in possible over-medicating, resulting in falls, confusion, etc.</td>
</tr>
<tr>
<td></td>
<td>Decreased peristals</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Decreased hunger sensations and emptying time</td>
<td></td>
</tr>
</tbody>
</table>
### Aging Process Changes

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<tr>
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<th>Implications For Potential Abuse</th>
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</thead>
<tbody>
<tr>
<td><strong>Bladder:</strong></td>
<td></td>
</tr>
<tr>
<td>Decreased bladder muscle tone and bladder capacity</td>
<td>Increased residual urine Sensation of urge to urinate may not occur until bladder is full Increased risk of infection, stress incontinence Urination at night may increase Enlarged prostate gland in male</td>
</tr>
</tbody>
</table>

| **Muscles, joint, and bone:** |  |
| Decreased muscle mass | Decreased muscle strength and increased muscle clamping Greater risk of fractures; limitation of movement; Potential for pain | Immobilization and neglect may cause contracture deformities (potential for physical and psychological abuse) Increased potential for falls More likely to fracture under less impact than a bone of a younger person Less strength resulting in increased isolation and dependence on caregiver |
| Deterioration of joint cartilage |  |
| Decreased bone mass |  |
| Decreased processing speed and vibration |  |
| Decreased nerve fibers |  |

| **Sensory:** |  |
| Changes in sleep-wake cycle | Increased or decreased time spent sleeping Increased nighttime awakenings Delayed reaction time Prone to falls Increased possibility of disorientation glare may pose an environmental hazard Incorrect assessment of height of curbs and steps Presbyopia (diminished ability to focus on near objects) Presbycusis (high frequency sounds lost) Less able to differentiate lower color tones e.g. blues, greens Dullness and dryness of the eyes Decreased ability to sense pressure, pain, temperature | Neglect and social isolation (potential for financial abuse) Falls, fractures, and injuries (potential for physical and psychological abuse) |
| Slower stimulus identification and registration |  |
| Decreased visual acuity |  |
| Slower light and dark adaptation |  |
| Difficulty in adapting to lighting changes |  |
| Distorted depth perception |  |
| Impaired color vision |  |
| Changes in lens |  |
| Diminished tear secretion |  |
| Decreased tone discrimination |  |
| Decreased sensitivity to odors |  |
| Reduced tactile sensation |  |

<p>| <strong>Immune system:</strong> |  |
| Decline in secretion of hormones | Decreased resistance to certain stresses (burns, surgery, etc.) Increased susceptibility and incidence of infection Increased incidence of obesity | Bedsores Infections Fractures Isolation Dependence |
| Impaired temperature regulation |  |
| Impaired immune reactivity |  |
| Decreased basal metabolic rate |  |</p>
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</tr>
</thead>
<tbody>
<tr>
<td><strong>Mental and cognitive:</strong></td>
<td>Short-term memory declines but long-term recall is usually maintained. Difficulty understanding abstract content. Learning abilities change—older adults are more cautious in their responses; are capable of learning new things but their speed of processing information is slower.</td>
<td>Potential for financial abuse and exploitation. Increased risk for self-neglect.</td>
</tr>
</tbody>
</table>

**Source:** California State University, Los Angeles, School of Social (2003). Adult Protective Services Worker Training for the California State University Department of Social Services.
MANDATORY ELDER ABUSE REPORTING FOR OREGON LAWYERS

Mark Johnson Roberts
Deputy General Counsel
Oregon State Bar

Amber A. Hollister, General Counsel

BROOKE ASTOR

• Philanthropist
• Writer
• Beloved NYC Socialite
• Widow of Vincent Astor
• $200 million estate
Chapter 6—Oregon Elder Abuse Reporting Requirements

778 Park Avenue

ATTORNEYS’ ABUSE REPORTING DUTIES

- ELDERS
- CHILDREN
- MENTAL ILLNESS/DEVELOPMENTAL DISABILITY
- LONG-TERM CARE RESIDENT
OREGON’S CHANGING DEMOGRAPHICS

- Over 50,000 Oregonians turn 65 each year.
- Oregonians have 15 expected “healthy” years beyond age 65.
- About 600,000 people in 2015; about 900,000 in 2020.
- In 2030, an estimated 20 percent of Oregonians will be 65 or older.

ELDER ABUSE REPORTERS

- Physicians, Dentists, Optometrists, Chiropractors, and Nurses
- Audiologists and Speech Pathologists
- Police Officers and Firefighters
- Department of Human Services and Oregon Health Authority Workers
- Owners and Employees of Adult Foster Care Facilities
- Clergy, Social Workers, Psychologists, Counselors, and Psychotherapists
- Physical, Speech and Occupational Therapists
- Senior Center Workers and Information and Referral or Outreach Workers
- Members of the Legislative Assembly
- Attorneys
LEGISLATIVE PURPOSE

“The Legislative Assembly finds that for the purpose of preventing abuse, safeguarding and enhancing the welfare of elderly persons, it is necessary and in the public interest to require mandatory reports and investigations of allegedly abused elderly persons.”

ORS 124.055

REPORTED ABUSE IN OREGON

2015
- Reports: nearly 43,000
- Investigations: 19,041
- More than half living in the community
- Over 4,000 in licensed settings
- Findings of abuse: 4,215
WHERE DOES ABUSE OCCUR?

- 66% at home
- 34% care facility

YOUR ELDER ABUSE REPORTING DUTY

You must report elder abuse if you have
- Contact with an Elder or an Abuser and
- Reasonable Cause to Believe that
- A person 65 or Older
- Has Been Abused,

UNLESS an exception applies.

This duty exists 24 hours a day, 7 days a week.
WHAT IS CONTACT?

- A touching or meeting; association or relationship
- Need not be to be linked to abuse BUT there must be physical or associational contact
- Receiving information in a public meeting about someone is not sufficient (AG opinion)
- Telephone or email contact?
- Can be before or after the abuse or the disclosure
THE BROOKE ASTOR STORY: CONTACT

- Surrounded by staff, nurses and family
- Beloved donor and board member
- Appears that her son was abusing her, neglecting her and taking her money, all along.
- Mrs. Astor Regrets chronicles her abuse based on her nurses’ diaries
Chapter 6—Oregon Elder Abuse Reporting Requirements

WHAT IS REASONABLE CAUSE?

• Any reasonable suspicion of abuse should be reported.
• Reasonable suspicion is more than a hunch.
• It requires an ability to point to articulable facts based on the totality of the circumstances.
• Your obligation to report does not depend upon whether abuse actually occurred.

THE BROOKE ASTOR STORY

• Mrs. Astor was diagnosed with Alzheimer’s and anemia
• Anthony “Tony” Marshall, her only son, was tasked with her care
• Anthony earned $450,000/yr to take care of her portfolio
BROOKE ASTOR: REASONABLE CAUSE?

• Phillip Marshall, Mrs. Astor’s grandson, sought a change in guardianship
• Phillip alleged that despite her great wealth Mrs. Astor was living in squalor and his father Anthony had reduced her necessary medication and doctor’s visits

What is Abuse?
FINANCIAL EXPLOITATION

- Wrongfully taking* the property of an elderly person
- Alarming an elderly person by a threat to take property
- Misappropriating money from any account (even joint)
- Failing to use income or assets effectively for support and maintenance of person

*“including, but not limited to, deceit, trickery, subterfuge, coercion, harassment, duress, fraud, or undue influence” (OAR 411-020-0002(1)(e))

ABANDONMENT OR NEGLECT

- Desertion for any period of time
- Failure to provide basic care or services
- May be active or passive (OAR 411-020-0002(1)(b)(A)(i))
- Religious exception, ORS 124.095
VERBAL ABUSE

- Threat of significant harm
- Derogatory or inappropriate names, insults, verbal assaults, profanity, ridicule
- Harassment, coercion, threats, intimidation, humiliation, mental cruelty, inappropriate sexual comments
- Victim's comprehension immaterial (OAR 411-020-0002(1)(d)(B)(i))

PHYSICAL ABUSE

- Physical injury caused by other than accidental means, or apparently inconsistent with the explanation given for it.
- Willful infliction of physical pain or injury
- Includes force-feeding and all physical punishments (OAR 411-020-0002(1)(a)(B)(ii))
- Presumed to injure the non-responsive (OAR 411-020-0002(1)(a)(C))
SEXUAL ABUSE

- Enumerated sex crimes
- Sexual contact without consent
- Sexual harassment
- Sexual exploitation
- Sexual contact with (non-spouse) employee of a paid facility or caregiver
- BUT NOT with the paid caregiver themselves

SECLUSION & RESTRAINT

- Involuntary seclusion for convenience or discipline
- Wrongful use of a physical or chemical restraint
Chapter 6—Oregon Elder Abuse Reporting Requirements

**WARNING SIGNS**

- Unexplained injury or one that doesn’t fit the explanation given for it
- Elder not permitted to speak for themselves or without the presence of others.
- Being extremely withdrawn and non-communicative or non-responsive.
- Unpaid bills, overdue rent, utility shut-off notices

**2015 SUBSTANTIATED ABUSE**

- Financial: 30%
- Neglect: 29%
- Physical: 13%
- Verbal: 22%
- Sexual: 2%
- Other: 4%
Exceptions to Reporting

EXCEPTIONS: CERTAIN CLIENT CONFIDENCES

- Attorney-Client Privileged under ORS 40.225 (OEC 503) OR
- Information communicated during representation that is detrimental to client if disclosed (reconciles RPC 1.6 duty)
Chapter 6—Oregon Elder Abuse Reporting Requirements

Lawyer Confidences—RPC 1.6
[Information relating to the representation of a client]

A/C Privileged

Likely Detrimental

Secrets

Embarrassing

Reporting Never Required

Reporting Always Required
Chapter 6—Oregon Elder Abuse Reporting Requirements

May I Report? Yes, if:

- Informed Consent
- Implied Authorization
- Client Intends to Commit Crime
- Prevent Death or Injury

**EXCEPTION:**

**SPIRITUAL TREATMENT**

- Voluntary
- Through prayer
- Recognized church
- Duly accredited practitioner
Chapter 6—Oregon Elder Abuse Reporting Requirements

How to Report

- Immediately = without delay
- To DHS or law enforcement
- Oral report required
- Give as much as information as possible
- Explain allegation of abuse

**Reporting Hotline:**
1-855-503-SAFE

Or call DHS Branch Offices
REPORT SHOULD INCLUDE ...

- Names and addresses
- Nature and extent of abuse
- Explanation given for the abuse
- Cause of abuse and identity of perpetrator.

BEHIND THE SCENES

- Screening
- Investigation and Evaluation (Substantiated, Unsubstantiated, Inconclusive)
- Follow up with Reporter
- Possible Law Enforcement Involvement
THE BROOKE ASTOR STORY: CONSEQUENCES

- The jury convicted Anthony Marshall of one charge of grand larceny and Francis X. Morrissey Jr. of forgery.
- Both were sentenced to 1-3 years in prison.
- On February 10, 2010, Francis X. Morrissey Jr. was disbarred.

COMMUNITY-BASED COMPLAINT OUTCOMES (2013) (~8000 COMPLAINTS)

<table>
<thead>
<tr>
<th>2013 Outcomes</th>
<th>Incidence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Risk reduced</td>
<td>673</td>
</tr>
<tr>
<td>Victim declined intervention</td>
<td>442</td>
</tr>
<tr>
<td>Issue resolved</td>
<td>429</td>
</tr>
<tr>
<td>Referred to District Attorney</td>
<td>369</td>
</tr>
<tr>
<td>Accepted services</td>
<td>235</td>
</tr>
<tr>
<td>Entered care setting</td>
<td>223</td>
</tr>
<tr>
<td>Guardian / Conservator appointed</td>
<td>112</td>
</tr>
<tr>
<td>Victim deceased</td>
<td>56</td>
</tr>
<tr>
<td>Moved out of the area</td>
<td>42</td>
</tr>
<tr>
<td>Services not available</td>
<td>35</td>
</tr>
</tbody>
</table>
Chapter 6—Oregon Elder Abuse Reporting Requirements

IMMUNITY & ANONYMITY

<table>
<thead>
<tr>
<th>Immunity</th>
<th>Anonymity</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Report made in good faith</td>
<td>• Anonymous reports accepted but not</td>
</tr>
<tr>
<td>• Reasonable grounds</td>
<td>preferred</td>
</tr>
</tbody>
</table>

CONSEQUENCES

- Class A violation (fine)
- Failure to perform duties of office
- Tort liability
- Not generally an ethics violation
HYPOTHETICAL NO. 1

You are representing Pat, a 69 year old woman, in a dissolution. You notice that there are large withdrawals from Pat’s savings account. Pat explains that her niece Jane has been taking care of her for the past year, and that she writes Jane regular checks to help pay for groceries. The checks total $30,000. You share this information with Pat and she is shocked that the number is so high. You know that Pat has been experiencing some mild dementia and is under the care of a doctor. Pat is adamantly that she loves Jane and doesn’t want to do anything about it. Do you have a duty to report elder abuse?

HYPOTHETICAL NO. 2

At a hot yoga class, your yoga buddy Sam mentions that she is worried about her 71-year-old mother, Sally. Sam explains that Sally is at home recovering from a knee replacement. Sam visited Sally yesterday and she had not bathed for two weeks and complained she had missed several doctor’s appointments. Sam’s sister, Amanda, is being paid about $750 a month by the state to take care of Sally, but Sam thinks Amanda may be using the money to improve her shoe collection. You remember meeting Sally at a yin yoga class a few months ago, prior to her surgery. Do you have a duty to report?
HYPOTHETICAL NO. 3

Your neighbor Jack approaches you while you are raking leaves on a beautiful fall day. Jack is concerned that his brothers are bilking his father John for free vacations and new cars. Jack explains that his father has been despondent after the death of his wife of 50 years, and seems to have lost all of his zest for life. Jack says he is upset because he feels like his family is taking advantage of his father when he is mired in grief. Do you have a duty to report elder abuse?
Chapter 7
Resources on Guardianship, Conservatorship, and Other Options

Penny L. Davis
Davis Pagnano McNeil & Vigna LLP
Portland, Oregon

Contents

Publications ................................................................. 7–1
Sources for Finding a Guardian or Conservator in Oregon ....................... 7–3
State Agencies Providing Services to Elders, People with Disabilities, and Their Families .... 7–5
Statewide Organizations Providing Services to Elders, People with Disabilities, and Their Families ..................................................... 7–7
Additional Resources .................................................... 7–8
RESOURCES ON GUARDIANSHIP, CONSERVATORSHIP, AND OTHER OPTIONS

PUBLICATIONS:

Advance Directives (Living Wills)

Assessment of Older Adults with Diminished Capacity: A Handbook for Lawyers

Elder Law

FAQs About Representative Payees

Guardianship Handbook: Protective Proceedings for Adults

Guardianship in Oregon Explained in Brief for Medical and Other Care Professionals
Oregon Department of Human Services State Unit on Aging (2014). Available online at http://tinyurl.com/yb7s9wvp

Guardianships, Conservatorships, and Transfers to Minors

Help for Court-Appointed Guardians of Property and Conservators

Help for Representative Payees and VA Fiduciaries

Helping Memory-Impaired Elders: A Guide for Caregivers
Chapter 7—Resources on Guardianship, Conservatorship, and Other Options

*Ley de Salud Mental en Oregon*

*Manual de Tutela Procesos Judicial de Protección para Adultos*
Disability Rights Oregon (3rd edition in Spanish, 2009). Available online at
http://droregon.org/wp-content/uploads/Manual-de-Tutela-Procesos-Judiciales-de-Protecci%C3%B3n-para-Adultos.pdf

*Mental Health Law in Oregon*

*Options in Oregon to Help Another Person Make Decisions: Guardianship, Conservatorship, and Other Options in Oregon*
Oregon Department of Human Services State Unit on Aging (2015). Available online at
https://apps.state.or.us/cf1/DHSforms/Forms/Served/se0502.pdf

*Oregon Advance Directive for Health Care*
Explanatory materials about the difference between an advance directive and Physician Orders for Life-Sustaining Treatment (POLST) and the statutory advance directive form available online at http://oregonpolst.org/advance-directives/. Advance Directive for Health Care forms are available from most hospitals and health plans and from many health care providers.

*Oregon Declaration for Mental Health Treatment*
Explanatory materials about the Declaration for Mental Health Treatment and the statutory form available online at http://www.oregon.gov/oha/HSD/AMH/Forms/Declaration.pdf. Declaration for Mental Health Treatment forms are available from some health plans and mental health providers.

*The Oregon Fiduciary’s Handbook*
Estate Planning Council of Oregon (2013). To order, go to

*Powers of Attorney and Other Decision-Making Tools*
Oregon State Bar (2014). Available online in many languages at

*PRACTICAL Tool for Lawyers: Steps in Supported Decision-Making*
American Bar Association (2016). Available online at
https://www.americanbar.org/groups/law_aging/resources/guardianship_law_practice/practical_tool.html
Representantes de beneficiarios del Seguro Social
Disability Rights Oregon (Spanish edition, date unknown). Available online at

Revocable Living Trusts
Oregon State Bar (2016). Available online in many languages at

Social Security Administration Representative Payee Program
Explanatory materials and forms available online at www.ssa.gov/payee/

U.S. Department of Veterans Affairs (VA) Fiduciary Program
Explanatory materials and forms available online at www.benefits.va.gov/fiduciary/

Your First Year as Guardian
Oregon Department of Human Services State Unit on Aging (2014). Available online at
https://apps.state.or.us/cf1/DHSforms/Forms/Served/se0559.pdf

SOURCES FOR FINDING A GUARDIAN OR CONSERVATOR IN OREGON:

Guardian/Conservator Association of Oregon
PO Box 2587
Oregon City OR 97045
www.gcaoregon.org

GCA Oregon is a non-profit membership organization for professional guardians, conservators, trustees, attorneys, and those who work in related fields. The website includes a member directory which can be searched by name, location, types of services provided, and certification.

Oregon Bankers Association
PO Box 13429
Salem, OR 97309-1429
Phone: 503-581-3522
www.oregonbankers.com

OBA is a non-profit trade association representing state and national banks and trust companies doing business in Oregon. Some trust companies and bank trust departments will serve as conservator and/or guardian.
Oregon Public Guardian
3855 Wolverine St NE, Suite 6
Salem, OR 97305
Phone: 503-378-6848 or toll-free 1-844-656-6774
http://www.oregon.gov/LTCO/Pages/Oregon-Public-Guardian.aspx
Legislation establishing the statewide Oregon Public Guardian was enacted in 2014. The program has limited capacity to provide direct services. Its priority is serving individuals over the age of 18 who are experiencing severe and current abuse or neglect or profound self-neglect with life threatening issues.

Oregon Department of Veterans’ Affairs (ODVA) Conservatorship Program
Conservatorship Manager
700 Summer St NE
Salem, OR 97301-1285
Phone: 503-373-2085 or 800-692-9666
http://www.oregon.gov/odva/BENEFITS/Pages/conservatorship.aspx
The ODVA Conservatorship Program serves veterans, their surviving spouses, minor children or helpless adult children of veterans, and dependent parents.

The Arc Oregon Guardianship, Advocacy, and Planning Services (GAPS)
2405 Front Street NE #120
Salem, OR 97301
Phone: 503-581-2726
www.thearcoregon.org/what%1ewe%1edo/gaps/
GAPS is a non-profit statewide guardianship program which provides guardianship services, advocacy services, and appointed health care representative services for individuals with intellectual and developmental disabilities.

Impact NW Senior Guardianship Assistance Program
PO Box 787
Forest Grove, OR 97116
Phone: 503-357-7520
www.impactnw.org
This program operated by Impact NW (a non-profit organization) provides money management, representative payee services, and guardianship and conservatorship services to a limited number of vulnerable seniors in Washington, Clackamas, and Multnomah counties.
Senior Citizens Council of Clackamas County
PO Box 1777
Oregon City, Oregon 97045
Phone: (503) 657-1366
www.seniorcitizenscouncil.com
This non-profit organization provides guardianship diversion services (such as money management) and guardianship and conservatorship services to a limited number of at-risk individuals in Clackamas County.

Jackson County Public Guardian
Center for NonProfit Legal Services, Inc.
PO Box 1586
Medford, OR 97501
Phone: 541-779-7291
www.cnpls.org/who%1edo%1ewe%1eserve/
The Center for NonProfit Legal Services has a contract with Jackson County to serve as the county's public guardian. The program accepts a limited number of cases referred by local agencies and concentrates on protecting individuals in the greatest need who have no one else willing and able to serve as guardian.

Multnomah County Public Guardian
421 SW Oak Street, Suite 510
Portland, OR 97204-0000
Phone: 503-988-4567
www.multco.us/ads/public%1eguardian%1eprogram
The Multnomah County Public Guardian is a publically funded program which provides guardianship and conservatorship services for a limited number of mentally incapacitated persons in the county who are unable to care for themselves and who are at high risk due to abuse, exploitation, or extreme self-neglect. The public guardian is appointed only when there is no one else who is willing and able to serve as guardian and/or conservator.

STATE AGENCIES PROVIDING SERVICES TO ELDERS, PEOPLE WITH DISABILITIES, AND THEIR FAMILIES:
Long-Term Care Ombudsman
3855 Wolverine NE, Suite 6
Salem, OR 97305
Phone: 503.378.6533 or 800.522.2602
http://www.oregon.gov/Ltco/Pages/index.aspx
The Office of the Long-Term Care Ombudsman uses staff and certified volunteer ombudsman to advocate, investigate complaints, and resolve concerns for residents of nursing facilities, residential care facilities, assisted living facilities and adult foster care homes. The complaint or concern may involve resident care, medications, billing, lost property, meal quality, eviction, guardianship, dignity and respect, or care plans.
Oregon Department of Human Services, Aging and People with Disabilities
500 Summer St. NE
Salem, OR 97301
Phone: 503-945-5600
http://www.oregon.gov/DHS/Pages/index.aspx

DHS Aging and People with Disabilities (sometimes called Seniors and People with Disabilities) provides information and a variety of services for seniors, people with physical disabilities, and people with intellectual and developmental disabilities. Most services are provided through local APD and Area Agency on Aging offices and county Community Developmental Disability Programs. DHS APD is responsible for receiving and investigating reports of abuse and neglect of elders and people with disabilities. DHS also licenses long term care facilities and investigates complaints about those facilities.

Oregon Department of Human Services

Aging and Disability Resource Connection of Oregon
Phone: 855-673-2372
https://www.adrcoforegon.org/consite/index.php

ADRC offers information and counseling as part of a public-private partnership to help consumers navigate the complicated aging and disability services delivery system.

Oregon Department of Veterans’ Affairs (ODVA)
700 Summer St NE
Salem, OR 97301-1285
Phone: 503-373-2085 or 800-692-9666

Accredited Veteran Service Officers (VSO) with ODVA, local counties, and national service organizations answer questions about state and federal VA benefits and assist with applications.

Oregon Health Authority Addictions and Mental Health Services
500 Summer Street NE
Salem, OR 97301-1079
Phone: 503-945-5763
http://www.oregon.gov/oha/HSD/AMH/Pages/index.aspx

Addictions and Mental Health Services provides treatment services to children and adults through Community Mental Health Programs and the Oregon State Hospital. Information about the Oregon State Hospital is available at www.oregon.gov/oha/OSH/Pages/index.aspx.
Oregon Senior Health Insurance Benefits Assistance (SHIBA) Program

P.O. Box 14480
Salem, OR 97309
Phone: 800-722-4134
http://www.oregon.gov/dcbs/shiba/Pages/index.aspx

This program operated by the state Department of Consumer and Business Services uses staff and trained volunteers to provide information and counseling about Medicare and Medicare supplement insurance, including Medicare Advantage plans and Part D prescription drug plans. SHIBA publishes the annual Oregon Guide to Medicare Insurance Plans, which is available online on the program's website.

STATEWIDE ORGANIZATIONS PROVIDING SERVICES TO ELDERS, PEOPLE WITH DISABILITIES, AND THEIR FAMILIES:

Alzheimer's Association Oregon Chapter

24/7 Helpline: 800-272-3900
www.alz.org/oregon

The Alzheimer's Association Oregon Chapter is a non-profit organization with offices in Bend, Eugene, Medford, Salem, and Portland providing education and support programs and advocacy for individuals with Alzheimer's Disease and related dementias and their families and caregivers.

Autism Society of Oregon

5100 SW Macadam Avenue, Suite 400
Portland, OR 97239
Phone: 888-288-4761
www.autismsocietyoregon.org

The non-profit Autism Society of Oregon provides resources, education, advocacy, and support to individuals and families living with autism.

Brain Injury Alliance of Oregon

Phone: 800-544-5243
www.biaoregon.org

The Brain Injury Alliance of Oregon is a non-profit organization which provides advocacy, education, and support groups around the state for individuals with brain injuries and their families. Some support groups are for people who have experienced strokes.

National Alliance on Mental Illness Oregon (NAMI)

4701 SE 24th Ave. Ste. E
Portland, OR 97202
503-230-8009
www.namior.org

NAMI Oregon is a non-profit organization with 15 local chapters providing education and support programs and advocacy for individuals living with mental illness and their families.
The Arc Oregon
2405 Front Street NE, Suite #120
Salem OR 97301
Phone: 503-581-2726
www.thearcoregon.org/what%1ewe%1edo/gaps/

The Arc Oregon is a non-profit organization with 11 local chapters providing education and support programs and advocacy for individuals with intellectual and developmental disabilities and their families.

ADDITIONAL RESOURCES:

Aging Life Care Association
3275 W. Ina Road, Suite 130
Tucson, AZ 85741-2198
Phone: 520-881-8008
http://www.aginglifecare.org/

Aging Life Care Association (formerly the National Association of Professional Geriatric Care Managers) is a national non-profit membership organization for geriatric care managers. The website includes a member directory which can be searched by location and name.

Oregon ABLE Savings Plan
State Treasury
350 Winter Street NE, Suite 100
Salem, OR 97301
Phone: 1-844-999-ABLE or (503) 373-1903
http://oregonablesavings.com/

Created as a result of the Achieving a Better Life Experience Act (ABLE Act) of 2014, ABLE accounts allow individuals who became disabled before age 26 to save for future disability-related expenses without the assets counting against the resource limits for SSI, Medicaid, and other needs-based government benefits.

Special Needs Alliance
7739 E. Broadway Blvd. #362
Tucson, AZ 85710
Phone: 877-572-8472
http://www.specialneedsalliance.org/

The Special Needs Alliance is made up of attorneys who advise individuals with disabilities, their families, and the professionals who work with them about public benefits, planning for disabilities, guardianships and conservatorships, and special education issues. SNA publishes *Administering a Special Needs Trust: A Handbook for Trustees* in English and in Spanish. The free handbook can be downloaded from the website.
True Link Financial, Inc.

PO Box 581
San Francisco, CA 94104
Phone: 866-984-8576
www.truelinkfinancial.com/card/true%1elink%1ecard

True Link Financial, Inc., offers a customizable prepaid VISA card for a monthly fee. A fiduciary or other person who sets up a True Link card can specify transaction limits, limit ATM withdrawals, block or allow specific stores or businesses or categories of businesses, and prevent online or over-the-phone use.