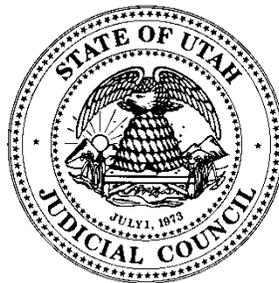




Utah State Courts

Volunteer Court Visitor Program
Excusing Respondent from the Hearing



October 1, 2012

(1) Acknowledgments

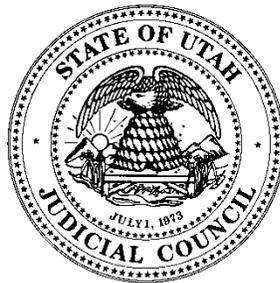
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Contributors to that manual are not included here.

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(2) Message from the chief justice

Congratulations on becoming a court visitor, and thank you. You have embarked on what I hope will be a personally rewarding experience. You will be helping the court to appoint and monitor guardians of incapacitated adults. Your contribution of time and effort will make a real difference to the court, to the guardians responsible for vulnerable adults, and to the vulnerable adults themselves.

The court has prepared this series of manuals to introduce you to the world in which people under guardianship live and to serve as a continuing resource as you do your work.

Your contributions will improve the lives of incapacitated adults in our community, provide information on which the judge can base decisions, teach guardians to perform their duties with integrity, and protect incapacitated adults from abuse, neglect and exploitation.

The Utah courts value your important contributions. Again, thank you.

A handwritten signature in black ink, appearing to read 'Matthew B. Durrant', with a long horizontal line extending to the right.

Matthew B. Durrant
Chief Justice, Utah Supreme Court
Presiding Officer, Utah Judicial Council

Volunteer Court Visitor Program: Excusing Respondent from the Hearing

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(3) Role of the court visitor

If the petitioner proposes that the respondent not attend the hearing, either the petitioner must present clear and convincing evidence that the respondent:

- has fourth stage Alzheimer's Disease;
- is in an extended coma; or
- has an intellectual disability with IQ under 25.

Or the court must order an investigation by a court visitor.

The volunteer court visitor's role is to observe and report on the ability of the respondent to attend the hearing. Whether the respondent is incapacitated is not an issue at this point. The visitor will interview the respondent and the proposed guardian and perhaps others and observe the respondent's circumstances. The inquiries are similar to those made for the purpose of monitoring the guardianship once it has been established, but the scope of the inquiry is much more limited.

(4) Volunteer's Manual for the Protected Person's Well-being

Because many of the inquiries about the respondent attending the hearing are similar to the inquiries for monitoring the guardianship, much of the information in the Volunteer's Manual for the Protected Person's Well-being will be helpful to you. Please take the time to review it.

The sections in that manual of who you will see, their limited functioning, and the conditions in which they live will apply.

The section on abuse, neglect, self neglect, and sexual and financial exploitation also is relevant because you may witness something that must be reported to law enforcement or Adult Protective Services.

Review as well the sections on personal safety and effective communication because both will apply, although the nature of the questions and inquiries are described more fully in this manual

(5) Checklist

- (1) Receive the certified copy of the order assigning you as visitor from the program coordinator. Some people whom you interview or interact with may want a copy of the assignment order. You may make copies of the assignment order to show or leave with them.
- (2) Review the court records for the essential documents and information:
 - respondent's name, age and location; case number
 - proposed guardian's name and contact information
 - name and contact information of interested parties

- petition for appointment
 - physician's or other clinical statement; note any medications being taken, any treatments ordered, and any assistive devices ordered
- (3) You may make personal notes about the case to take with you, but court records may never be removed from the courthouse. Records must not be written on or changed in any way. If you need a document from a file, you may consult with the court clerk to determine whether a copy of the document may be made.
 - (4) Be sure to protect your notes and copies of any court records. Do not leave them where someone else can see them or take them. Be sure to return them to the Program Coordinator for shredding after you have filed your report. Guardianship records are private so do not show documents to anyone else, other than the order assigning you as a visitor.
 - (5) The Program Coordinator will mail or email to the proposed guardian a letter signed notifying the proposed guardian that you will be in contact to schedule interviews and the purpose of the interviews.
 - (6) Contact the proposed guardian to explain your role and set up an appointment for a visit to interview the proposed guardian, the respondent, and anyone else who may have information about the respondent's ability to attend the hearing. If the person lives in a nursing home, assisted living, or a group home, contact and make appointments with key staff, such as a floor nurse or social worker. Contact and make appointments with anyone else described in the judge's order. When you have scheduled appointments, e-mail the program coordinator so s/he knows when you are going and where you are.
 - (7) If the person to be interviewed has a lawyer, notify the lawyer that you will be interviewing their client.
 - (8) Ask for the proposed guardian's guidance about visiting and communicating with the respondent. If the proposed guardian is antagonistic or threatening, let the program coordinator know immediately.
 - (9) Print a blank report form: Visitor's Report on Request to Excuse Respondent from the Hearing under Section 75-5-303. Fill in the basic information about the case.
 - (10) Based on the judge's order assigning you and the report form that you will be completing, think about the interview questions you will ask the respondent, the proposed guardian, and any others. The actual interviews may deviate substantially, but it is good to have thought about how the interviews will proceed. It is important to focus on actively engaging the interviewees and being flexible during the interview.

- (11) When arriving for the visit, show a copy of the order assigning you as visitor. Keep the original with you and leave a copy if the person wants a copy.
- (12) Take the time to thoroughly interview the guardian, the respondent, caregivers and others as the judge might have directed. See the communication tips found in this manual. Take good notes. Interview the respondent privately if possible.
- (13) If the visit is at a nursing home or assisted living facility, review the medical records to verify facts or to get additional information. You may see only a limited part of the record in hard copy. Ask to see electronic files, including incident reports.
- (14) If you observe abuse, neglect, self neglect, or exploitation, contact law enforcement or Adult Protective Services, as appropriate, and notify the program coordinator as well. Include the observations in your report to the court.
- (15) Using your notes from the interviews, complete the report form as soon as possible and submit it to the Program Coordinator. The coordinator will file it with the court that assigned you and mail a copy to all of the parties.
- (16) Schedule a meeting with the Program Coordinator to discuss the case and your report. Ask whether specific follow-up has occurred or will occur.
- (17) Unless you are told otherwise, plan on attending the hearing. You may be called upon to testify at the hearing. Although guardianship records are private, most guardianship hearings are public.

(6) Interview questions and strategy

What will your interview with the protected person and the guardian be like? What questions should you ask? A careful review of the Visitor's Report on Interviews and Observations, along with the court order assigning you and the specific information in the case file, will suggest questions to keep in mind. Review of the case file will provide a solid basis for your interviews and will help in gaining respect and confidence of the interviewees.

Below are some starters to tailor to the case at hand. Think about such questions, but it is important not to simply read from your list, but use it as an outline or reminder. The key is to engage the interviewees, develop a free-flowing dialogue, and keep the big picture in mind. Aim to develop a conversational interview style and be creative when asking questions.

(a) Ideas for talking with the protected person

- “My name is _____ and I’m here because GG has requested that you have a guardian.”
- Do you know what a guardian will do for you?
- There will be a hearing to decide whether to appoint _____ as your guardian. Do you want to go to the hearing at the courthouse?
- What is your full name?
- What is your address?
- What is your phone number?
- What is your date of birth?
- What is today’s date?
- **Make Observations:**
 - Example: Oh, this is a nice picture; tell me about it.
- Tell me about your family.
- Who lives here with you?
- Who comes to visit you?
- What are you going to do today?
- Do you see the doctor? What for?
- If you need to go somewhere, how do you get there?
- Is there anything you would like me to tell the court?
- Is there someone else I should talk to?

(b) Ideas for talking with the potential guardian

- Tell me about PP
- How frequently do you see him/her?
- What services is PP getting?
- Can you comment on the quality of care at the nursing home/assisted living where PP is living? Have there been any problems?
- What are your plans for PP in the coming year?
- What medical problems does PP have, who are the physicians, and what is the treatment plan?
- Do you have any questions or comments for the court?