

TEXAS YOUNG LAWYERS ASSOCIATION
AND STATE BAR OF TEXAS

The Court Visitor Program in Texas



The Court Visitor Program in Texas



Prepared and distributed as a Public Service

by the

Texas Young Lawyers Association

and the State Bar of Texas

2014

Special Thanks to

Rebekah Steely Brooker, TYLA President-Elect

Steven Hallbauer, Committee Member

Jason Lemons, Committee Member

David Mead, Committee Member

and the

The Dallas Association of Young Lawyers Elder Law Committee

For more information: www.texaslawhelp.org



TABLE OF CONTENTS

INTRODUCTION	1
THE COURT VISIT: WHAT TO LOOK FOR.....	2
THE COURT VISIT: INTERVIEWING THE WARD	3
THE COURT VISIT: INTERVIEWING THE GUARDIAN	4
FILLING OUT THE COURT VISITOR REPORT	5
SUMMATION	6

INTRODUCTION

This pamphlet is a guide for how to complete a visit to a ward that is subject to a court-approved guardianship. The Texas Young Lawyer's Association (TYLA) created this pamphlet so that attorneys and other individuals will understand the basic requirements and procedures for completing a court visit. TYLA encourages you to contact the probate court in your county to see how you can be of further assistance. If there is no statutory probate court in your county, you can contact the district clerk for information on the county's guardianship coordinator. Thank you for choosing to get involved in this important responsibility.

So, why do we need court visitors? The Texas Probate Code requires that all wards be checked on by the Court once a year. Because of limited resources available to complete this requirement, the responsibility often falls to volunteers who are willing to assist. There are only eleven counties in Texas with statutory probate courts, so often courts with general jurisdiction undertake this responsibility. This pamphlet was created so that those attorneys who are willing to assist with this process have access to a quick resource.

The first step in completing a Court Visit is to contact the individual in charge of coordinating the county's court visit program. Larger counties are more likely to have a Probate Court Investigator's Office, which is where you should begin. In smaller counties, where there are only courts of general jurisdiction, you will need to inquire with the district clerk's office as to the individual in charge of ward visits for the county. When you meet with the program coordinator, you will want to explain why you are interested in volunteering for this responsibility, state that you have reviewed this pamphlet, and ask about what further requirements are needed from you for that particular county and coordinator. Once you have completed these prerequisites, you are ready to conduct your first Court Visit.

The Court Visitor program coordinator will assign you a ward to visit and provide a case file. The case file is the best source of preliminary information about the ward and the guardian – it will contain basic information about the ward and will include the annual report which the guardian must submit to the court. Review the file and see if you have any preliminary questions for the coordinator before you start the process of arranging a visit.

The next step is to contact the guardian to arrange a visit. If the ward lives with the guardian, call the guardian to set a time for your visit. If the ward lives in a group home or nursing facility, contact the facility to ask about appropriate visiting times. When the ward is in a facility, it is possible that your visit may end up being unannounced.

Many wards participate in day programs, so be sure to set a time when you can visit with the ward and observe them in their living environment. As a reminder, it is always important to be respectful of the ward and guardian's schedules and routines.

Likewise, it is important to keep your safety in mind during a visit. Some wards may exhibit aggressive or inappropriate behavior. If the guardian is available and appears to know how to handle this type of behavior, follow the guardian's lead. Make sure you remain aware of your surroundings and know where exits are at all times. If your visit takes place at a nursing facility, stay out of any area that is marked "MRSA," which is a warning for very infectious and difficult to treat bacteria.

THE COURT VISIT: WHAT TO LOOK FOR

One of the first things you should do on your court visit is examine the ward's living environment and his or her health and well-being. Some of the things you should try to observe or ask about include:

- 1) Are the ward's basic needs being satisfied? For example, does the ward have bedding and clothes? And is the ward's clothing reasonably weather appropriate?
- 2) Does the ward have adequate living space? It's a good idea to ask the ward and/or the guardian for a tour of the home to make this assessment.
- 3) Are the ward's living conditions safe and sanitary? Remember that just because these conditions may not be up to your personal standard does not mean that they are not adequate for the needs of the ward.
- 4) Look at the ward's appearance. Are his or her clothes clean? Does the ward appear to be well-fed?

Anything that appears unusual, or raises a "red flag" in your mind, should be noted in your report.

THE COURT VISIT: INTERVIEWING THE WARD

Having a ward that is willing and able to speak with the court visitor is one of the best ways to assess the quality of care that the ward is receiving under the guardianship. Pay attention to:

- 1) The language and communication style of the ward. In some cases, you may need a translator to assist if you are not fluent in the language that the ward commonly speaks.
- 2) During the interview, continue to make note of the appearance of the ward. Note whether the ward's appearance is reasonably neat and clean or dirty and disheveled. Is their clothing weather appropriate or inappropriate in any other way?
- 3) The mood and demeanor of the ward. Are they angry, hostile, sad or depressed? Or do they appear to be happy and content? How do they communicate with you: verbally, non-verbally or do they communicate at all?
- 4) Some wards may request or demand a change in their guardianship. Some ask for this annually; if so, remember that it is their responsibility to, at a minimum, provide an informal letter requesting Restoration of their Rights.

- 5) What kind of decisions is the ward able to make? How much autonomy does the ward exercise over his or her daily life?

Here are some additional tips for building rapport with the ward as you conduct your interview:

- 1) Ask the ward about things that interest them. A discussion of their hobbies or favorite books or television shows can be a great way to build rapport and gain greater insight into the quality of care they are receiving.

Example question: “I heard that you really enjoy music. I saw a drum set in your living room. Do you play the drums?”

Example question: “I noticed a football in your room. I love football! What’s your favorite team?”

- 2) Ask the ward about their favorite foods. If you have any concerns that they are not being adequately fed, this can be a good way to find out what they do eat.

Example question: “I heard you had a birthday recently. Whenever I have a birthday, my friends cook me a special meal with some of my favorite foods. What are your favorite foods?”

- 3) Ask them how they feel. This can provide insight as to any health issues they’ve experienced and whether they have received adequate treatment for them.
- 4) Ask the ward about their job or other activities outside the home. This also helps to build rapport between the ward and the court visitor, but it can also show how the ward spends their days and weekends and whether the guardian is taking an active role in maintaining the ward’s quality of life.

Often, a ward has developmental disabilities that can make an interview more challenging. However, this shouldn’t necessarily prevent a visitor from having a productive and insightful interview with the ward. Be careful of the language you use around wards with developmental disabilities. Do not patronize them and understand that the interview process may require additional time and patience.

Other tips for interviewing wards with developmental disabilities include:

- 1) Identify yourself and explain the purpose of your interview.
- 2) Use your normal tone and volume of voice.
- 3) Keep language simple and clear.
- 4) Do not charge the ward with a follow-up question right after they have answered one question.
- 5) Treat adults with developmental disabilities in an age-appropriate manner. Avoid childlike words and baby talk.
- 6) Use simple questions, not compound questions. (One question at a time!)

- 7) You may need to occasionally check to be sure the ward has understood what you are saying.
- 8) Offer help or support in a sensitive and respectful manner.

THE COURT VISIT: INTERVIEWING THE GUARDIAN

Your interview with the guardian is equally as important as your interview with the ward. When interviewing the guardian, you should first review their contact information to ensure that the guardian's phone numbers, email address and physical address are all current. At this point, you should remind the guardian that he or she is required to contact the court when the contact information or residence of the ward or guardian changes.

If the guardian does not live with the ward, you should ask how often they visit the ward and when was the last time that a visit occurred.

Ask the guardian whether the ward experienced any major changes in the last year, which can be either problems or improvements. Any change in medical condition must be included in the court visitor's report.

You should also find out who the ward's primary care physician is, along with any specialist referrals that have been made in the past 12 months.

Ask the guardian about what kinds of adaptive equipment the ward uses, such as eyeglasses, wheelchairs, hearing aids and the like. If so, you should try to observe whether the equipment is in good working condition. And, if the guardian does not have adaptive equipment, you should determine in your interview questions whether the ward's condition has changed to the point where they now need adaptive equipment.

You should also review with the guardian the medications that the ward currently uses. These are obviously very personal questions, but it's important for the court visitor to determine the types and dosages of medications to ensure that the ward is receiving adequate medical care. It is helpful prior to your visit to familiarize yourself with brands of antidepressants, sedatives, anti-psychotics, stimulants, mood stabilizers, and other miscellaneous prescription drugs. And if the ward lives outside of a nursing home, you should review these medications personally. All medications and dosages should be listed on the court visitor's report.

You must also ask whether a report of abuse, neglect or exploitation of the ward been made in the last year. If so, list details, including date of incident and the agency that investigated the incident.

Finally, you should ask the guardian questions to determine their physical and mental health. Caring for a ward can be a demanding and sometimes unrewarding job. Ask the guardian how he or she feels. Are they tired? Are they still capable of caring for the ward?

Example question: "I've asked you a lot about the ward. But how are you? Have you experienced any changes in your health in the last year?"

You should also determine if there is a successor guardian in the event that the current guardian can no longer serve. Remember to state any successor's name, address, phone numbers in your report. And, if the guardian has a will, does it name a successor? Does it establish a special needs trust for the ward?

Even if a guardian has provided for the ward in their will, there are other aspects of planning that the guardian should be aware of. For example, many public benefits are need-based. If the guardian or anyone else gives the ward any money, even by inheritance, it may have the unanticipated effect of disqualifying the ward from benefits. The guardian should know that they can provide for the ward without affecting their eligibility for benefits. An attorney can assist the guardian with this, either the attorney that helped with the guardianship, or an attorney referred by the State Bar of Texas' Lawyer Referral Service or the local bar association. In some circumstances, the guardian may be eligible for a free or reduced-fee attorney through their local Legal Aid office.

Finally, ask the guardian if the ward receives any benefits from Social Security or Medicaid. If not, the ward may be eligible for benefits since they are unable to work. The guardian may be eligible for some assistance as well. To find out, encourage the guardian to contact their local Mental Health Mental Retardation office, their local ARC office (formerly called the Association for Retarded Citizens), or a local attorney who is knowledgeable about services. In some counties, a guardian may be able to dial 3-1-1 and be connected to someone who can point them in the right direction. Each of these entities should also be able to assist the guardian with services like transportation and employment opportunities and also help the guardian get connected with local support groups.

Most wards cannot handle money, but there are ways for them to still receive it. Some benefits can be payable directly to the guardian, while other benefits allow the designation of a representative payee, someone who is appointed to receive payments for the ward and manage those payments for the ward's benefit.

When you are ready to complete your visit, ask the guardian if they have any questions. Thank them for their time and for the work they do taking care of the ward. As a final thought, remind them to keep the court informed of any significant changes, such as a change of address or a significant change in the ward's health or level of need. Even without any major changes, remind the guardian that they still need to file their annual report with the court.

FILLING OUT THE COURT VISITOR REPORT

Once you leave your interview, you should complete and submit your report as soon as possible. A good tip to help you plan your meeting is to obtain your county's report form ahead of time and use that form or template as a guideline. As you conduct your interview, you can answer questions and take notes on the report form. Later, you can fill out a new copy to submit. Here are some tips for filling out and submitting your report:

First, be timely: The report must be filed within 14 days of your visit. Don't let so much time pass that you don't remember the details of your visit. It's best to get the report filled out and submitted quickly. Be sure to find out what to do with your report: some courts will want you to file the report with the clerk, others will want you to submit it to the investigators. Either way, the court or the investigator's office will want to hear from you quickly after your visit.

Next, be thorough: Make sure that your report sufficiently describes your investigation. Make sure you fill out the form or report as the court directs and articulate concerns that you have that may require follow-up. If the guardian had questions that you couldn't answer, if the scope of the guardianship needs to be expanded or reduced, or if something "just didn't seem right", you should point it out to the court or the investigator. But remember, the report is, or will become, a public document, which means you should remember to...

Be respectful: There is a good chance that you will be visiting guardians and ward that live lifestyles that are different from your own. Unless the living conditions affect the health or safety of the ward or the guardian, your personal comments should be omitted. For example, if the ward has some clutter around the house, they aren't necessarily a "hoarder" and should not be described as such. However, if the ceiling is falling down, you should report it and bring it to the court's attention.

If your visit uncovers some concern about the health or safety of the ward, or about the ability or suitability of the guardian to perform his duties, you should be sure to inform the court as quickly as possible. The court or the investigators will determine the best way to follow-up on your concerns. If you suspect abuse, neglect, or exploitation, you have a legal duty to make a report to Adult Protective Services.

Once you have filed your report, brought any issues to the court's attention, and answered any questions the court or the investigator's have, you are finished.

SUMMATION

We hope this pamphlet has helped give you an idea of what to expect during a court visit. By reading this pamphlet and taking an interest in the lives of incapacitated persons, you have begun to help make a difference in our society and may have helped to prevent or uncover abuse, neglect and exploitation of some of our most vulnerable citizens.

Don't worry about being nervous before your first visit! You never really know what you're going to encounter when you knock on the door, but as you continue to interact with guardians and wards, you will: develop your own style, learn to adapt to the situation, and determine what each visit should focus on.

If you have any questions about procedures, expectations, or practical pointers after reading this pamphlet, the court staff and other guardianship attorneys should be able to provide assistance. Thank you for your interest in this very important service, and best of luck with your visits.

NOTES

For Additional Copies Please Contact:
Public Information Department
State Bar of Texas
P.O. Box 12487
Austin, Texas 78711-2487
(800) 204-2222, Ext. 1800
www.texasbar.com

