

Court Appointed Court Visitor Role

Court visitors play an important role in the guardianship and conservatorship process. Court visitors meet with the person subject to guardianship or conservatorship (hereafter referred to as “the individual”) and prepare written recommendations for the court that are used when determining whether there is a need for a guardian or conservator and if so, what powers they should be granted.

Court visitors must be disinterested in the guardianship or conservatorship proceedings. If the court at any time determines that the visitor, or the firm or agency by which he or she is employed, has or had, at the time of the hearing, a conflict of interest, the court shall immediately appoint a new visitor and may, if necessary, require a hearing.

Before the appointment of a guardian or conservator, it is important that the implications of the appointment are understood by the individual as well as by the petitioner requesting guardianship or conservatorship. The appointment of a guardian or conservator is a serious matter involving the limitation of the individual’s independence and rights. This should be thoroughly explained to the individual; resist the temptation to water down the significance of this appointment.

The Court Visitor’s Report is filed after a visit with the individual. The Visitor’s Report is an important resource for the courts in determining the need for a guardian or conservator, including recommendations concerning appointment and limitation of their powers. Court visitors should spend enough time with the individual to be able to determine whether Less Restrictive Alternatives are available (see below for examples). Court visitors should also form opinions and recommendations regarding the need for appointment of a guardian or conservator and how their powers may be limited.

Experience: Overview for the Individual

During your visit with the individual, the following should be explained to them:

- What can be expected during the guardianship or conservatorship process should be made clear to the individual.
- What will the individual experience during their court visit and visit from their court-appointed attorney?
- This information should inform the individual of when they are allowed to speak up in the process.

Information should be provided in a format the individual can understand.

Interview of the Individual by Court Visitor

During the visit, the court visitor shall:

Serve the Notice and Petition on the Individual

- Personally serve the notice and petition. Read the notice and petition to the individual unless they ask the visitor not to.
- Interview the individual in person and explain the substance of the petition; nature, purpose, effect of proceeding, rights at hearing, general powers and duties of the guardian as requested in the petition.

Determine Need

Individuals under guardianship or conservatorship can learn to be more independent and gain skills, but guardianship and conservatorship can also bring risk with less focus on growth and skill building, loss of rights/autonomy, decreased self-worth, and loss of a sense of agency. It is important to ensure guardianship and conservatorship are granted only when needed.

- Guardianship and conservatorship should not be used proactively. Is the appointment of a guardian or conservator needed at this time?
 - What are the individual’s views about the proposed guardian or conservator, the proposed powers, and duties; the scope and duration of the guardianship or conservatorship?
 - If the individual does not wish to have guardianship granted, the court visitor should make it clear to them that they may be appointed a court-appointed attorney who will represent their wishes.
- Do the presumed benefits of guardianship or conservatorship outweigh the potential harms and costs?
- Are the individual’s needs able to be met in any other way? Does it appear the petitioner has tried other ways?
- Should the guardian or conservator powers be limited?
 - The powers that can be granted to a guardian are found in [Minnesota Statutes § 524.5-313](#).
 - The powers that can be granted to a conservator are found in [Minnesota Statutes § 524.5-417](#).

Less Restrictive Alternatives

Before appointing a guardian or conservator the court must find that the individual’s identified needs cannot be met by less restrictive means, including but not limited to use of appropriate technological assistance, supported decision making, community or residential services, or appointment of a health care agent. See [Minn. Stat. §524.5-310](#); [Minn. Stat. §524.5-409](#).

Inform the Individual of Their Right to Counsel

[Minnesota Statutes § 524.5-304](#) provides the right of an individual subject to guardianship to be represented by court-appointed legal counsel or counsel of their choosing as able.

- [Minnesota Statutes §524.5-406](#) provides the right of an individual subject to conservatorship to be represented by court-appointed legal counsel or counsel of their choosing as able.
- Generally, legal counsel is not waived. Advocacy is needed as guardianship is a significant loss of rights.
- Make it clear to the individual that they have the right to a court-appointed attorney (costs might be waived in some circumstances).

Court Visitor Report

The court visitor must file a report in writing with the court a minimum of 7 days before the hearing.

The report must include:

- Recommendations regarding the appropriateness of guardianship, including whether less restrictive means of intervention are available, the type of guardianship or conservatorship, and, if a limited guardianship or conservatorship, the powers recommended to be granted to the limited guardian or conservator;
- What is the primary or preferred language (when English is secondary)?
- Is an official court interpreter needed for the individual?

A statement as to whether the individual approves or disapproves of the proposed guardian or conservator, and the powers and duties proposed or the scope of the guardianship or conservatorship.

Race Data Collection

Provide the respondent with the [race data collection form for Guardianship and Conservatorship cases](#) and explain that completing the form is optional. Collecting this information will help the Court ensure that all people are treated fairly and equally, regardless of their race or ethnicity.

Resources

- [Less Restrictive Alternatives](#) from Working Interdisciplinary Networks (WINGS) MN
- Supported Decision Making (SDM) Resources:
 - [Supported Decision Making](#) from DisabilityHubMN.org
 - SDM Resources for Guardians
 - Center for Excellence in Supported Decision Making (CESDM), Guardianship Information Line: 952-945-4174, 1-844-333-1748, cesdm@voamn.org – assistance with:
 - Phone Consultation, Advice, I&R
 - Assessments
 - Facilitation of Supported Decision Making & Surrogate Decision Making Legal Tools
 - Petitioning for conservatorship/guardianship, terminations, and modifications
 - [Guardianship & Supported Decision Making Explained](#) from VOA of Minnesota
 - [Finding the Right Fit: Decision-Making Supports and Guardianship](#) from Elder Justice Initiative and National Center for State Courts
 - [Introduction and Guide to Supported Decision Making](#) from Minnesota Department of Human Services (DHS)