

59-3088. Resignation or removal of guardian or conservator; petition; contents; notice; hearing; procedure; appointment of successor; forfeiture of conservator's bond. (a) A verified petition may be filed requesting the court to accept the resignation of the guardian or the conservator, or both, to remove the guardian or conservator, or both, or to appoint a successor guardian or conservator, or both, and shall include:

(1) The petitioner's name and address, and if the petitioner is the ward's or conservatee's court appointed guardian or conservator, that fact;

(2) the ward's or conservatee's name, age, date of birth, address of permanent residence, and present address or whereabouts, if different from the ward's or conservatee's permanent residence;

(3) the name and address of the court appointed guardian or conservator, or both, if different from the petitioner;

(4) the factual basis upon which the petitioner alleges the need for the removal of the guardian or conservator, or both, or the appointment of a successor guardian or conservator, or both. If the current guardian or conservator is requesting the court to accept the guardian's or conservator's resignation, the petition shall include a statement to that effect and state the reasons why the guardian or conservator, or both, desires to resign;

(5) the names and addresses of witnesses by whom the truth of this petition may be proved;

(6) the name, address, and relationship to the ward or conservatee, if any, of the individual or corporation whom the petitioner suggests that the court appoint as the successor guardian or conservator, and if the suggested successor guardian or conservator is under contract with the Kansas guardianship program, that fact; and

(7) a request that the court make a determination that the guardian or conservator should be allowed to resign or should be removed, or that a successor guardian or conservator, or both, should be appointed.

(b) Upon the filing of such a petition, the court shall issue an order fixing the date, time and place of a hearing on the petition, which hearing may be held forthwith and without further notice if, in the opinion of the court, all persons necessary to the matter have entered their appearances, waived notice, and agreed to the court's entering the order requested. Otherwise, the court shall require the petitioner to give notice of this hearing to such persons and in such manner as the court may direct, including therewith a copy of the petition. This notice shall advise such persons that if they have any objections to the petition that they must file their written objections with the court prior to the scheduled hearing or that they must appear at the hearing to present those objections. If the petitioner is not the guardian or conservator, the court shall require the petitioner to give this notice to the guardian or conservator, or both. The court may appoint an attorney to represent the ward or conservatee in this matter, similarly as provided for in subsection (a)(3) of K.S.A. 59-3063, and amendments thereto, and in such event, the court shall require the petitioner also to give this notice to that attorney.

(c) In the absence of a petition having been filed, but at any time when the court has reason to believe that removal of the guardian or conservator, or both, may be necessary, the court may set a hearing thereon, and may require the guardian, conservator or some other person to give notice thereof as provided for herein. Nothing herein shall be construed such that the court does not have the authority to suspend immediately the powers and authorities of a guardian or conservator, or both, whenever the court determines that it is in the best interests of the ward or conservatee to do so.

(d) The hearing shall be conducted in as informal a manner as may be consistent with orderly procedure. The court shall have the authority to receive all relevant and material evidence which may be offered, including the testimony or written report, findings or recommendations of any professional or other person who has familiarity with the ward or conservatee or the conservatee's estate. The court may review the courts prior orders, any guardianship plan or conservatorship plan filed pursuant to K.S.A. 59-3076 or 59-3079, and amendments thereto, which is in effect, and any reports or accountings which have been filed by the guardian or conservator, or both, even if previously approved or allowed. The court shall give to the guardian or conservator, or both, to the ward or conservatee, and to other interested persons, the opportunity to present evidence to the court concerning the actions of the guardian or conservator, or both, and of the recommendations of such persons.

(e) At the conclusion of the hearing, if the court finds, by a preponderance of the evidence, that the guardian or conservator, or both, should be permitted to resign, or should be removed for failure to fulfill the duties or responsibilities of being a guardian or conservator, or for the manner in which the guardian or conservator has exercised the powers or authorities granted to the guardian or conservator, the court may so order and in such case shall revoke the letters of guardianship or conservatorship, or both, previously issued pursuant to K.S.A. 59-3069, and amendments thereto. The court may appoint a successor guardian or conservator, or both. In making any such appointments, the court shall act in accordance with K.S.A. 59-3068 and 59-3069, and amendments thereto.

(f) If the court finds that the conservator has innocently misused any funds or assets of the conservatee's estate, the court shall order the conservator to repay such funds or return such assets to the conservatee's estate. If the court finds that the conservator has embezzled or converted for the conservator's personal use any funds or assets of the conservatee's estate, the court shall find the conservator liable for double the value of those funds or assets, as provided for in K.S.A. 59-1704, and amendments thereto. In either case, the court may order the forfeiture of the conservator's bond, or such portion thereof as equals the value of such funds or assets, including any lost earnings and the costs of recovering those funds or assets, including reasonable attorney fees, as the court may allow, and may require of the surety satisfaction thereof. Neither the conservator, nor the conservator's estate or surety, shall be finally released from such bond until the satisfaction thereof.

History: L. 2002, ch. 114, § 39; July 1.