

59-3089. Order to show cause for failure to fulfill duties; removal; forfeiture of conservator's bond; bench warrant. (a) At any time the court has reason to believe that the guardian or conservator, or both, has failed to faithfully or diligently carry out such person's duties or responsibilities or to properly exercise such person's powers or authorities in a manner consistent with the provisions of K.S.A. 59-3075 or 59-3078, and amendments thereto, or with any prior order of the court, the court may issue to the guardian or conservator, or both, an order to appear before the court at a specified date, time and place to show just cause why the court should not find that such person has failed to faithfully or diligently carry out such person's duties or responsibilities or to properly exercise such person's powers or authorities.

(b) At such hearing, the court shall give to the guardian or conservator, or both, the opportunity to present evidence concerning their actions. The court shall also have the authority to receive all relevant and material evidence which may be offered by other interested parties, 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 court's 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.

(c) At the conclusion of the hearing, if the court finds, by a preponderance of the evidence, that the guardian or conservator, or both, has failed to faithfully or diligently carry out such person's duties or responsibilities or to properly exercise such person's powers or authorities, the court may remove the guardian or conservator, or both, and in such case, the court shall revoke the letters of guardianship or conservatorship, or both, previously issued pursuant to K.S.A. 59-3069, and amendments thereto. Otherwise, the court may issue appropriate orders further directing the guardian or conservator, or both, with regard to the performance of such person's duties or responsibilities or the exercise of such person's powers or authorities, or the court may dismiss the proceedings.

(d) If the court finds that the guardian or conservator has innocently misused any funds or assets of the ward's or conservatee's estate, the court shall order the guardian or conservator to repay such funds or return such assets to the ward's or conservatee's estate. If the court finds that the guardian or conservator has embezzled or converted for such person's personal use any funds or assets of the ward's or conservatee's estate, the court shall find the guardian or conservator liable for double the value of those funds or assets, as provided for in K.S.A. 59-1704, and amendments thereto, and in such case, neither the guardian or conservator, or the guardian's or conservator's estate, shall be finally released until the satisfaction thereof. 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, and in such case the court shall not finally release the conservator's surety until such order has been satisfied.

(e) If the guardian or conservator, or both, fail or refuse to appear as ordered, the court may proceed as provided for in article 12 of chapter 20 of the Kansas Statutes Annotated or K.S.A. 59-2217a, and amendments thereto.

History: L. 2002, ch. 114, § 40; July 1.