

59-3091. Termination of guardianship or conservatorship; petition; contents; hearing; procedure; final discharge. (a) At any time following the appointment of a guardian or a conservator, any person, including the ward or conservatee, may file a verified petition with the court requesting that the court find that the ward or conservatee is no longer in need of a guardian or a conservator, or both, and requesting that the court terminate the guardianship or conservatorship, or both.

(b) The petition 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, or both, 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 ward's or conservatee's court appointed guardian or conservator, or both, if different from the petitioner;

(4) the factual basis upon which the petitioner alleges that the ward or conservatee is no longer in need of a guardian or conservator, or both;

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

(6) a request that the court find that the ward or conservatee is no longer in need of a guardian or conservator, or both, and that the court terminate the guardianship or conservatorship, or both.

(c) (1) Upon the filing of such a petition, the court shall review the petition to determine whether good cause exists to warrant further proceedings. If the court finds good cause to warrant further proceedings, the court shall issue an order fixing the date, time and place of a hearing on the petition, which hearing shall be held not later than 30 days following the filing of the petition. If the court does not find within the petition facts sufficient to constitute good cause to warrant further proceedings, the court nonetheless may issue an order for an investigation and report concerning the circumstances of the ward or conservatee. The court may appoint any qualified person to conduct this investigation. The costs of this investigation shall be assessed as provided for in K.S.A. 59-3094, and amendments thereto.

(2) If the court does not find good cause to warrant further proceedings and the court does not issue an order for an investigation and report, or if the court has within the past six months conducted either the trial upon the original petition provided for in K.S.A. 59-3067, and amendments thereto, or a hearing on a previous petition for termination, the court may decline to set a hearing on the petition and may dismiss the petition without further proceedings.

(d) If the court orders an investigation, and the report of that investigation contains information upon which the court finds good cause to warrant further proceedings, the court shall issue an order fixing the date, time and place of a hearing on the petition, which hearing shall be held not later than 30 days following receipt of the report of the investigation. Otherwise, the court may dismiss the petition without further proceedings.

(e) The court may at any time on its own motion issue an order fixing the date, time and place of a hearing on whether the guardianship or conservatorship, or both, should be terminated.

(f) If the court issues an order setting the petition for a hearing, or issues an order on its own motion, the court may issue the following:

(1) An order appointing 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;

(2) a notice of the hearing to the guardian or conservator, or both, and to other interested parties. The court may order the petitioner, or another appropriate person, to serve this notice as the court may direct;

(3) for good cause shown, an order of continuance of the hearing;

(4) for good cause shown, an order of advancement of the hearing; and

(5) for good cause shown, an order changing the place of the hearing.

(g) The hearing upon the petition, or the court's own motion, 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.

(h) At the conclusion of the hearing, if the court does not find, by clear and convincing evidence, that the ward or conservatee is in need of a guardian or conservator, or both, the court shall order that the guardianship or conservatorship, or both, be terminated as provided for herein. The court may assign to the guardian or conservator additional responsibilities, duties, powers or authorities as the court determines appropriate to facilitate the closure of the guardianship or conservatorship, or both, including, if the ward or conservatee is deceased, authority to the guardian or conservator to pay from the ward's or conservatee's estate any reasonable funeral expenses, any medical expenses from the ward's or conservatee's last illness, and any claim for medical assistance paid for pursuant to K.S.A. 39-709, and amendments thereto, with due regard to the rights of a surviving spouse, if any, and creditors.

(i) Upon the court ordering that the guardianship be terminated, the guardian shall give any necessary notices with regard to the termination of the guardian's authority, shall assist the ward to establish an independent residence, if applicable, and shall file a final report with the court concerning the actions of the guardian. The court shall review the report and if the court finds matters in order, the court shall approve this final report and shall finally discharge the guardian.

(j) Upon the court ordering that the conservatorship be terminated, the conservator shall take any necessary action to close the conservator's administration of the conservatee's estate, and to deliver the property and assets of the conservatee's estate to the conservatee or otherwise as the court may direct. If the conservatee is deceased, and the funeral and last illness expenses, payment of any claim for medical expenses paid pursuant to K.S.A. 39-709, and amendments thereto, payment of the fees of the conservator as the court may allow, and payment of the costs of the final accounting and closing of the conservatee's estate, will deplete the estate, the conservator shall show such depletion on the final accounting. If such expenses will not deplete the estate, the remaining property and assets of the conservatee's estate shall be delivered by the conservator to the appropriate person or agency as determined by the court, and the conservator shall report such fact to the court in a final accounting. Upon the filing of a final accounting, and presentation to the court of a receipt for such property and assets, if the court approves, allows and settles this final accounting pursuant to the provisions of K.S.A. 59-3086, and amendments thereto, the court shall finally discharge the conservator and the conservator's surety. Neither the conservator, nor the conservator's estate or surety, shall be finally discharged until all of the property and assets of the conservatee's estate have been dispersed as directed by the court.

History: L. 2002, ch. 114, § 42; July 1.