

NOTICE OF COMMENT PERIOD

The Nebraska Supreme Court Commission on Guardianship and Conservatorships Rules and Forms Committee submitted proposed amendments to several Uniform County Court Rules of Practice and Procedure regarding guardianship and conservatorship cases. The proposed amendments would clarify and modify existing rules codified at Neb. Ct. R. §§ 6-1433, 6-1437, 6-1442, 6-1442.01, 6-1442.02, 6-1443, 6-1443.01, 6-1449, and 6-1464.

The Nebraska Supreme Court invites interested persons to comment on the proposed amendments. Anyone desiring to comment on the proposed amendments should do so in writing to the office of the Clerk of the Supreme Court and Court of Appeals, P.O. Box 98910, Lincoln, Nebraska 68509-8910, or via e-mail to wendy.wussow@nebraska.gov no later than August 1, 2019.

The full text of the proposed amendments is available below, or a hard copy may be obtained from the office of the Clerk of the Supreme Court and Court of Appeals upon request.

CHAPTER 6: TRIAL COURTS

....

Article 14: Uniform County Court Rules of Practice and Procedure.

....

§ 6-1433. Notice of interested person duty; guardian and conservator notice requirements; court notice requirements.

(A) In all probate matters, it shall be the duty of the petitioner or applicant for probate of a will or appointment of a personal representative to show in the petition or the application the names, relationship to the subject of the petition or application, and last known post office address of all interested persons. For purposes of subsection (A) of this section, interested persons shall include all those defined under Neb. Rev. Stat. § 30-2209(21). If any interested person is known by the petitioner, applicant, or the attorney for either to be incompetent or a minor, such fact shall be disclosed to the court.

(B) In all guardianship and/or conservatorship matters, the meaning of interested person may vary from time to time and must be determined according to the particular purposes of and matter involved in any proceeding as follows:

(1) Prior to appointment and Letters being issued, interested persons are those defined in Neb. Rev. Stat. § 30-2601(10).

(2)(i) For all appointments which were made prior to January 1, 2020, until July 1, 2020, After Letters are issued, interested persons are those defined under Neb. Rev. Stat. § 30- 2601(10) who have returned the interested party form to the court, any governmental agency paying benefits on behalf of the ward, incapacitated person, protected person, or minor and any person designated by order of the court to be an interested person.

(ii) For all new appointments made after December 31, 2019, and for all cases after June 30, 2020, this paragraph (ii) shall apply. After Letters are issued, interested persons are those defined under Neb. Rev. Stat. § 30-2601(10); any governmental agency paying benefits on behalf of the ward, incapacitated person, protected person, or minor; and any person designated by order of the court to be an interested person.

(iii) The court may order that 6-1433(B)(2)(ii) applies to any case in which the appointment was made prior to January 1, 2020.

(3) Upon termination or transfer of the guardianship and/or conservatorship for any reason other than death of the ward, incapacitated person, protected person, and/or minor, interested persons shall be the same as subsection (B)(~~2~~1) above.

(4) Upon death of a ward, incapacitated person, protected person, and/or minor; interested persons are those defined in Neb. Rev. Stat. § 30-2209(21).

(5) If the Office of Public Guardian is nominated as the guardian and/or conservator, or if a case is accepted to a waiting list for a guardian and/or conservator as determined by the Office of Public Guardian, the Office of Public Guardian shall be considered an interested person. If the Office of Public Guardian is nominated but not appointed due to lack of capacity by the Office of Public Guardian, or the Office of Public Guardian is nominated but not appointed because the appointment would not comply with the requirements of the Public Guardianship Act, the Office of Public Guardian will no longer be an interested person in the case. If the Office of Public Guardian is an interested person only because the case has been placed on a Public Guardian waiting list, the Office of Public Guardian will receive notices, orders, and annual reports, but the appearance of the Office of Public Guardian will not be required at hearings, unless the hearing is to appoint the Office of Public Guardian.

(C) In all guardianship and/or conservatorship matters, it shall be the duty of the petitioner or applicant for a guardian or conservator to show in the petition or the application, in addition to what is required by Neb. Rev. Stat. §§ 30-2619 and 30-2633:

(1) The names of the interested persons as set forth in the above subsection (B)(1), their addresses if known, and their relationship to the subject of the petition or application;

(2) Any other court having jurisdiction over the ward or minor listing the caption of the case, case number, and type of proceeding;

(3) If the case involves a minor, if reasonably ascertainable, the minor's present address or whereabouts, the places where the minor has lived during the last 5 years, and the names and present addresses of the persons with whom the child has lived during that period.

(4) Whether the minor is subject to the Indian Child Welfare Act;

(5) The number of cases, if any, in which the person or entity being nominated is acting as guardian and/or conservator for other wards or protected persons at the time of the nomination;

(6) Whether the ward has a Power of Attorney. If so, the Power of Attorney shall be filed with the petition as a confidential document if available;

(7) Whether the ward has a Health Care Power of Attorney and/or a Declaration relating to use of life-sustaining treatment (Living Will). If so, the documents shall be filed with the petition as a confidential document, if available;

(8) If any interested person is known by the petitioner, applicant, or the attorney for either to be incompetent or a minor, such fact shall be disclosed to the court;

(9) If the petition or application nominates the Public Guardian, it shall state that due diligence was used to identify a guardian and/or conservator and the methods employed and that in spite of such

efforts, the Public Guardian is the last resort.

(D) It shall be the duty of a guardian or conservator to:

(1) send a notice of waiver interested party form to all interested persons at the time of mailing the initial inventory as set forth above in subsection (B)(1);

(2) send all annual accountings, all inventories, all notices of newly discovered assets, and all annual report of guardian condition of ward reports filed with the court to all interested persons as set forth above in subsection (B)(2), unless waived by the court for good cause shown; (personal and financial information forms are not to be sent to interested persons; bank and brokerage statements are not to be sent to any interested persons unless otherwise ordered by the court, which mailing may be requested by an interested person);

(3) send a notice of right to object form with all inventories, notices of newly discovered assets, annual accountings, and annual report of guardian condition of ward reports that are sent to interested persons as set forth above in subsection (B)(1) and (B)(2);

(4) notify the court of the change of address of the ward or protected person within ~~3~~ 10 days of the change and send notice to all interested persons as set forth above in subsection (B)(2) unless waived by the court for good cause shown; and

(5) notify the court of the ward or protected person's death within ~~3~~ 10 days and send notice to all interested persons as set forth above in subsection (B)(4).

(E) All courts shall:

~~(1) hand out the Quick Reference Guide with sample forms attached to guardians and conservators when Letters are delivered;~~

~~(12)~~ ensure that all interested persons are on the certificate of mailing for inventories, annual accounting, annual report of guardian condition of ward reports, and motions that are filed with the court. If all interested persons are not on the certificate of mailing, the court shall issue a Notice of Need for Corrective Action(s) form and send it to the person who filed the document(s) to correct the certificate of mailing and send the document to all interested persons; and

~~(23)~~ send out reminders to guardians and conservators indicating annual filing deadlines 45 days prior to the annual filing due date.

(F) If a waiver of notice form is filed with the court, then the following items need not be sent on an annual basis to the person who filed the waiver of notice form.

(1) Annual Report of Guardian including any accounting and associated documents;

(2) Annual Report of Conservator including any accounting and associated documents;

(3) Application for Approval of Fees;

(4) Application for Approval of Accounting; and

(5) Orders and Notices of Hearing on any of the above filings.

(G) If a waiver of notice form is filed with the court, then any filings, other than those listed in

subsection (F), shall be sent to the person who filed the waiver of notice form. This specifically includes, but is not limited to, any petition to change the guardian or conservator, assumption by a standby guardian, final accounting of a guardian or a conservator, request for discharge of a guardian or a conservator, and request for exoneration of a bond or for a change in the amount of the bond.

....

§ 6-1437. Claims of personal representatives, guardians, and conservators.

(A) Personal Representatives; Individual Claims. No personal representative who has individual claims of his or her own which arose against the decedent prior to the death of the decedent shall pay the claims in excess of an aggregate amount of ~~\$250~~ \$500 without first specifically informing the court of his or her adverse interest and obtaining the approval of the court.

(B) Guardian or Conservator; Individual Claims. No guardian or conservator who has individual claims of his or her own (other than compensation governed by § 6-1443) against the estate of the ward or protected person shall pay the claims which aggregate in excess of ~~\$250~~ \$500 without first specifically informing the court of his or her adverse interest and obtaining the approval of the court.

(C) Unless otherwise ordered by the court, the attorney for the guardian or the conservator may be paid from the estate up to \$1,000 per year without prior court order.

~~(C)~~(D) Form of Order. Any order entered pursuant to this section shall provide that any person aggrieved by payment of the claim may petition the court for a formal review of the claim or payment.

....

§ 6-1442. Conservator/guardian inventory and accounts; initial filing; annual filing; amended inventories; restricted accounts; court review.

(A) Within 30 days after appointment, every guardian or conservator, except a guardian appointed by a juvenile court pursuant to the Nebraska Juvenile Code, shall prepare and file with the court a complete inventory of the estate of the protected person pursuant to Neb. Rev. Stat. §§ 30-2647 and 30-2628, together with his or her oath or affirmation that it is complete and accurate as far as he or she is informed. The initial inventory shall be sent to all interested persons with a notice of right to object form, waiver of notice of interested party form, and certificate of mailing showing copies were sent to all interested persons by first-class mail. If an inventory is not filed within 30 days after the date it is due, the court shall issue an order to show cause why the guardian or conservator should not be removed and shall set the same for hearing. For purposes of this paragraph, interested persons is defined under Neb. Rev. Stat. § 30-2601(10).

(B) Unless waived for good cause shown or otherwise ordered by the court, every conservator or guardian that has control of the ward's estate shall, not later than 30 days after the expiration of 1 year after ~~Letters~~ Orders of Appointment are ~~issued~~ entered and annually thereafter, file with the court an complete accounting of his or her administration ~~with a certificate of proof of possession form~~, except for the Office of Public Guardian which will provide documentation as required in § 6-1433.03, along with the required fee and a certificate of mailing showing that copies and a notice of right to object form were sent to all interested persons, including the bonding company by first-class mail postage prepaid. The accounting shall include an updated inventory. Bank statements and brokerage reports or statements shall be submitted to the court with all accountings unless waived by the court for good cause shown, except for the Office of Public Guardian which will provide documentation as required in § 6-1433.03. For purposes of this paragraph, interested persons shall include all those defined in § 6-1433(B)(2). Unless ordered by the court, a conservator or guardian shall not mail bank statements or brokerage statements to interested persons.

(C) ~~All~~ Guardians who do not have control of the ward's estate ~~shall~~ are not required to file with the court an updated inventory, annual accounting, bank statements or brokerage statements, or any certificates of possession, but must file along with a certificate of mailing showing that copies of the guardian's annual report and a notice of right to object form were sent to all interested persons, ~~including the bonding company,~~ by first-class mail postage prepaid every year ~~based on reasonably available information~~ unless waived by the court for good cause shown. For purposes of this paragraph, interested persons shall include all those defined in § 6-1433(B)(2).

(D) A conservator who has restricted accounts shall file with the court a proof of restricted account form within 10 days of being appointed.

(E) A notice of newly discovered asset form is required to be filed with the court within 30 days after the guardian or conservator becomes aware of additional assets, gifts, awards, settlements, or inheritances over \$500 not disclosed in the current inventory along with a certificate of mailing showing that copies and a notice of right to object form were sent to all interested persons, including the bonding company, by first-class mail postage prepaid. For purposes of this paragraph, interested persons shall include all those defined in § 6-1433(B)(2).

(F) The court shall monitor all cases in which annual accountings are required to see that the accountings are filed in a timely manner. If an accounting is not filed within 30 days after the date it is due, the court shall issue an order to show cause why the guardian/conservator should not be removed and shall set the same for hearing.

(G) All accountings, inventories, annual budget reports, and annual report of guardian condition of ward reports filed with the court shall be reviewed by a clerk magistrate, probate supervisor, court staff, or guardian ad litem, if one is appointed, or by an independent third party approved by the State Court Administrator's Office, if available, unless waived by the court. If there is a problem and/or concern with the report, the matter ~~shall~~ may be set for hearing before the court with notice to all interested persons. For purposes of this paragraph, interested persons shall include all those defined in § 6-1433(B)(2).

(H) The court shall schedule a formal due process hearing to approve the accounting upon (1) a petition requesting approval by the guardian/conservator, (2) the request or objection of any interested person, or (3) the court's own motion. Notice of such hearing must be given to all interested persons. The protected person's interest shall be safeguarded as provided in the filing of the original petition (see Neb. Rev. Stat. § 30-2636). For purposes of this paragraph, interested persons shall include all those defined in § 6-1433(B)(2).

§ 6-1442.01. Budget process in guardianships and conservatorships.

(A) A guardian or conservator or a nominated guardian or conservator may request the court to allow the guardian and/or conservator to annually file a budget summarizing the receipts and disbursements expected to be expended for the year. Due to changes occurring because of inflation, the court may in its order approving the budget authorize a variance of up to 15 percent over the budgeted amounts.

(B) If authorized by the court, the budget may allow for payments to the guardian and/or conservator for items such as rent, room and board, and guardian and/or conservator fees. Effectively, this is a preapproval of these payments, and payments up to the amounts approved are authorized. Anything above the budget amounts (subject to subsection (A)) remains subject to § 6-1437(B).

(C) At the end of the annual reporting period unless otherwise ordered by the court, the guardian and/or conservator shall file a report summarizing the payments made under the budget listing any payments beyond the budget, a copy of the last bank statement, except for the Office of Public

Guardian which will provide documentation as required in § 6-1433.03, and an inventory at the end of the year and may request a budget for the next year. These documents (except for the bank statement which is not mailed to interested persons except as ordered by the court) shall be sent to all interested persons unless waived by the court for good cause shown. For purposes of this paragraph, interested persons shall include all those defined in § 6-1433(B)(2).

(D) Court authorization under this section shall be made at a hearing after notice to all interested persons. However, if the waiver of notice and hearing is signed by all interested persons, the court may enter the order without further notice and without further hearing. For purposes of this paragraph, interested persons shall include all those defined in § 6-1433(B)(2).

(E) If a budget has been approved, the guardian or conservator shall not be required to file an annual accounting unless otherwise ordered by the court.

(F) If the court authorizes ATM withdrawals or cash back on a debit transactions as part of an approved budget, the Letters of the guardian and/or conservator shall be so modified.

(G) If additional assets are received during the year for which notice to the court is required under these rules, the court may review the budget during the year and the bond.

§ 6-1442.02. Guardians with limited authority; authority limited to not handling any assets of the ward.

A guardian or nominated guardian may apply to the court for an order that provides that the guardian shall have no authority over the estate of the ward.

(A) If that order is obtained, then the guardian shall have no authority over the estate of the ward which restrictions shall be included on the Letters issued. If the guardian becomes a representative payee, the guardian shall notify the court and interested persons within 7 10 days of receiving notice of becoming a representative payee and shall apply to the court to have the guardian's Letters appropriately modified. The guardian shall file an inventory and shall remain subject to the requirement of §§ 6-1442(E) and 6-1443. For purposes of this paragraph, interested persons shall include all those defined in § 6-1433(B)(2).

~~(B) Upon application of a guardian who has received an order under this section, with notice to all interested persons, the updated inventory may be waived by the court for good cause shown. For purposes of this paragraph, interested persons shall include all those defined in § 6-1433(B)(2).~~

~~(B)C~~ If the guardian becomes the representative payee or has control of other assets of the ward, the guardian shall file an accounting with the court and comply with § 6-1442(B).

§ 6-1443. Conservator/guardian Letters.

(A) Prior to being issued Letters, the guardian or conservator shall file an acceptance and the following with the court unless waived by the court for good cause shown:

(1) address information sheet, general information sheet, inventory with an affidavit of due diligence, and a bond if required; and

(2) ~~an acknowledgment of financial institution~~ receipt of orders form showing that the order appointing him or her as guardian or conservator was provided to each financial institution in which the ward, protected person, or minor has an account/assets;

(B) After the guardian or conservator has been issued Letters, the guardian or conservator shall file with the court an ~~acknowledgment of financial institution~~ receipt of letters form showing that Letters have been provided to each financial institution in which the ward, protected person, or minor has an account/assets. This form shall be filed with the court within ~~10~~ 30 days of the Letters being issued. Failure to file the form shall result in suspension of authority.

(C) Language expressly limiting powers shall be included on all Letters of guardian/conservator in the following language: “Except as provided in § 6-1437, you shall not pay yourself or your attorney compensation from the assets or income of your ward, nor sell real property of the estate, without first obtaining an order therefor, after an application, notice to the interested persons, and hearing thereon. The order may be entered ex parte if all interested persons have waived notice of hearing or have executed their written consent to the fee.”

At the same time the annual accounting is filed with the court, the guardian/conservator shall file with the court an application for payment of the previous year’s fees to the attorney and to the guardian/conservator. The specific amount of the fees requested shall be set out in the application.

(D) The filing requirements of the guardian/conservator shall be included on all Letters of guardianship/conservatorship.

The language on the Letters should be as follows for a conservatorship:

You are further directed to file a complete accounting of your administration of this estate, along with the required fee, notice of right to object form, and a certificate of mailing showing copies were sent to all interested persons, including the bonding company, by first-class mail, postage prepaid, not later than ~~30 days after the expiration of 1 year~~ and 30 days after the date of these Letters of appointment and annually thereafter. The accounting shall include an updated inventory at the end of the accounting period and shall, if ordered by the court, include certificates of proof of possession for all intangible personal property existing at the end of the accounting period.

For a guardianship:

You are further directed to file an annual report of guardian ~~condition of ward~~ report, a complete accounting of your administration of this estate, if you have possession of the estate or are representative payee, along with the required fee, notice of right to object form, and a certificate of mailing showing copies were sent to all interested persons, including the bonding company, by first-class mail, postage prepaid, not later than ~~30 days after the expiration of 1 year~~ and 30 days after the date of these Letters of appointment and annually thereafter. If you are filing an accounting, the accounting shall include an updated inventory at the end of the accounting period and shall, if ordered by the court, include certificates of proof of possession for all intangible personal property existing at the end of the accounting period.

For a guardianship and conservatorship:

You are further directed to file an annual report of guardian ~~condition of ward~~ report and a complete accounting of your administration of this estate, along with the required fee, notice of right to object form, and a certificate of mailing showing copies were sent to all interested persons, including the bonding company, by first-class mail, postage prepaid, not later than ~~30 days after the expiration of 1 year~~ and 30 days after the date of these Letters of appointment and annually thereafter. The accounting shall include an updated inventory at the end of the accounting period and shall, if ordered by the court, include certificates of proof of possession for all intangible personal property existing at the end of the accounting

period.

(E) Guardians/Conservators shall not make ATM withdrawals or receive cash back on a debit transaction on a ward's or protected person's bank account without first receiving a court order to do so. The following language shall be included on all Letters:

No ATM cash withdrawals or cash back ~~on debit transactions~~ without court order. The Office of Public Guardian is prohibited from making ATM cash withdrawals or receiving cash back ~~on debit transactions~~.

(F) The court shall order guardians/conservators to file Letters with the Register of Deeds in any county where the ward has real property or an interest in real property. The following language shall be included on all Letters:

Guardians/conservators shall file Letters with the Register of Deeds in any county where the ward has real property or an interest in real property, wherever located, within a reasonable time.

§ 6-1443.01 Standby Guardian.

(A) If a nominated Standby Guardian is listed in a petition, the Standby Guardian shall complete all background checks as required by Neb. Rev. Stat. § 30-2602.02 and Neb. Ct. R. § 6-1449 prior to being appointed unless waived by the court for good cause shown.

(B) When the Standby Guardian seeks to act as guardian for the ward or incapacitated person due to the death, unwillingness or inability to act, or resignation or removal of the guardian, before Letters will be issued, the Standby Guardian must do the following:

(1) Complete a Standby Guardian Assumption of Guardianship Authority notification form and Acceptance and file it with the court within ~~3~~ 10 days of any of the event(s) occurring in subsection (2). The Standby Guardian shall file a certificate of mailing with the court showing that copies of the Standby Guardian notification form, Acceptance, and a Notice of Right to Object form were sent to all interested persons, including the bonding company, if any, by first-class mail postage prepaid.

(2) Complete all background checks as required by Neb. Rev. Stat. § 30-2602.02 and Neb. Ct. R. § 6-1449 and file them with the court, unless waived by the court for good cause shown.

(3) File within 30 days of the filing of the Standby Guardian Assumption of Guardianship Authority notification form and Acceptance:

(i) General Information Form

(ii) Address Information Form

(iii) Personal and Confidential Information Form

(34) File an Inventory, Affidavit of Due Diligence, and Certificate of Mailing with the court showing that copies of the Inventory and a Notice of Right to Object form were sent to all interested persons, including the bonding company, if any, by first-class mail postage prepaid within 30 days of the filing of the Standby Guardian Assumption of Guardianship Authority.

(5) File a Financial Institution Receipt of Letters Form. This form shall be filed with the court within 30 days of the Letters being issued.

(C) The court shall review the inventory and background checks filed by the Standby Guardian. The court shall determine if a bond is necessary and shall so indicate in an Order, and Letters shall issue after the bond is posted, if required. The court may in its discretion set the matter for hearing with notice to all interested parties.

(D) The Standby Guardian shall complete training within 90 days of receiving his or her Letters.

....

§ 6-1449. Background checks on guardians or conservators; appointment of guardian ad litem.

(A) Disclosure of the content of the following reports to nonparties of this pending action is prohibited without the court's written consent. All reports filed pursuant to this section are confidential and shall be handled in the same manner as personal and financial information in court records under § 6-1464.

(1) A person, except for a financial institution as that term is defined in subsection (12) of Neb. Rev. Stat. § 8-101 or its officers, directors, employees, or agents or a trust company, who has been nominated for appointment as a guardian or conservator shall obtain a national criminal history record check, a check of the Abuse and Neglect Registries for adults and children, a check with the sex offender registry, and a credit check through a process approved by the State Court Administrator's Office. The nominated guardian or conservator shall file the results of the reports with the court at least 10 days prior to the appointment hearing date, unless waived or modified by the court (a) for good cause shown by affidavit filed simultaneously with the petition for appointment or (b) in the event the protected person requests an expedited hearing under Neb. Rev. Stat. § 30-2630.01.

(2) An order appointing a guardian or conservator shall not be signed by the judge until such reports have been filed with the court and reviewed by the judge. Such reports, or the lack thereof, shall be certified either by affidavit or by obtaining a certified copy of the reports. No reports or national criminal history record check shall be required by the court upon the application of a petitioner for an emergency temporary guardianship or emergency temporary conservatorship. The court may waive the requirements of this section for good cause shown.

(B) The court ~~shall~~ may appoint a guardian ad litem if:

(1) There are no interested persons. For purposes of subsection (B), interested persons shall include all those defined in § 6-1433; or

(2) The only interested persons are one or more governmental agencies paying benefits on behalf of the ward, incapacitated person, protected person, or minor.

Also, ~~if~~ if the court finds that a governmental agency is reviewing the annual reports, then the court may waive the appointment of a guardian ad litem.

....

§ 6-1464. Protection of personal and financial information in civil court records.

The following privacy rules shall apply to all pleadings, documents, exhibits, court orders, judgments, and decrees filed in all civil actions in the county courts of Nebraska:

(A) This rule seeks to prevent birth dates, Social Security numbers, and financial account numbers of all persons, including minor children, from being included in court records generally available to the public.

....

(H) If the personal financial information identified in § 6-1464(A) has previously been provided to the court with Appendices 7, 8, or 11 filed in a proceeding, no new form needs to be filed, unless there are changes. A new Appendix 7, 8, or 11 or updated personal financial information form for guardianship and conservatorship proceedings is only required to be filed in a court proceeding if the information provided on the original Appendix or personal financial information form for guardianship and conservatorship proceedings has changed.

....