NOTICE OF COMMENT PERIOD

The Forms, Court Rules and Statutes Subcommittee of the Commission on Guardianships and Conservatorships and the Office of Public Guardian submitted proposed amendments to the Uniform County Court Rules of Practice and Procedure and four new rules. The proposed amendments would clarify existing guardianship and conservatorship rules. The new rules would provide for the nomination and appointment of the Office of Public Guardian; for the appointment of a standby guardian; and for intrastate transfer of guardianship and conservatorship cases.

The Nebraska Supreme Court invites interested persons to comment on the proposed amendments and new rules. Anyone desiring to comment on the proposed amendments and new rules 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 jill.machacek@nebraska.gov, no later than August 1, 2015.

The full text of the proposed amendments and new rules follows, or a hard copy may be reviewed in the office of the Clerk of the Supreme Court and Court of Appeals upon request.

§ 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, ~~guardian, or conservator~~ 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 rule, interested persons shall include all those defined under Neb. Rev. Stat. § ~~30-2601~~ 30-2209(21) ~~who have returned the notice of 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~~. 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.

~~(1) In addition, the petitioner or applicant for appointment of guardian or conservator shall inform the court in the petition of 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.~~

(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. 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.

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) 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 Guardian 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, ~~I~~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 five 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 valid 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.

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

~~(1)~~ (4)notify the court of the change of address of the ward or protected person within 3 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.

~~(2)~~(5) notify the court of the ward or protected person's death within 3 days and send notice to all interested persons as set forth above in subsection (B)(4).

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

~~(4)~~ (1)send a notice of interested party form to all interested ~~parties~~ persons at the time of mailing the initial inventory as set forth above in subsection (B)(1). and

~~(5)~~ (2)send all annual accountings, all inventories, all notices of newly discovered assets, and all condition of ward reports filed with the court to all interested ~~parties~~ persons as set forth above in subsection (B)(2), unless waived by the court for good cause shown.

~~(C)~~ (E) All courts shall:

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

(2) ensure that all interested ~~parties~~ persons are on the certificate of mailing for inventories, annual accounting, condition of ward reports, and motions that are filed with the court. If all interested ~~parties~~ 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 ~~parties~~ persons ~~;~~ and

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

§ 6-1433 amended August 31, 2011, effective January 1, 2012; § 6-1433(B)(5) amended May 23, 2013, effective September 1, 2013; § 6-1433(C)(2) amended August 28, 2013, effective September 1, 2013; § 6-1443(A) and (A)(1) amended April 16, 2014, effective July 1, 2014.

§ 6-1439. Time for increase in bonds; bond review.

(A) Where the amount of a personal representative's, guardian's, or conservator's bond has been fixed on the basis of known or anticipated assets only, and there is a subsequent material increase in the value of the assets or an increase is anticipated, the judge shall be promptly informed of such fact and an adequate bond to cover the increased responsibility of the personal representative, guardian, or conservator shall be furnished and filed if required by the judge.

(B) All initial inventories shall be reviewed by the judge prior to Letters being issued to determine if a bond needs to be set or if the previously set bond is adequate. If the judge finds the bond should be changed, the matter shall be set for hearing unless the hearing on the bond is waived by all interested ~~parties~~ persons present at the time the guardian or conservator is appointed.

(C) Every updated inventory filed with an accounting and every notice of newly discovered asset form 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, to determine whether the bond previously set is adequate pursuant to Neb. Rev. Stat. § 30-2640 and § 6-1441. If there is a concern that the bond previously set is not adequate, the matter shall be set for hearing before the court with notice to all interested ~~parties~~ persons. For purposes of this paragraph, interested persons shall include all those defined in § 6-1433(B)(2).

Rule 39 amended June 1988. Renumbered and codified as § 6-1439, effective July 18, 2008; § 6-1439 amended August 31, 2011, effective January 1, 2012.

§ 6-1441. Bonds in guardianship/conservatorship cases.

In all guardianship/conservatorship cases, the court shall order that an approved corporate surety bond be filed in estates with a net value of more than $10,000. The bond shall be in an amount of the aggregate capital value of the personal property of the estate in the guardian/conservator's control plus 1 year's estimated income from all sources minus the value of securities and other assets deposited under arrangements requiring an order of the court for their removal. The court, in lieu of sureties on a bond, may accept other security for the performance of the bond, including a pledge of securities or a mortgage of land owned by the conservator/guardian. This bond shall be reviewed by the court periodically and adjusted to reflect any increase as set out in § 6-1439.

The court may eliminate the requirement of bond or decrease or increase the required amount of any such bond previously furnished for good cause shown.

The court shall not require a bond if the protected person executed a written, valid power of attorney that specifically nominates a guardian or conservator and specifically does not require a bond.

The court shall consider as one of the factors of good cause, when determining whether a bond should be required and the amount thereof, the protected person's choice of any attorney in fact or alternative attorney in fact.

No bond shall be required of the Office of Public Guardian or any financial institution, as that term is defined in Neb. Rev. Stat. § 8-101(12), or any officer, director, employee, or agent of the financial institution serving as a conservator, or any trust company serving as a conservator.

Rule 41 amended May 1990. Renumbered and codified as § 6-1441, effective July 18, 2008; § 6-1441 amended August 31, 2011, effective January 1, 2012.

§ 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 inventory shall be sent to all interested ~~parties~~ persons with a notice to object form, notice of interested party form, and certificate of mailing showing copies were sent to all interested ~~parties~~ 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 are issued and annually thereafter, file with the court a complete accounting of his or her administration with a certificate of proof of possession form, along with the required fee and a certificate of mailing showing that copies and a notice to object form were sent to all interested ~~parties~~ 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 with all accountings 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).

(C) All guardians who do not have control of the ward's estate shall file with the court an updated 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 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 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 be set for hearing before the court with notice to all interested ~~parties~~ 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 ~~party~~ person, or (3) the court's own motion. Notice of such hearing must be given to all interested ~~parties~~ persons. ~~and~~ ~~t~~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).

Rule 42 amended June 1988. Renumbered and codified as § 6-1442, effective July 18, 2008; § 6-1442 amended August 31, 2011, effective January 1, 2012; § 6-1442(A) amended October 17, 2012; § 6-1442(A)-(C) and (G) amended May 23, 2013, effective September 1, 2013; § 6-1442(A) and (B) amended August 28, 2013, effective September 1, 2013.

§ 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.

(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 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, and an inventory at the end of the year and may request a budget for the next year. These documents shall be sent to all interested ~~parties~~ 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 rule shall be made at a hearing after notice to all interested ~~parties~~ persons. However, if the waiver of notice and hearing is signed by all interested ~~parties~~ 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.

§ 6-1442.01 adopted May 23, 2013, effective September 1, 2013.

§ 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 ~~parties~~ persons within 7 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 remain subject to the requirement of § 6-1442(E). 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 ~~parties~~ 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).

(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).

§ 6-1442.02 adopted May 23, 2013, effective September 1, 2013.

§ 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) ~~an acceptance,~~ 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 form showing that the order appointing them 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 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 days of the Letters being issued. Failure to file the form shall result in suspension of your authority.

(C) Language expressly limiting powers shall be included on all Letters of guardian/conservator in the following language: "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 ~~parties~~ persons, including the bonding company, by first-class mail, postage prepaid, not later than 30 days after the expiration of 1 year after the date of these Letters and annually thereafter. The accounting shall include an updated inventory at the end of the accounting period and shall 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 a condition of ward report, a complete accounting of your administration of this estate, if you have possession of the estate, along with the required fee, notice of right to object form, and a certificate of mailing showing copies were sent to all interested ~~parties~~ persons, including the bonding company, by first-class mail, postage prepaid, not later than 30 days after the expiration of 1 year after the date of these Letters 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 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 a 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 ~~parties~~ persons, including the bonding company, by first-class mail, postage prepaid, not later than 30 days after the expiration of 1 year after the date of these Letters and annually thereafter. The accounting shall include an updated inventory at the end of the accounting period and shall 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 withdrawals or cash back on debit transactions without court order. The Office of Public Guardian is prohibited from making ATM 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.*

Rule 43 amended November 1988. Renumbered and codified as § 6-1443, effective July 18, 2008; § 6-1443 amended August 31, 2011, effective January 1, 2012; § 6-1443(A) amended May 23, 2013, effective September 1, 2013; § 6-1443(D) amended August 28, 2013, effective September 1, 2013.

§ 6-1445.01. Waivers of rules in guardianships and conservatorships; procedure.

(A) In a guardianship or a conservatorship proceeding, where a waiver for good cause shown is requested, the following procedures shall apply:

(1) A request for waiver shall be made upon application and may be considered by the court after a hearing upon notice to all interested ~~parties~~ persons. For purposes of this paragraph, interested persons shall include all those defined in § 6-1433(B)(2).

(2) Notice of any hearing shall be given by the applicant as required by the Nebraska Probate Code.

(3) Proof of sending the application and notice of hearing to all interested ~~parties~~ persons shall be filed with the court by the applicant.

(4) The hearing upon the application may be waived if the waiver requested is approved in writing by all interested ~~parties~~ persons. The court may then 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).

(5) The court may enter an order specifying what rule requirements have been waived. Upon request by any interested ~~party~~ person, the court shall set forth its findings in the order.

§ 6-1445.01 adopted May 23, 2013, effective September 1, 2013.

§ 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 rule 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) ~~If there are no interested parties identified for a ward or a protected person, the court shall appoint a guardian ad litem.~~ The court shall appoint a guardian ad litem if:

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

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

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.

Rule 49 renumbered and codified as § 6-1449, effective July 18, 2008; § 6 -1449 amended August 31, 2011, effective January 1, 2012.

§ 6-1433.01. Public Guardian Nomination Procedures.

(A) The individual filing the petition/application to appoint the Public Guardian shall provide notice of the nomination to the Office of Public Guardian. Notice shall be given on a separate form approved by the State Court Administrator's Office.

(B) Upon receiving notice of nomination, the Office of Public Guardian shall file with the court, within 14 days: 1) an acknowledgment of nomination and 2) verification of caseload capacity subject to statutory requirements of the Public Guardian Act.

(C) If the Office of Public Guardian is unable to accept the nomination due to their caseload capacity status, good cause shall be presumed to exist to deny their appointment. The appearance of the Office of Public Guardian shall no longer be required.

(D) The court shall appoint a visitor consistent with Neb. Rev. Stat. § 30-2619.01, or a guardian ad litem pursuant to Neb. Rev. Stat. § 30-2222(4) within ten judicial days of the filing of acknowledgement and caseload capacity verification by the Office of Public Guardian if the verification shows the Office of Public Guardian has capacity to take the case. If the acknowledgement and caseload capacity verification shows the Office of Public Guardian does not have capacity to take the case, the court may request the case be placed on the Office of Public Guardian waiting list. If the court requests the case be placed on the Office of Public Guardian waiting list the court shall appoint a visitor consistent with Neb. Rev. Stat. § 30-2619.01, or a guardian ad litem pursuant to Neb. Rev. Stat. § 30-2222(4) within ten judicial days of the request to place the case on the Office of Public Guardian waiting list.

(E) The visitor or Guardian Ad Litem evaluation contents shall comply with Neb. Rev. Stat. § 30-2619.03 and, to assist the Office of Public Guardian fulfill its duties mandated by the Public Guardianship Act, the report will include a standard form approved by the State Court Administrator's Office to include information required by Neb. Rev. Stat. § 30-2619.01.

(F) The Office of Public Guardian shall have ten judicial days to file responses to the visitor's evaluation or guardian ad litem report.

(G) Once the Office of Public Guardian receives the visitor's report they shall file another verification of caseload capacity within five judicial days. If the visitor or guardian ad litem report shows that there is no one other than the Office of Public Guardian to serve as guardian and/or conservator and if the Office of Public Guardian has capacity to take the case then the Office of Public Guardian shall not accept any additional appointments which would in the interim cause their capacity to be exceeded before final determination is made by the court as to their appointment.

(H) Unless otherwise ordered by the court, hearing on the petition for appointment of the Office of Public Guardian shall not take place less than 60 days but no more than 90 days from the filing of nomination.

(I) In addition to the statutory requirements, in the order to appoint the Office of Public Guardian as a guardian or conservator, the order of appointment shall also provide:
    (1) Proper notice has been given to the Office of Public Guardian;
    (2) The petitioner has acted in good faith and due diligence to identify a guardian or conservator who would serve in the best interest of the alleged incapacitated person;
    (3) The appointment of the Office of the Public Guardian is necessary and does not exceed the caseload limitations as set forth by statute;
    (4) That the report of the guardian ad litem or visitor has provided supporting evidence that no person is available for appointment as guardian or conservator, all options available to support the individual in the least restrictive manner possible has been explored, and guardianship is a last resort; and
    (5) There is no other alternative than to appoint the Office of Public Guardian.

(J) When the Office of Public Guardian has no available caseload capacity to assume the duties of guardian and conservator at the time of the appointment, the court may order that the case be placed on the waiting list, as provided by the Office of Public Guardian, if the court finds:
    (1) Proper notice was given to the Office of Public Guardian;
    (2) The petitioner has acted in good faith and due diligence to identify a guardian or conservator who would serve in the best interest of the alleged incapacitated person;
    (3) The appointment of the Office of Public Guardian would be necessary, but that no current caseload capacity exists to serve the individual by the Office of Public Guardian, as set forth by statute; and
    (4) That the report of the guardian ad litem or visitor as outlined in these procedures has been completed and supports the appointment of the Office of Public Guardian, but for the lack of capacity by the Office of Public Guardian, all options available to support the individual in the least restrictive manner possible has been explored, and the guardianship is a last resort.

§ 6-1433.02. Public Guardian.

(A) If the Office of Public Guardian is nominated as the guardian and/or conservator, the Office of Public Guardian shall be considered an interested person.

(B) No bond shall be required of the Office of Public Guardian.

(C) If the Office of Public Guardian is appointed guardian and/or conservator, payments to the Office of Public Guardian will be allowed as per the established sliding fee scale as approved by the Court.

(D) If the Office of Public Guardian is appointed guardian and/or conservator, the Office of Public Guardian shall be required to file a budget with the initial inventory. This shall be for informational purposes only. Neb. Ct. R. § 6-1442.01 shall not apply to the Office of Public Guardian**.** The Office of Public Guardian shall be required to file an annual accounting even if a budget has been provided.

(E) The Office of Public Guardian is prohibited from making ATM withdrawals or receiving cash back on debit transactions and this shall be reflected on the Letters.

(F) If the Office of Public Guardian is nominated as the initial or successor guardian or conservator, the court shall appoint a visitor and/or guardian ad litem, consistent with Neb. Rev. Stat. § 30-2619.01, or a guardian ad litem pursuant to Neb. Rev. Stat. § 30-2222(4), to ensure the necessity of the guardianship and/or conservatorship, whether there is an appropriate private guardian and/or private conservator to serve in the case and to determine the appropriate limitations within the guardianship and/or conservatorship.

(1) If the acknowledgment of nomination and caseload capacity verification filed by the Office of Public Guardian indicates the Office of Public Guardian has caseload capacity to take the case, the appointment of a visitor and/or guardian ad litem will occur within ten judicial days of the court receiving the acknowledgement.

(2) If the acknowledgement and caseload capacity verification filed by the Office of Public Guardian indicates the Office of Public Guardian does not have caseload capacity to take the case, the court may request the case be placed on the Public Guardian waiting list. If the court requests the case be placed on the Office of Public Guardian's waiting list, the court shall appoint a visitor and/or guardian ad litem within ten judicial days of the court's waiting list request.

(G) The court may appoint the Office of Public Guardian on a temporary basis if an emergency exists until an evidentiary hearing can be held. The court shall appoint a visitor and/or guardian ad litem as provided in subsection (F) above within 10 days of signing the temporary Order.

(H) An appointed visitor and/or guardian ad litem is to conduct an evaluation of the allegations of incapacity and whether there is an appropriate private guardian and/or private conservator to serve in the case. The visitor or guardian ad litem shall provide a written report to the court, on a form approved by the Court Administrators Office, and allow for the filing of responses to the report in accordance with Neb. Rev. Stat. §§ 30-2619 through 30-2619.04.

(I) The court should consider utilizing a multi-disciplinary screening to determine diminished capacity. The multi-disciplinary screening shall include, but is not limited to, the individual's: (1) medical condition; (2) cognitive functioning; (3) daily living functional abilities; (4) consistency of functioning with his/her values, preferences and

lifetime patterns; (5) risk of harm in the context of his/her social and environmental supports; and (6) means to enhance capacity through accommodations and effective communication techniques. This screening may be done by a trained visitor or trained guardian ad litem that is appointed by the court.

(J) The Office of Public Guardian may file a motion to make more definite and certain a statement of functional limitation (30-2619) regarding the determination of necessity to ascertain whether any alternative to public guardianship or conservatorship exists.

§ 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, 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 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 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.

(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 their Letters.

§ 6-1443.02. Intrastate Transfer of Guardianship and Conservatorship Cases.

When the court is informed that a ward, protected person and/or incapacitated person's best interest would be served by transferring a guardianship and/or conservatorship case to another county within the State of Nebraska having concurrent jurisdiction pursuant to Neb. Rev. Stat. § 30-2212, § 30-2615 and § 30-2629 the following procedures shall apply:

(A) No transfer to another county may be made without a hearing and notice to all interested persons.

(B) A motion for intrastate transfer shall be filed and set forth with specificity the basis upon which a transfer would serve the best interest of the ward, protected person and/or incapacitated person.

(C) The movant shall send the motion and a notice of the hearing to all interested persons along with a Notice of Right to Object Form.

(D) After a hearing, the county court of original jurisdiction shall make findings of fact setting forth how the best interests of the ward, protected person and/or incapacitated person are met by way of transfer.

(E) If the transferring court finds venue exists in the successor court and good cause is found to transfer, the county court shall enter a provisional transfer of jurisdiction order.

(F) The provisional transfer of jurisdiction order shall be sent to the presiding judge of the successor county court. Thereafter the successor court shall have 14 days to either accept the transfer or deny the same, for lack of venue only, by written order. The acceptance or denial order shall be filed in the court records of the original jurisdiction court.

(G) If an acceptance of transfer is filed, the original jurisdiction court shall enter an order of intrastate transfer.

(H) The original court file and all exhibits shall forthwith be sent to the successor county court's clerk for docketing.

(I) The original jurisdiction court shall maintain certified copies of all pleadings and exhibits sent to the successor court at the time of transfer.

(J) The successor court shall schedule a status review hearing within 30 days of transfer giving all interested persons notice of the new docket and page number, court address and judge assigned to the case.

(K) The successor court shall enter an order acknowledging receipt of the transferred case within the records of its own court with a certified copy sent to the transferring original jurisdiction court for completion of the intrastate transfer. The original jurisdiction court shall no longer retain jurisdiction of the proceedings once the successor court's acknowledgment of jurisdiction has been docketed.

(L) If the original court and proposed successor court fail to agree on transfer, the presiding judges of each county court judicial district shall consult and resolve the manner in which the case shall thereafter proceed.

(M) Until the case is accepted by the successor court, all proceedings shall remain in the court in which the proceedings were originally commenced.