

59-3087. Change in authority of co-guardian or co-conservator; petition; contents; hearing; procedure; forfeiture of co-conservator's bond. (a) A verified petition requesting the court to modify its prior order appointing co-guardians or co-conservators, or both, by either changing the authority of the co-guardians or co-conservators, or both, to act independently, to act only in concert, or to act only in concert with regard to certain matters, or to remove one or both of the co-guardians or co-conservators, or both, and to appoint only a single guardian or a single conservator, or both, shall include:

(1) The petitioner's name and address, and if the petitioner is one of the ward's or conservatee's court appointed co-guardians or co-conservators, 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 names and addresses of each of the court appointed co-guardians or co-conservators, or both, who are not the petitioner;

(4) the factual basis upon which the petitioner alleges the need for the court to modify its prior order of appointment, and whether the petitioner requests that the court require the co-guardians or co-conservators, or both, to act independently, to act only in concert, or to act only in concert with regard to certain matters, or whether the petitioner requests that the court remove one of the co-guardians or co-conservators, or both, and appoint only a single guardian or a single conservator, or both;

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

(6) if the petitioner is requesting the appointment of a single guardian or a single conservator, or both, to replace the co-guardians or co-conservators, or both, 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 single guardian or single conservator, or both, and if the suggested single guardian or single conservator is under contract with the Kansas guardianship program, that fact; and

(7) a request that the court make a determination that the co-guardians or co-conservators, or both, should each have the authority to act independently, should be required to act only in concert or only in concert with regard to certain matters, or that the co-guardians or co-conservators, or both, should be replaced with a single guardian or a single conservator, or both.

(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 each of the co-guardians or co-conservators, as applicable, and, if in the opinion of the court, all other persons necessary to the matter, have entered their appearance, waived notice, and agreed to the court granting the petitioner's request. Otherwise, the court shall require the petitioner to give notice of this hearing to such persons and in such manner as the court may specify, including therewith a copy of the petition. The court shall require the petitioner to give this notice to any co-guardians or co-conservators, 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 to also give this notice to that attorney.

(c) In the absence of a petition having been filed pursuant to this section, but whenever the court believes that it may be in the best interests of the ward or conservatee to consider modification of the court's prior order appointing co-guardians or co-conservators, or both, the court may set a hearing thereon, and may require one of the co-guardians or co-conservators to give notice thereof as provided for herein.

(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 court's prior orders, any guardianship plan or conservatorship plan which has been filed pursuant to K.S.A. 59-3076 or 59-3079, and amendments thereto, and any reports or accountings which have been filed by the co-guardians or co-conservators, or both, even if previously approved or allowed. The court shall give to the co-guardians or co-conservators, or both, to the ward or conservatee, and to other interested persons, the opportunity to present information to the court concerning the actions of the co-guardians or co-conservators, or both, and of the recommendations of such persons.

(e) At the conclusion of the hearing, if the court finds that it is in the best interests of the ward or conservatee to do so, the court may modify its prior orders to provide that the co-guardians or co-conservators, or both, shall have the authority to act independently, to act only in concert, in certain circumstances or with regard to certain matters to act independently and in certain other circumstances or with regard to certain other matters to act only in concert, or the court may remove the co-guardians or co-conservators, or both, and appoint a single guardian or a single 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 by a preponderance of the evidence that a co-conservator has innocently misused any funds or assets of the conservatee's estate, the court shall order the co-conservator to repay such funds or return such assets to the conservator's estate. If the court finds that a co-conservator has embezzled or converted for the co-conservator's personal use any funds or assets of the conservatee's estate, the court shall find the co-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 co-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.

(g) No co-conservator, nor the co-conservator's estate or surety, shall be finally released from their bond until a final accounting has been filed, allowed and settled as provided for in K.S.A. 59-3086, and amendments thereto.

History: L. 2002, ch. 114, § 38; July 1.