

**REPORT OF THE JUDICIAL COUNCIL
GUARDIANSHIP AND CONSERVATORSHIP ADVISORY COMMITTEE
ON 2005 SB 240, PROPOSED BALLOON AMENDMENT VERSION**

BACKGROUND

In January 2007, Representative Lance Kinzer, as Chairman of the Special Committee on Judiciary, requested that the Judicial Council study 2005 SB 240, proposed balloon amendment version, relating to the appointment of guardians and conservators. (A copy of the bill is attached as Appendix A.) The Judicial Council assigned the study to its Guardianship and Conservatorship Advisory Committee in June 2007.

The study request was the result of a Special Committee on Judiciary hearing held on December 13, 2006. (A copy of the Special Committee's Report is attached as Appendix B.) The Special Committee was charged with studying possible conflicts of interest and the need for oversight and training of guardians and conservators. After a conferee urged the Special Committee to recommend 2005 SB 240, proposed balloon amendment version, the Special Committee agreed to request a Judicial Council study of the bill with emphasis on the language appearing at page one, lines 33 to 43, and page two, lines 1 through 3. The Special Committee also asked that the Council take testimony on the bill to see whether such a measure is warranted and, in its examination of the bill, to consider the education and training needed for a guardian or conservator.

The Guardianship and Conservatorship Advisory Committee held three meetings to conduct its study of 2005 SB 240, balloon amendment version. The Chair of the Special Committee on Judiciary was informed that the Guardianship and Conservatorship Committee

would hear testimony from interested conferees, and Committee members were urged to invite interested persons to testify. Kirk Lowry, Legal Director of the Disability Rights Center, testified before the Committee regarding the Center's position on the bill.

This report is the Judicial Council Guardianship and Conservatorship Committee's response to its assignment to study 2005 HB 240, balloon amendment version. However, it should be noted that 2005 SB 240, before balloon amendments, is identical to 2005 HB 2307, a bill previously studied by the Guardianship and Conservatorship Advisory Committee. The Committee provided the legislature a report on its study of that bill in December 2005. Because the Committee continues to support the findings and recommendation it made in the 2005 report, some of the content of this new report is identical.

COMMITTEE MEMBERSHIP

The members of the Judicial Council Guardianship and Conservatorship Advisory Committee are:

Hon. Sam K. Bruner, Chairman, retired District Court Judge, Overland Park

Tim Emert, practicing attorney and former State Senator, Independence

Hon. Thomas H. Graber, retired District Court Judge in 30th Judicial District, Wellington

John H. House, Attorney, Kansas Department of Social & Rehabilitative Services, Topeka

Jean Krahn, Executive Director of the Kansas Guardianship Program, Manhattan

Hon. Philip T. Kyle, Magistrate Judge in 24th Judicial District, Jetmore

Hon. Hal B. Malone, retired District Court Judge in 18th Judicial District, Wichita

H. Philip Martin, practicing attorney, Larned

Hon. David P. Mikesic, retired District Court Judge in 29th Judicial District, Kansas City

Robert I. Nicholson, Jr., practicing attorney, Paola

Dr. Jane Rhys, Executive Director of the Kansas Council on Developmental Disabilities,

Topeka

STATUTORY AMENDMENTS PROPOSED IN 2005 SB 240, BALLOON AMENDMENT VERSION

The issue before the Committee is whether K.S.A. 59-3068 and 59-3075 should be amended, and if so, how the amendments should be phrased. In addition to other amendments, 2005 SB 240, balloon amendment version, proposes the following additions to K.S.A. 59-3068(b):

(b) (1) The court, in appointing a guardian or conservator, shall consider the workload, capabilities and potential conflicts of interest of the proposed guardian or conservator, or both, before making such appointment, and the court shall give particular attention in making such appointment to the number of other cases in which the proposed guardian or conservator, other than a corporation, is currently serving as guardian or conservator, or both, particularly if that number is more than 15 or more wards or conservatees, or both.

(2) The court shall not appoint an unrelated person, institution, association, or corporation to be the guardian or conservator of a ward or conservatee if the unrelated person, institution, association, or corporation:

(A) provides during the guardianship or conservatorship goods or services for a fee to the ward or conservatee in the professional or business capacity;

(B) is during the guardianship or conservatorship period a creditor of the ward or conservatee;

(C) has during the guardianship or conservatorship period interests that may conflict with interests of the ward or conservatee;

(D) is an employee of a treatment or residential facility where a ward or conservatee is an inpatient in or resident of the facility; or

(E) is employed by an unrelated person, institution, association, or corporation who or which would be disqualified under paragraphs (A) through (D).

The Special Committee on Judiciary asked that the Judicial Council's study of 2005 SB 240, balloon amendment version, emphasize this language. While other amendments contained

in the bill are not reproduced here, they were also considered by the Guardianship and Conservatorship Advisory Committee. The entire bill with balloon amendments is attached as Appendix A.

COMMITTEE FINDINGS

The Committee is unanimously opposed to 2005 SB 240, proposed balloon amendment version. The following findings set forth the basis for the Committee's position and recommendation.

1. The prohibitions set forth in proposed K.S.A. 59-3068(b)(2) are limited to "unrelated" guardians.

2005 HB 240, balloon amendment version, proposes a new subsection (b)(2) be added to K.S.A. 59-3068 which prohibits appointment of "unrelated" guardians in certain situations. The assumption that potential conflicts of interest are not a concern for guardians who are related to the ward cannot be reconciled with reality. Family members who are guardians can have a myriad of conflicts. Financial conflicts of interest are particularly common in familial guardian/ward relationships. Furthermore, the term "unrelated" is not defined.

2. The proposed amendment to K.S.A. 59-3068 would absolutely prohibit the selection of potential appointees who could be otherwise appointed with proper disclosures.

The provision that would be added to K.S.A. 59-3068 would prohibit many qualified, competent people from serving as guardians. An employee of the provider of any services to the ward could not serve as the guardian, even if the employee worked in a different location or had nothing at all to do with the actual delivery of services to the ward. In reality, this category of people is a valuable resource in the community as potential guardians. This provision, if enacted, would needlessly disqualify countless guardians currently serving in a competent and

professional fashion.

3. The proposed amendments contained in new sections 4 and 5 (balloon amendments) are unclear.

The reference to "this section" in new sections 4 and 5 (balloon amendments) is unclear. For example, new section 4 states, "This section shall not apply to a guardian or conservator of a minor" It is not clear what "this section" refers to; however, if it means that the provisions regarding conflicts of interest apply only to adult wards and not minor wards, the Committee does not believe such a distinction is warranted.

4. The proposed amendment to K.S.A. 59-3075 employs a "laundry list" approach to attempt to define conflict of interest.

K.S.A. 59-3075(a)(2) currently contains broad directives regarding a guardian's duties and responsibilities. The language that is proposed in 2005 SB 240, balloon amendment version, as a new subsection (a)(3) contains a list of very specific things a guardian "shall" or "shall not" do. It appears to attempt to define situations that would constitute a conflict of interest. Laundry list approaches should be used with caution, especially in statutes. Such lists inevitably lead to questions regarding a situation that is not listed. Was it intentionally omitted, or was it forgotten or not considered? Despite the apparent attempt to be specific about what constitutes a conflict of interest, the proposed language includes terms that are not defined. For example, there is no definition of "friends or family" to accompany the provision that the guardian shall not "employ such guardian's friends or family to provide services"

5. 2005 HB 2307 does not solve the perceived problem it attempts to address and instead creates new problems.

The Committee believes that 2005 HB 240, balloon amendment version, was at least in part a reaction to the Newton case in which the owner of a group home served as guardian and provided therapy to a ward residing in the home. It is the Committee's position that the Newton case is an example of human failures and not of inadequate statutory protections. Moreover, 2005 HB 240, balloon amendment version, is not well tailored to address the perceived issue. The bill is overly broad and contains undefined terms and vague language that are incapable of uniform application. Further, enactment of the bill would result in the outright disqualification of capable and competent persons who could otherwise be appointed as guardians.

6. While the current guardianship and conservatorship act contains many provisions addressing conflicts of interest, if additional protections are necessary, they can be implemented in a less restrictive manner than 2005 HB 240, balloon amendment version.

The act for obtaining a guardian or conservator, or both, K.S.A. 59-3050 *et seq.*, already contains several provisions addressing the potential for conflicts of interest in guardianships and conservatorships. For example, the court is directed to consider potential conflicts at the time of appointment. K.S.A. 59-3068(b) states:

"The court, in appointing a guardian or conservator, shall consider the workload, capabilities *and potential conflicts of interest* of the proposed guardian or conservator, or both, before making such appointment" (Emphasis added).

The act also provides guidance for guardians. The last sentence of existing K.S.A. 59-3075(a)(2), immediately preceding the proposed laundry list addition, clearly states: "A guardian shall at all times act in the best interests of the ward and shall exercise reasonable care, diligence and prudence." It is not necessary to then list situations in which a guardian would not be acting in the ward's best interests.

The act also has built-in opportunities to bring a conflict of interest to the attention of the

court. Anyone can file a verified petition pursuant to K.S.A. 59-3088 requesting the removal of a guardian or conservator, or both. The court can even raise the issue in the absence of a petition and set the matter for hearing "at any time when the court has reason to believe that removal of a guardian or conservator, or both, may be necessary." K.S.A. 60-3088(c). In addition, K.S.A. 60-3089(a) states:

"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. Supp. 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."

This statute also gives the court broad latitude to shape an appropriate remedy, depending on the court's findings at the conclusion of the hearing. These range from dismissal of the proceedings to removal of the guardian or conservator and revocation of the letters of guardianship or conservatorship, or both. K.S.A. 59-3088(c) and (d).

The Committee firmly believes that Kansas judges are capable and are, in fact, in the best position to evaluate individual situations and make the best decision for each proposed ward. 2005 SB 240, balloon amendment version, takes that discretion away from judges by enacting blanket prohibitions against situations that "might" result in a conflict of interest. Instead of restricting judicial discretion, the Committee believes that a better remedy would be to implement less restrictive protections. First, the Committee recommends that each of the six guardianship and conservatorship petition statutes (K.S.A. 59-3056, 59-3058, 59-3059, 59-3060,

59-3061 and 59-3062) be amended to strengthen pleading requirements by requiring the petitioner to state any potential conflicts of interest as well as the age, date of birth, gender, and place of employment of the proposed guardian or conservator. The latter information will be helpful if it ever becomes necessary to issue a bench warrant for the guardian or conservator. Second, the Committee recommends that K.S.A. 59-3083 be amended to require reporting when a conflict of interest arises at any time after appointment. Third, the Committee recommends the addition of a more detailed conflict of interest analysis to K.S.A. 59-3068 which is narrowly tailored to address the concerns of the drafters of 2005 HB 240, balloon amendment version.

Finally, the Committee believes that education and training of guardians and conservators is essential and that completion of a basic instructional program which emphasizes conflict of interest issues should be required of all first-time guardians and conservators. Accordingly, the Committee recommends the addition of a training requirement to K.S.A. 59-3069.

COMMITTEE'S RECOMMENDATION

After careful consideration, the Committee recommends that the proposed amendments contained in 2005 SB 240, balloon amendment version, not be enacted. If the legislature determines that more protections relating to conflicts of interest and training of guardians and conservators are necessary, the Committee's recommended amendments are fully set out below.

RECOMMENDED AMENDMENTS

59-3056. Voluntary petition for appointment of conservator.

An adult person for whom no guardian or conservator has been appointed, and who is not a proposed ward or a proposed conservatee may file in the district court of the county of residence of such person a verified petition requesting the appointment of a conservator for the petitioner. The petition shall include:

- (a) The person's name, age, date of birth, address of permanent residence and present address or whereabouts, if different from the person's permanent residence;
- (b) the factual basis upon which the person alleges the need for the appointment of a conservator;
- (c) the name, age, date of birth, gender, and address, place of employment, and relationship to the person, if any, of the individual or corporation whom the person requests that the court appoint as the conservator, and any personal or agency interest of the proposed conservator that could be perceived as self-serving or adverse to the position or best interest of the proposed conservatee, and whether such individual or corporation should be required to file a bond. If the proposed conservator is under contract with the Kansas guardianship program, the petition shall state that fact;
- (d) a request that the court make a determination that there is a need for the appointment of a conservator and that the court appoint a conservator;
- (e) the names and addresses of the relatives nearest in kinship to the person;
- (f) the general character and probable value of the real and personal property, including the amount and sources of income, of the person;
- (g) the name, address of any existing fiduciary for the person and a description of that fiduciary relationship.

59-3058. Petition for appointment of guardian or conservator for an adult with an impairment; contents; evaluation; plan.

(a) (1) Any person may file in the district court of the county of residence of the proposed ward or proposed conservatee or of any county wherein the proposed ward or proposed conservatee may be found, a verified petition requesting the appointment of a guardian or a conservator, or both, for an adult with an impairment in need of a guardian or conservator, or both. If the proposed conservatee is not a resident of or present within the state of Kansas, such petition may be filed in the district court of any county in which any property of the proposed conservatee is situated.

(2) If a petition is filed in the district court of a county other than the county of residence of the proposed ward or proposed conservatee, the court may consider whether it is in the best interests of the proposed ward or proposed conservatee or in the interests of justice for the proceedings to take place in that county.

(3) If the court finds it is not in the best interests of the proposed ward or proposed conservatee or in the interests of justice that the proceedings take place in that county and the proposed ward or proposed conservatee is a nonresident of the state of Kansas, the court may dismiss the matter immediately, or may continue the matter for a specific period of time not to exceed 60 days to allow for the filing of proceedings in the state of residence. After the expiration of that period of time, or upon the filing of proceedings in the state of residence, the court shall dismiss the petition without prejudice.

(4) If the court finds it is not in the best interests of the proposed ward or proposed conservatee or in the interests of justice that the proceedings take place in that county and the proposed ward or proposed conservatee is a resident of a different county in Kansas, the court may dismiss the matter immediately, or may transfer venue to the county of residence, or may continue the matter for a specific period of time not to exceed 60 days to allow for the filing of proceedings in the county of residence. After the expiration of that period of time, or upon the filing of proceedings in the county of residence, the court shall dismiss the petition without prejudice.

(b) The petition shall include:

(1) The petitioner's name and address;

(2) the proposed ward's or proposed conservatee's name, age, date of birth, address of permanent residence, and present address or whereabouts, if different from the proposed ward's or proposed conservatee's permanent residence;

(3) if the proposed ward or proposed conservatee is a nonresident of the county in which the petition is filed, a statement of why it is in the best interests of the proposed ward or proposed conservatee or in the interests of justice for the proceedings to take place in that county;

(4) if the proposed ward or proposed conservatee is under the age of 18 years, the factual circumstances under which the petitioner alleges that the minor should be considered to be of the age of majority pursuant to the provisions of K.S.A. 38-101, and amendments thereto, or concerning when and where the rights of majority were conferred upon the minor pursuant to the provisions of K.S.A. 38-108, and amendments thereto;

(5) a statement that it is the petitioner's belief that the proposed ward or proposed conservatee is an adult with an impairment in need of a guardian or a conservator, or both;

(6) the factual basis upon which the petitioner makes that allegation;

(7) the names and addresses of any spouse, adult children and adult grandchildren of the proposed ward or proposed conservatee, and those of any parent and adult siblings of the proposed ward or proposed conservatee, or if no such names or addresses are known to the petitioner, the name and address of at least one adult who is nearest in kinship to the proposed ward or proposed conservatee, or if none, that fact. If no such names or addresses are known to the petitioner, but the petitioner has reason to believe such persons exist, then the petition shall state that fact and that the petitioner has made diligent inquiry to learn those names and addresses;

(8) the name and address of any person or agency having custody of the proposed ward or proposed conservatee, or any other person or agency who has assumed responsibility for the proposed ward or proposed conservatee, and the circumstances under which the proposed ward or proposed conservatee came into such person's or agency's care or control;

(9) the name and address of any person or corporation acting for or nominated to act on behalf of the proposed ward or proposed conservatee pursuant to any power of attorney, trust or other fiduciary relationship established by any court order, and a description of that authority or relationship. If not known, the petition shall state that the petitioner has made diligent inquiry to learn this information;

(10) a list and description of all court proceedings in which the proposed ward or conservatee is a party, or is the subject of, or may be a beneficiary of, or in which any rights of the proposed ward or proposed conservatee may be determined or affected, and the name and address of any attorney who represents the proposed ward or proposed conservatee in such matter. If not known, the petition shall state that the petitioner has made diligent inquiry to learn this information;

(11) in general terms, the location, type, and value of any real or personal property of the proposed ward or proposed conservatee, including the amount and sources of any income of the proposed ward or proposed conservatee. If not known, the petition shall state that the petitioner has made diligent inquiry to learn this information;

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

(13) the name, age, date of birth, gender, address, place of employment, ~~and~~ relationship to the proposed ward or proposed conservatee, if any, of the individual or corporation whom the petitioner suggests that the court appoint as the guardian or as the conservator, or both, and any personal or agency interest of the proposed guardian or conservator that could be perceived as self-serving or adverse to the position or best interest of the proposed ward or conservatee, and if the suggested guardian or conservator is under contract with the Kansas guardianship program, that fact;

(14) if the petitioner suggests the appointment of co-guardians or co-conservators, or both, a statement of the reasons why such appointment is sought and whether the petitioner suggests that the co-guardians or co-conservators, if appointed, should be able to act independently or whether they should be required to act only in concert or only in concert with regard to specified matters; and

(15) a request that the court make a determination that the proposed ward or proposed conservatee is an adult with an impairment in need of a guardian or a conservator, or both, that the court enter one or more of the orders provided for in K.S.A. 59-3063, 59-3064 and 59-3065, and amendments thereto, and that the court appoint a guardian or a conservator, or both, for the proposed ward or proposed conservatee.

(c) Any such petition may be accompanied by, or the court may require that such petition be accompanied by, a report of an examination and evaluation which meets the requirements of K.S.A. 59-3064, and amendments thereto. In such case, the petition may include a request that the court accept this report in lieu of ordering any additional examination and evaluation pursuant to K.S.A. 59-3064, and amendments thereto.

(d) Any such petition may be accompanied by, or the court may require that such petition be accompanied by, a proposed guardianship plan as provided for in K.S.A. 59-3076, and amendments thereto, or a proposed conservatorship plan as provided for in K.S.A. 59-3079, and amendments thereto, or both.

59-3059. Petition for appointment of guardian or conservator for minor; contents; plan.

(a) (1) Any person may file in the district court of the county of residence of the proposed ward or proposed conservatee or of any county wherein the proposed ward or proposed conservatee may be found, a verified petition requesting the appointment of a guardian or a conservator, or both, for a minor in need of a guardian or conservator, or both. If the proposed conservatee is not a resident of or present within the state of Kansas, such petition may be filed in the district court of any county in which any property of the proposed conservatee is situated.

(2) If a petition is filed in the district court of a county other than the county of residence of the minor, the court may consider whether it is in the best interests of the minor or in the interests of justice for the proceedings to take place in that county.

(3) If the court finds it is not in the best interests of the minor or in the interests of justice that the proceedings take place in that county and the minor is a nonresident of the state of Kansas, the court may dismiss the matter immediately, or may continue the matter for a specific period of time not to exceed 60 days to allow for the filing of proceedings in the state of residence. After the expiration of that period of time, or upon the filing of proceedings in the state of residence, the court shall dismiss the petition without prejudice.

(4) If the court finds it is not in the best interests of the minor or in the interests of justice that the proceedings take place in that county and the minor is a resident of a different county in Kansas, the court may dismiss the matter immediately, or may transfer venue to the county of residence, or may continue the matter for a specific period of time not to exceed 60 days to allow for the filing of proceedings in the county of residence. After the expiration of that period of time, or upon the filing of proceedings in the county of residence, the court shall dismiss the petition without prejudice.

(b) The petition shall include:

(1) The petitioner's name and address;

(2) the minor's name, age, date of birth, address of permanent residence, and present address or whereabouts, if different from the minor's permanent residence;

(3) if the minor is a nonresident of the county in which the petition is filed, a statement of why it is in the best interests of the minor or in the interests of justice for the proceedings to take place in that county;

(4) a statement that it is the petitioner's belief that the proposed ward or proposed conservatee is a minor in need of a guardian or conservator, or both;

(5) the factual basis upon which the petitioner makes that allegation;

(6) the names and addresses of any spouse of the minor, any natural guardian, any grandparent, any person nominated by a natural guardian to be the guardian or conservator, or both, any child or children of the minor, any permanent custodian appointed for the minor pursuant to K.S.A. 2006 Supp. 38-2269, and amendments thereto, any fiduciary appointed for the minor by any court order, and any other person or agency having or claiming a right to legal or physical custody of or visitation with the minor or who has assumed responsibility for or care of the minor, and the circumstances under which the minor came into such person's or agency's care or control. If no such names or addresses are known to the petitioner, but the petitioner has reason to believe such persons exist, then the petition shall state that fact and that the petitioner has made diligent inquiry to learn those names and addresses;

(7) a list and description of all court proceedings in which the minor is or has recently been a party, or is or has recently been the subject of, or was or may be a beneficiary of, or in which any rights of the minor were or may be determined or affected, including any proceedings concerning the custody of or visitation with the minor, any domestic relations matters, juvenile proceedings or adoptions, and the name and address of any attorney who represents or has represented the minor in any such matter. If not known, the petition shall state that the petitioner has made diligent inquiry to learn this information;

(8) in general terms, the location, type, and value of any real or personal property of the minor, including the amount and sources of any income of the minor. If not known, the petition shall state that the petitioner has made diligent inquiry to learn this information;

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

(10) the name, age, date of birth, gender, address, place of employment, and relationship to the minor, if any, of the individual or corporation whom the petitioner suggests that the court appoint as the guardian or as the conservator, or both, and any personal or agency interest of the proposed guardian or conservator that could be perceived as self-serving or adverse to the position or best interest of the proposed ward or conservatee;

(11) if the petitioner suggests the appointment of co-guardians or co-conservators, or both, a statement of the reasons why such appointment is sought and whether the petitioner suggests that the co-guardians or co-conservators, if appointed, should be able to act independently or whether they should be required to act only in concert or only in concert with regard to specified matters; and

(12) a request that the court make a determination that the proposed ward or proposed conservatee is a minor in need of a guardian or a conservator, or both, that the court enter one or more of the orders provided for in K.S.A. 59-3063 and 59-3065, and amendments thereto, and that the court appoint a guardian or a conservator, or both, for the minor.

(c) Any such petition may be accompanied by, or the court may require that such petition be accompanied by, a proposed guardianship plan as provided for in K.S.A. 59-3076, and amendments thereto, or a proposed conservatorship plan as provided for in K.S.A. 59-3079, and amendments thereto, or both.

59-3060. Petition for appointment of guardian or conservator for a minor with an impairment; contents; evaluations; plan.

(a) (1) Any person may file in the district court of the county of residence of the proposed ward or proposed conservatee or of any county wherein the proposed ward or proposed conservatee may be found, a verified petition requesting the appointment of a guardian or a conservator, or both, for a minor with an impairment in need of a guardian or conservator, or both. If the proposed conservatee is not a resident of or present within the state of Kansas, such petition may be filed in the district court of any county in which any property of the proposed conservatee is situated. If a petition is filed in the district court of a county other than the county of residence of the minor, the court may consider whether it is in the best interests of the minor or in the interests of justice for the proceedings to take place in that county.

(2) If the court finds it is not in the best interests of the minor or in the interests of justice that the proceedings take place in that county and the minor is a nonresident of the state of Kansas, the court may dismiss the matter immediately, or may continue the matter for a specific period of time not to exceed 60 days to allow for the filing of proceedings in the state of residence. After the expiration of that period of time, or upon the filing of proceedings in the state of residence, the court shall dismiss the petition without prejudice.

(3) If the court finds it is not in the best interests of the minor or in the interests of justice that the proceedings take place in that county and the minor is a resident of a different county in Kansas, the court may dismiss the matter immediately, or may transfer venue to the county of residence, or may continue the matter for a specific period of time not to exceed 60 days to allow for the filing of proceedings in the county of residence. After the expiration of that period of time, or upon the filing of proceedings in the county of residence, the court shall dismiss the petition without prejudice.

(b) The petition shall include:

(1) The petitioner's name and address;

(2) the minor's name, age, date of birth, address of permanent residence, and present address or whereabouts, if different from the minor's permanent residence;

(3) if the minor is a nonresident of the county in which the petition is filed, a statement of why it is in the best interests of the minor or in the interests of justice for the proceedings to take place in that county;

(4) a statement that it is the petitioner's belief that the proposed ward or proposed conservatee is a minor with an impairment in need of a guardian or conservator, or both;

(5) the factual basis upon which the petitioner makes this allegation;

(6) the names and addresses of any spouse of the minor, any natural guardian, any grandparent, any person nominated by a natural guardian to be the guardian or conservator, or both, any child or children of the minor, any permanent custodian appointed for the minor pursuant to K.S.A. 2006 Supp. 38-2269, and amendments thereto, any fiduciary appointed for the minor by any court order, and any other person or agency having or claiming a right to legal or physical custody of or visitation with the minor or who has assumed responsibility for or care of the minor, and the circumstances under which the minor came into such person's or agency's care or control. If no such names or addresses are known to the petitioner, but the petitioner has reason to believe such persons exist, then the petition shall state that fact and that the petitioner has

made diligent inquiry to learn those names and addresses;

(7) a list and description of all court proceedings in which the minor is or has recently been a party, or is or has recently been the subject of, or was or may be a beneficiary of, or in which any rights of the minor were or may be determined or affected, including any proceeding concerning the custody of or visitation with the minor, any domestic relations matters, juvenile proceedings or adoptions, and the name and address of any attorney who represents or has represented the minor in any such matter. If not known, the petition shall state that the petitioner has made diligent inquiry to learn this information;

(8) in general terms, the location, type, and value of any real or personal property of the minor, including the amount and sources of any income of the minor. If not known, the petition shall state that the petitioner has made diligent inquiry to learn this information;

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

(10) the name, age, date of birth, gender, address, place of employment, and relationship to the minor, if any, of the individual or corporation whom the petitioner suggests that the court appoint as the guardian or as the conservator, or both, and any personal or agency interest of the proposed guardian or conservator that could be perceived as self-serving or adverse to the position or best interest of the proposed ward or conservatee;

(11) if the petitioner suggests the appointment of co-guardians or co-conservators, or both, a statement of the reasons why such appointment is sought and whether the petitioner suggests that the co-guardians or co-conservators, if appointed, should be able to act independently or whether they should be required to act only in concert or only in concert with regard to specified matters; and

(12) a request that the court make a determination that the proposed ward or proposed conservatee is a minor with an impairment in need of a guardian or conservator, or both, that the court enter one or more of the orders provided for in K.S.A. 59-3063, 59-3064 and 59-3065, and amendments thereto, that the court appoint a guardian or a conservator, or both, for the minor and that the court order that this appointment shall extend beyond the minor's 18th birthday.

(c) Any such petition may be accompanied by, or the court may require that such petition be accompanied by, a report of an examination and evaluation which meets the requirements of K.S.A. 59-3064, and amendments thereto. In such case, the petition may include a request that the court accept this report in lieu of ordering any additional examination and evaluation pursuant to K.S.A. 59-3064, and amendments thereto.

(d) Any such petition may be accompanied by, or the court may require that such petition be accompanied by, a proposed guardianship plan as provided for in K.S.A. 59-3076, and amendments thereto, or a proposed conservatorship plan as provided for in K.S.A. 59-3079, and amendments thereto, or both.

59-3061. Petition for appointment of guardian or conservator for person previously adjudged impaired in another state; contents; authenticated documents; plan.

(a) The guardian, conservator or other similarly empowered fiduciary appointed in any other state for a person who has been previously adjudged as impaired in another state may file in the district court of the county wherein the proposed ward or proposed conservatee may be found or wherein the petitioner plans to relocate the proposed ward or proposed conservatee, a verified petition requesting that the court give full faith and credit to the prior adjudication and appoint a guardian or a conservator, or both, in Kansas. The petition shall also declare that immediately upon such appointment, the petitioner will take the necessary action to terminate the proceedings in the other state.

(b) The petition shall include:

(1) The petitioner's name and address;

(2) the proposed ward's or proposed conservatee's name, age, date of birth, address of permanent residence, and present address or whereabouts, if different from the proposed ward's or proposed conservatee's permanent residence;

(3) if the proposed ward or proposed conservatee is not already present within Kansas, the address and nature of the place located within Kansas to which the petitioner plans to relocate the proposed ward or proposed conservatee if the court does appoint a guardian or conservator, or both, in Kansas;

(4) the place where and the date upon which the petitioner was appointed as the guardian, conservator or other similarly empowered fiduciary for the proposed ward or proposed conservatee and a statement that this appointment remains in full force and effect;

(5) the factual basis upon which the petitioner alleges the need for the appointment of a guardian or conservator, or both, in Kansas;

(6) the names and addresses of any spouse, adult children and adult grandchildren of the proposed ward or proposed conservatee, and those of any parent and adult siblings of the proposed ward or proposed conservatee, or if no such names or addresses are known to the petitioner, the name and address of at least one adult who is nearest in kinship to the proposed ward or proposed conservatee, or if none, that fact. If no such names or addresses are known to the petitioner, but the petitioner has reason to believe such persons exist, then the petition shall state that fact and that the petitioner has made diligent inquiry to learn those names and addresses;

(7) the name and address of any person or corporation acting for or nominated to act on behalf of the proposed ward or proposed conservatee pursuant to any power of attorney, trust or other fiduciary relationship established by any court order, other than the appointment in the other state of the petitioner as the guardian, conservator or other similarly empowered fiduciary for the proposed ward or proposed conservatee, and a description of that authority or relationship. If not known, the petition shall state that the petitioner has made diligent inquiry to learn this information;

(8) a list and description of all court proceedings in which the proposed ward or conservatee is a party, or is the subject of, or may be a beneficiary of, or in which any rights of the proposed ward or proposed conservatee may be determined or affected, and the name and address of any attorney who represents the proposed ward or proposed conservatee in such matter. If not known,

the petition shall state that the petitioner has made diligent inquiry to learn this information;

(9) in general terms, the location, type and value of any real or personal property of the proposed ward or proposed conservatee, including the amount and sources of any income of the proposed ward or proposed conservatee. If not known, the petition shall state that the petitioner has made diligent inquiry to learn this information;

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

(11) the name, age, date of birth, gender, address, place of employment, and relationship to the proposed ward or proposed conservatee, if any, of the individual or corporation whom the petitioner suggests that the court appoint as the guardian or as the conservator, or both, and any personal or agency interest of the proposed guardian or conservator that could be perceived as self-serving or adverse to the position or best interest of the ward or conservatee, and if the suggested guardian or conservator is under contract with the Kansas guardianship program, that fact;

(12) if the petitioner suggests the appointment of co-guardians or co-conservators, or both, a statement of the reasons why such appointment is sought and whether the petitioner suggests that the co-guardians or co-conservators, if appointed, should be able to act independently or whether they should be required to act only in concert or only in concert with regard to specified matters;

(13) a declaration that, immediately upon the appointment of a guardian or conservator in this state, the petitioner will take the necessary action to terminate the proceedings in the other state; and

(14) a request that the court make a determination that the proposed ward or proposed conservatee is a person who has been previously adjudged as impaired in another state, that the court enter one or more of the orders provided for in K.S.A. 59-3063 and 59-3065, and amendments thereto, and that the court appoint a guardian or conservator, or both, for the proposed ward or proposed conservatee in Kansas.

(c) Any such petition shall be accompanied by a duly authenticated copy of the order of adjudication and appointment and documents showing the continuing authority of the petitioner in the other state.

(d) Any such petition may be accompanied by, or the court may require that such petition be accompanied by, a proposed guardianship plan as provided for in K.S.A. 59-3076, and amendments thereto, or a proposed conservatorship plan as provided for in K.S.A. 59-3079, and amendments thereto, or both.

59-3062. Petition for appointment of ancillary conservator; contents; authenticated documents; plan.

(a) The conservator or other similarly empowered fiduciary appointed in any other state for a person in need of an ancillary conservator may file in the district court of any county in which any property of the proposed conservatee is situated a verified petition requesting the appointment of an ancillary conservator in Kansas.

(b) The petition shall include:

(1) The petitioner's name and address, and a statement that the petitioner is the conservator or other similarly empowered fiduciary appointed in another state, and that this appointment remains in full force and effect;

(2) the proposed conservatee's name, age, date of birth, address of permanent residence, and present address or whereabouts, if different from the proposed conservatee's permanent residence;

(3) a statement that the proposed conservatee is a person in need of an ancillary conservator;

(4) the factual basis upon which the petitioner alleges the need for an ancillary conservatorship in this state;

(5) the names and addresses of any spouse, adult children and adult grandchildren of the proposed conservatee, and those of any parent and adult siblings of the proposed conservatee, or if no such names or addresses are known to the petitioner, the name and address of at least one adult who is nearest in kinship to the proposed conservatee. If no such names or addresses are known to the petitioner, but the petitioner has reason to believe such persons exist, then the petition shall state that fact and that the petitioner has made diligent inquiry to learn those names and addresses;

(6) the name and address of any person or corporation acting for or nominated to act on behalf of the proposed conservatee in this state pursuant to any power of attorney, trust or other fiduciary relationship established by any court order, and a description of that authority or relationship. If not known, the petition shall state that the petitioner has made diligent inquiry to learn this information;

(7) the location and value of the property within Kansas for which an ancillary conservatorship is being sought;

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

(9) the name, age, date of birth, gender, address, place of employment, ~~and~~ relationship to the proposed conservatee, if any, of the individual or corporation whom the petitioner suggests that the court appoint as the ancillary conservator, and any personal or agency interest of the proposed conservator that could be perceived as self-serving or adverse to the position or best interest of the conservatee, and if the suggested ancillary conservator is under contract with the Kansas guardianship program, that fact;

(10) if the petitioner suggests the appointment of co-ancillary conservators, a statement of the reasons why such appointment is sought and whether the petitioner suggests that the co-ancillary conservators, if appointed, should be able to act independently or whether they should be required to act only in concert or only in concert with regard to specified matters; and

(11) a request that the court make a determination that the proposed conservatee is a person in need of an ancillary conservator, that the court enter one or more of the orders provided for in

K.S.A. 59-3063 and 59-3065, and amendments thereto, and that the court appoint an ancillary conservator for the proposed conservatee in this state.

(c) The petition shall be accompanied by a duly authenticated copy of the order of adjudication and appointment and documents showing the continuing authority of the petitioner in the other state.

(d) Any such petition may be accompanied by, or the court may require that such petition be accompanied by, a proposed conservatorship plan as provided for in K.S.A. 59-3079, and amendments thereto.

59-3068. Appointment of guardian or conservator; priority of nominee; qualifications.

- (a) The court in appointing a guardian or conservator shall give priority in the following order to:
- (1) The nominee of the proposed ward or proposed conservatee, if such nomination is made within any durable power of attorney;
 - (2) the nominee of a natural guardian;
 - (3) the nominee of a minor who is the proposed ward or proposed conservatee, if the minor is over 14 years of age;
 - (4) the nominee of the spouse, adult child or other close family member of the proposed ward or proposed conservatee; or
 - (5) the nominee of the petitioner.

(b)(1) The court, in appointing a guardian or conservator, shall consider the workload, capabilities and potential conflicts of interest of the proposed guardian or conservator, or both, before making such appointment, and the court shall give particular attention in making such appointment to the number of other cases in which the proposed guardian or conservator, other than a corporation, is currently serving as guardian or conservator, or both, particularly if that number is more than 15 or more wards or conservatees, or both.

(2) If the proposed guardian or proposed conservator is a person who provides care or other services, or is an employee of an agency, partnership or corporation which provides care or other services, to persons with a disability similar in nature to the condition or conditions which contribute to the impairment of the ward or conservatee, then that person or employee may be appointed as the guardian or conservator only when:

(A) the person or employee is the spouse, parent, grandparent, child, grandchild, sibling, niece, nephew, aunt or uncle of the ward or conservatee, and the court is satisfied that the person or employee is aware of issues of conflict of interest and, for persons appointed on or after January 1, 2009, has completed the basic instructional program referenced in K.S.A. 59-3069(j);

(B) the person or employee does not personally provide nor supervise the providing of care or other services to the ward or conservatee, and the person or employee is not in a position to be called upon to advocate for the agency, partnership or corporation in opposition to the interests of the ward or conservatee; or,

(C) the person or employee is the only person readily available to be appointed and the court is satisfied that the person or employee is aware of issues of conflict of interest and, for persons appointed on or after January 1, 2009, has completed the basic instructional program referenced in K.S.A. 59-3069(j).

For purposes of this section, "employee" shall include any student, trainee or other classification of persons providing services to any agency, partnership or corporation, whether compensated or not.

(3) Nothing in this section shall prohibit a guardian or conservator from collecting a reasonable fee, as approved by the court, for carrying out their duties and responsibilities as a guardian or conservator. Nothing in this section shall prohibit a guardian or conservator associated with the Kansas guardianship program from receiving a stipend from that program for carrying out his or her duties and responsibilities as a guardian or conservator.

(c) In appointing a guardian for a person who is an adherent of a religion whose tenets and practices call for reliance on prayer alone for healing, the court shall consider, but shall not be limited to, the appointment of an individual as guardian who is sympathetic to and willing to support this system of healing.

59-3069. Oaths; bonds; resident agent; letters.

(a) When the court appoints an individual or a corporation as a guardian, the court shall require that the individual or a representative on behalf of the corporation file with the court an oath or affirmation as required by K.S.A. 59-1702, and amendments thereto.

(b) When the court appoints an individual or a corporation as a conservator, except as provided for in subsections (c), (d) or (e), or in K.S.A. 59-3055, and amendments thereto, the court shall require that the individual or a representative on behalf of the corporation file with the court a bond in the amount of 125% of the combined value of the tangible and intangible personal property in the conservatee's estate and the total of any annual income from any source which the conservator may be expected to receive on behalf of the conservatee, minus any reasonably expected expenses, conditioned upon the faithful discharge of all the duties of the conservator's trust according to law, and with sufficient sureties as the court may determine necessary or appropriate.

(c) When the court appoints an individual or a corporation as a conservator pursuant to a request for a voluntary conservatorship as provided for in K.S.A. 59-3056, and amendments thereto, and the person for whom the voluntary conservatorship is established has requested that the individual or corporation appointed not be required to file a bond, the court may waive the filing of a bond; provided that the court may later require the filing of a bond if circumstances so require.

(d) If, at the time of the appointment of a conservator, there is no property in the possession of the conservatee requiring a conservatorship, but the court finds that there is likely to be such at some point in time, the court may waive the filing of a bond and order that the conservator shall immediately file a report with the court upon either the conservator coming into possession of any property of the conservatee, or if the conservatee becomes entitled to receive any property which the conservator believes should be placed within the conservatorship. Upon the filing of such a report, the court, following any hearing the court may determine appropriate, may require the conservator to file a bond as provided for herein.

(e) If the conservator appointed is the individual or corporation suggested by a testator or settlor as provided for in K.S.A. 59-3054, and amendments thereto, and the testator or settlor has provided by will or trust that no bond should be required of such conservator, the court may waive the filing of a bond; provided that the court may later require the filing of a bond if circumstances so require.

(f) If the conservator is a bank having trust authority or a trust company organized and having its principal place of business within the state of Kansas, the court may waive the filing of a bond.

(g) If the conservator appointed is under contract with the Kansas guardianship program, the department of social and rehabilitation services shall act as surety on the bond. The court shall order that a certified copy of the order appointing a conservator who is under contract with the Kansas guardianship program be sent to the director of the Kansas guardianship program.

(h) If the individual appointed as the guardian or as the conservator, or both, resides outside of Kansas, the court shall require that person, and in the case of a corporation being appointed as the guardian or the conservator, or both, the court shall require a representative of the corporation, to appoint, in writing, a resident agent pursuant to K.S.A. 59-1706, and amendments thereto.

(i) Upon the filing of the required oath or bond, and appointment and consent of a resident agent, the court shall issue letters of guardianship to the guardian or letters of conservatorship to the conservator, or both. The court may order that a certified copy of these letters be sent to such persons or agencies as the court specifies.

(j) Every individual appointed as a guardian or conservator on or after January 1, 2009, shall file with the court prior to the issuance of letters of guardianship or conservatorship evidence of completion of a basic instructional program concerning the duties and responsibilities of a guardian or conservator. The court shall have the authority to require any guardian or conservator appointed prior to January 1, 2009, to complete the basic instructional program and provide evidence thereof to the court. The materials comprising the basic instructional program shall be prepared by the judicial council.

59-3083. Reports and accountings.

(a) The guardian or conservator appointed by the court pursuant to either K.S.A. 59-3057 or 59-3067, and amendments thereto, annually, and at other times as the court may specify, shall file with the court, in such form as the supreme court may require by rule, or in the absence of such rule or in supplement thereto, as the court may require, reports and accountings concerning the status of the ward or conservatee, the estate of the ward or conservatee, and the actions of the guardian or conservator.

(b) The guardian or conservator, or both, shall file a special report or accounting with the court upon the occurrence of any of the following:

(1) A change of address of the guardian or conservator;

(2) a change of residence or placement of the ward or conservatee;

(3) a significant change in the health or impairment of the ward or conservatee;

(4) the acquisition by the ward of any real property, or the receipt or accumulation of other property or income by the ward or by the guardian on behalf of the ward, which causes the total value of the ward's estate to equal or exceed \$10,000; or

(5) the death of the ward or conservatee;

(6) a change in the circumstances of the guardian, conservator, ward, or conservatee that may constitute a conflict of interest. A conflict of interest occurs where the guardian or conservator has some personal or agency interest that could be perceived as self-serving or adverse to the position or best interest of the ward or conservatee.

(c) Upon the death of the guardian or conservator, or upon the guardian or conservator being adjudged in this state to be an adult with an impairment in need of a guardian or a conservator, or both, or being similarly adjudged in any other state, a representative on behalf of the guardian or conservator, as the court may allow, shall file a final report or accounting on behalf of that guardian or conservator.

(d) If the guardian or conservator is under contract with the Kansas guardianship program, the court shall order that the guardian or conservator file with the Kansas guardianship program a copy of each report or accounting filed with the court.

(e) At the termination of the guardianship, or upon the resignation, impairment, death or removal of the guardian, the guardian or a representative on behalf of the guardian, as the court may allow, shall file with the court a final report concerning the status of the ward and of the actions and recommendations of the guardian.

(f) At the termination of the conservatorship, or upon the resignation, impairment, death or removal of the conservator, the conservator or a representative on behalf of the conservator, as the court may allow, shall file with the court a final report and accounting concerning the status of the conservatee, of the conservatee's estate, and of the actions and recommendations of the conservator. The conservator, the conservator's estate and the conservator's surety shall not be finally discharged until such final report and accounting is filed, and the accounting allowed and settled as provided for in K.S.A. 59-3086, and amendments thereto. The conservator's surety, in the surety's discretion, may file any report or accounting it deems appropriate, or perform the duties of the conservator upon the resignation, death, impairment or removal of the conservator, subject to the authority of the standby conservator, if a standby conservator has been appointed by the court pursuant to K.S.A. 59-3074, and amendments thereto.