

59-3063. Mandatory preliminary orders; trial; notice. (a) Upon the filing of a petition as provided for in K.S.A. 59-3058, and amendments thereto, alleging that the proposed ward or proposed conservatee is an adult with an impairment in need of a guardian or conservator, or both, or as provided for in K.S.A. 59-3060, and amendments thereto, alleging that the proposed ward or proposed conservatee is a minor with an impairment in need of a guardian or conservator, or both, the district court shall issue the following:

(1) An order fixing the date, time and place of the trial on the petition. Such trial, in the court's discretion, may be conducted in a courtroom, a treatment facility or at some other suitable place. The time fixed in the order shall in no event be earlier than seven days or later than 21 days after the date of the filing of the petition. If a demand for a trial by jury is filed pursuant to subsection (b) of K.S.A. 59-3067, and amendments thereto, by the proposed ward or proposed conservatee, the court may continue the trial and fix a new time and place of the trial at a time beyond the 21 days but within a reasonable time not to exceed 30 days from the date of the filing of the demand.

(2) An order requiring that the proposed ward or proposed conservatee appear at the time and place of the trial unless the court makes a finding prior to the trial that the presence of the proposed ward or proposed conservatee will be injurious to the person's health or welfare, or that the proposed ward's or proposed conservatee's impairment is such that the person could not meaningfully participate in the proceedings, or that the proposed ward or proposed conservatee has filed with the court a written waiver of such person's right to appear in person. In any such case, the court shall enter in the record of the proceedings the facts upon which the court has found that the presence of the proposed ward or proposed conservatee at the trial should be excused. Notwithstanding the foregoing provisions of this subsection, if the proposed ward or proposed conservatee files with the court at least one day prior to the date of the trial a written notice stating the person's desire to be present at the trial, the court shall order that the proposed ward or proposed conservatee must be present at the trial.

(3) An order appointing an attorney to represent the proposed ward or proposed conservatee. The court shall give preference, in the appointment of this attorney, to any attorney who has represented the proposed ward or proposed conservatee in other matters if the court has knowledge of that prior representation, or to an attorney whom the proposed ward or proposed conservatee has requested. The proposed ward or proposed conservatee, if an adult, shall have the right to engage an attorney of the proposed ward's or proposed conservatee's own choice and, in such case, the attorney appointed by the court shall be relieved of all duties. Any appointment made by the court shall terminate upon a final determination of the petition and any appeal therefrom, unless the court continues the appointment by further order. Thereafter, an attorney may be appointed by the court if requested, in writing, by the ward, conservatee, guardian or conservator, or upon the court's own motion.

(4) An order fixing the date, time and a place that is in the best interests of the proposed ward or proposed conservatee, at which the proposed ward or proposed conservatee shall have the opportunity to consult with the court appointed attorney. This consultation shall be scheduled to occur not later than five days prior to the scheduled trial on the petition, provided that if an examination and evaluation as provided for in K.S.A. 59-3064, and amendments thereto, is ordered, then this consultation shall be scheduled to occur prior to the time at which that examination and evaluation is scheduled to occur.

(5) A notice as provided for in K.S.A. 59-3066, and amendments thereto.

(6) An order for an examination and evaluation as provided for in K.S.A. 59-3064, and amendments thereto. If the petition is accompanied by a report of an examination and evaluation of the proposed ward or proposed conservatee, as provided for in K.S.A. 59-3058 or 59-3060, and amendments thereto, and the court determines that such report meets the requirements of K.S.A. 59-3064, and amendments thereto, the court may determine that no additional examination or evaluation is required and that none shall be ordered unless requested by the proposed ward or proposed conservatee pursuant to subsection (d) of K.S.A. 59-3064, and amendments thereto.

(b) Upon the filing of a petition as provided for in K.S.A. 59-3059, and amendments thereto, alleging that the proposed ward or proposed conservatee is a minor in need of a guardian or conservator, or both, the court shall issue an order fixing the date, time and place of the trial on the petition. If the petition is filed on behalf of the minor by the minor's natural guardian, the time of the hearing designated in the order may be forthwith and without notice. In all other cases the trial shall be held no earlier than seven days or later than 21 days after the date of the filing of the petition, unless those persons or agencies entitled to notice pursuant to subsection (d) of K.S.A. 59-3066, and amendments thereto, have entered their appearances, waived notice and consented to the appointment of the suggested guardian or conservator, or both, in which case the trial may be held forthwith and without notice.

(c) Upon the filing of a petition as provided for in K.S.A. 59-3061, and amendments thereto, alleging that the proposed ward or proposed conservatee is a person who has been previously adjudged as impaired in another state, the court shall issue an order fixing the date, time and place of the trial on the petition, which trial shall be held no earlier than seven days or later than 21 days after the date of the filing of the petition, unless those persons or agencies entitled to notice pursuant to subsection (f) of K.S.A. 59-3066, and amendments thereto, have entered their appearances, waived notice, agreed to the court's accepting jurisdiction of the case if transferred from the other state, and consented to the appointment in Kansas of the suggested guardian or conservator, or both, in which case the trial may be held forthwith and without notice.

(d) Upon the filing of a petition as provided for in K.S.A. 59-3062, and amendments thereto, alleging that the proposed conservatee is a person in need of an ancillary conservator and requesting the appointment of an ancillary conservator in Kansas, the court shall issue an order fixing the date, time and place of the trial on the petition, which trial shall be held no earlier than seven days or later than 21 days after the date of the filing of the petition, unless those persons or agencies entitled to notice pursuant to subsection (e) of K.S.A. 59-3066, and amendments thereto, have entered their appearances, waived notice and consented to the appointment in Kansas of the suggested ancillary conservator, in which case the trial may be held forthwith and without notice.

History: L. 2002, ch. 114, § 14; July 1.