

59-3090. Restoration to capacity; petition; contents; hearing; procedure. (a) The ward or conservatee may at any time file a verified petition with the court requesting that the court find that the ward or conservatee is no longer impaired, and request that the court restore the ward or conservatee to capacity.

(b) The petition shall include:

- (1) 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;
- (2) the name and address of the ward's or conservatee's court appointed guardian or conservator, or both;
- (3) the factual basis upon which the ward or conservatee alleges that they are no longer impaired;
- (4) the names and addresses of the witnesses by whom the truth of the petition may be proved; and
- (5) a request that the court find that the ward or conservatee is no longer impaired, and therefore entitled to be restored to capacity.

(c) (1) Upon the filing of such a petition, the court shall review the petition to determine whether good cause exists to warrant further proceedings. If the court finds good cause to warrant further proceedings, the court shall issue an order fixing the date, time and place of a hearing on the petition, which hearing shall be held not later than 30 days following the filing of the petition. If the court does not find within the petition facts sufficient to constitute good cause to warrant further proceedings, the court nonetheless may issue an order for an examination and evaluation of the ward or conservatee to determine if there is sufficient cause for further proceedings. The court may order the ward or conservatee to submit to such an examination and evaluation to be conducted through a general hospital, psychiatric hospital, community mental health center, community developmental disability organization, or by a private physician, psychiatrist, psychologist or other person appointed by the court who is qualified to examine and evaluate the ward or conservatee. The costs of this examination and evaluation shall be assessed as provided for in K.S.A. 59-3094, and amendments thereto.

(2) If the court does not find good cause to warrant further proceedings and the court does not issue an order for an examination and evaluation, or if the court has within the past six months conducted either the trial upon the original petition provided for in K.S.A. 59-3067, and amendments thereto, or a hearing on a previous petition for restoration, the court may decline to set a hearing on the petition and may dismiss the petition without further proceedings.

(d) If the court orders an examination and evaluation, and the report of that examination and evaluation contains information upon which the court finds good cause to warrant further proceedings, the court shall issue an order fixing the date, time and place of a hearing on the petition, which hearing shall be held not later than 30 days following receipt of the report of the examination and evaluation. Otherwise, the court may dismiss the petition without further proceedings.

(e) The court may at any time on its own motion issue an order fixing the date, time and place of a hearing on whether the ward or conservatee should be restored to capacity.

(f) If the court issues an order setting the petition for a hearing, or issues an order on its own motion, the court may issue the following:

(1) An order appointing 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;

(2) an order requiring that the ward or conservatee appear at the time and place of the hearing on the petition. If an order to appear is entered, but is later rescinded, the court shall enter in the record of the proceedings the facts upon which the court found subsequent to the issuance of the order that the presence of the ward or conservatee should be excused;

(3) a notice of the hearing to the guardian or conservator, or both, and to other interested parties. The court may order the attorney for the ward or conservatee, or another appropriate person, to serve this notice as the court may direct;

(4) an order of referral for hearing to the district court of the county of residence of the ward or conservatee, or of the county wherein the ward or conservatee may be found, except that no order of referral for hearing shall be issued if objected to by the ward or conservatee. The district court to which an order of referral for hearing is made shall proceed in the case as if the petition for restoration had been filed therein, except that upon completion of the hearing the court shall transmit the findings of the court, along with any statement of the costs incurred, and a certified copy of all pleadings filed and orders entered during the course of the referral, to the original court having venue. Thereafter, the original court shall proceed as provided for under this act;

(5) for good cause shown, an order of continuance of the hearing;

(6) for good cause shown, an order of advancement of the hearing; and

(7) for good cause shown, an order changing the place of the hearing.

(g) The hearing upon the petition, or the court's own motion, 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.

(h) At the conclusion of the hearing, if the court does not find, by clear and convincing evidence, that the ward or conservatee is impaired, the court shall order that the ward or conservatee is restored to capacity and shall proceed to terminate the guardianship or conservatorship, or both, as provided for in subsection (i) or (j) of K.S.A. 59-3091, and amendments thereto. Otherwise, the court shall make such further orders in the guardianship or conservatorship, or both, as may be appropriate under this act.

History: L. 2002, ch. 114, § 41; July 1.