

2012 Kansas Statutes

59-3086. Allowance and settlement on conservator's accounting; petition; contents; notice; hearing; procedure; forfeiture of conservator's bond; final release. (a) At the time of or at any time after the filing of an accounting by the conservator, the conservator may file with the court a verified petition requesting a hearing on that accounting for the purposes of allowance and settlement. The petition shall include:

- (1) The conservator's name and address, and if the conservator is also the guardian, that fact;
- (2) the conservatee's name, age, date of birth, address of permanent residence, and present address or whereabouts, if different from the conservatee's permanent residence;
- (3) the name and address of the court appointed guardian, if different from the conservator;
- (4) the names and addresses of any spouse, adult children and adult grandchildren of the conservatee, and those of any parent and adult siblings of the 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 conservatee, or if none, that fact. If no such names or addresses are known to the conservator, but the conservator has reason to believe that such persons exist, then the petition shall state that fact and that the conservator has made diligent inquiry to learn those names and addresses;
- (5) the names and addresses of other persons, if any, whom the conservator knows to have an interest in the matter, or a statement that the petitioner knows of no other persons having an interest in the matter;
- (6) designation of the accounting period for which allowance and settlement is sought; and
- (7) a request that this accounting be accepted and that the court issue an order providing that all matters related thereto are finally allowed and settled.

(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 those persons named within the petition pursuant to the requirement of subsections (a)(3), (a)(4) and (a)(5), as applicable, have entered their appearances, waived notice, and agreed to the court's accepting the accounting and issuing an order of final allowance and settlement. Otherwise, the court shall require the conservator to give notice of this hearing to such persons in such manner as the court may specify, including therewith a copy of the conservator's petition and a copy or copies of the accounting or accountings for which the conservator requests an order of final allowance and settlement. This notice shall advise such persons that if they have any objections to the accounting or accountings for which final allowance and settlement is sought that they must file their written objections with the court prior to the scheduled hearing or that they must appear at the hearing to present those objections. The court may appoint an attorney to represent the 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 conservator to also give this notice to that attorney.

(c) In the absence of a petition having been filed by the conservator pursuant to this section, the court may set a hearing to determine whether an order of final allowance and settlement should be issued with regard to any accounting which has been previously filed by the conservator, and may require the conservator or some other person 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 conservatee or the conservatee's estate. The court may review the court's prior orders, any conservatorship plan which has been filed pursuant to K.S.A. 59-3079, and amendments thereto, and any reports and accountings which have been filed by the guardian or conservator, or both, even if previously approved or allowed, to determine whether the current accounting seems reasonable in light of the past reports or accountings, and to determine whether any further proceedings under this act may be appropriate. The court shall give to the conservator, to the conservatee, and to other interested persons, the opportunity to present evidence to the court concerning the actions of the conservator, the conservatee's estate and the recommendations of such persons.

(e) At the conclusion of the hearing, if the court finds, by a preponderance of the evidence, that the accounting accurately accounts for the conservatee's estate, shows appropriate administration on the part of the conservator, that any fees of the conservator are reasonable, and that due notice and an opportunity to be heard has been provided to any interested parties, the court shall approve the accounting and order that it is allowed and settled. Such allowance and settlement shall relieve the conservator and the conservator's sureties from liability for all acts and omissions which are fully and accurately described in the accounting, including the investments of the assets of the conservatee's estate.

(f) If the court finds by a preponderance of the evidence that the conservator has innocently misused any funds or assets of the conservatee's estate, the court shall order the conservator to repay such funds or return such assets to the conservatee's estate. If the court finds that the conservator has embezzled or converted for the conservator's own personal use any funds or assets of the conservatee's estate, the court shall find the 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 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) At no time shall the conservator, or the conservator's estate or surety, be finally released from the bond required by the court pursuant to K.S.A. 59-3069, and amendments thereto, until a final accounting has been filed, allowed and settled as provided for herein.

(h) The court may issue a final order of allowance and settlement upon the filing of a final accounting and a finding by the court that the following have occurred:

- (1) Reimbursement to the appropriate agency for any medical assistance payments, if any, received under subsection (e) of K.S.A. 39-709, and amendment thereto, or any similar laws of any other state for or on behalf of a conservatee or a predeceased spouse of the conservatee, but only to the extent allowed by law;
- (2) delivery of any remaining funds and assets of the conservatee's estate to the person or persons entitled to such funds or assets; and
- (3) presentation to the court of receipts for subsections (1) and (2).

The conservator, the conservator's estate and the conservator's surety shall be released upon the issuance of

the court's final order of allowance and settlement.

History: L. 2002, ch. 114, § 37; L. 2007, ch. 190, § 15; July 1.