

NOTICE OF COMMENT PERIOD

The following proposed amendments to Neb. Ct. R. §§ 6-1401 through 6-1465 of the Nebraska Supreme Court's Uniform County Court Rules of Practice and Procedure are the result of a study conducted by the 2010 Supreme Court Review Committee on Adult Guardianships and Conservatorships and are intended to reflect new statutory provisions of L.B. 157, which was signed into law by Governor Heineman on February 22, 2011, with an effective date of January 1, 2012. The rule amendments as proposed and submitted to the Supreme Court were drafted by a committee of Nebraska County Court judges consisting of Judge Susan Bazis, Judge Curtis H. Evans, and Judge Todd J. Hutton.

A copy of the proposed amendments is available for review on the following pages or a hard copy may be reviewed in the Office of the Clerk of the Supreme Court and Court of Appeals upon request.

The Nebraska Supreme Court invites interested persons to comment on these proposed rule amendments. Anyone desiring to comment on these proposed amendments should do so in writing to the office of the Clerk of the Supreme Court and Court of Appeals, P.O. Box 98910, Lincoln, Nebraska 68509-8910, or via e-mail to lanet.asmussen@nebraska.gov, no later than August 1, 2011.

CHAPTER 6

TRIAL COURTS

ARTICLE 14

UNIFORM COUNTY COURT RULES OF PRACTICE AND PROCEDURE

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§ 6-1433. Notice of interested person duty; guardian and conservator notice requirements; court notice requirements.

(A) In all probate matters, it shall be the duty of the petitioner or applicant for probate of a will or appointment of a personal representative, guardian, or conservator to show in the petition or the application the names, relationship to the subject of the petition or application, and last known post office address of all interested persons. If any interested person is known by the petitioner, applicant, or the attorney for either to be incompetent or a minor, such fact shall be disclosed to the court;

(B) It shall be the duty of a guardian or conservator to:

(1) notify the court of the change of address of the ward or protected person within 3 days of the change;

(2) notify the court of the ward or protected person's death within 3 days of the individual's decease;

(3) send a notice of right to object form with all inventories, notices of newly discovered assets, annual accountings, and condition of ward reports that are sent to interested parties;

(4) send a notice of interested party form to all interested parties at the time of mailing the initial inventory; and

(5) send all annual accountings, all inventories, all notices of newly discovered assets, and all condition of ward reports filed with the court to all interested parties.

(C) All courts shall:

(1) hand out the Quick Reference Guide with sample forms attached to guardians and conservators when Letters are delivered;

(2) ensure that all interested parties are on the affidavit of mailing for inventories, annual accounting, condition of ward reports, and motions that are filed with the court. If all interested parties are not on the affidavit of mailing, the court shall issue an inability form and send it to the person who filed the document(s) to correct the affidavit of mailing and send the document to all interested parties; and

(3) send out reminders to guardians and conservators indicating annual filing deadlines 45 days prior to the annual filing due date.

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§ 6-1439. Time for increase in bonds; bond review.

(A) Where the amount of a personal representative's, guardian's, or conservator's bond has been fixed on the basis of known or anticipated assets only, and there is a subsequent material increase in the value of the assets or an increase is anticipated, the judge shall be promptly informed of such fact and an adequate bond to cover the increased responsibility of the personal representative, guardian, or conservator shall be furnished and filed if required by the judge.

(B) All initial inventories shall be reviewed by the judge prior to Letters being issued to determine if a bond needs to be set or if the previously set bond is adequate. If the judge finds the bond should be changed, the matter shall be set for hearing unless the hearing on the bond is waived by all interested parties present at the time the guardian or conservator is appointed.

(C) Every updated inventory filed with an accounting and every notice of newly discovered asset form filed with the court shall be reviewed by an independent third party approved by the State Court Administrator's Office to determine whether the bond previously set is adequate. If an independent third party is not available, then the clerk magistrate, probate supervisor, or guardian ad litem, if one is appointed, shall review the inventory to determine whether the bond previously set is sufficient, pursuant to Neb. Rev. Stat. § _____ [L.B. 157 may change the numbering of Neb. Rev. Stat. § 30-2640] and Neb. Ct. R. § 6-1441. If there is a concern that the bond previously set is not adequate the matter shall be set for hearing before the court with notice to all interested parties.

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§ 6-1441. Bonds in guardianship/conservatorship cases.

In all guardianship/conservatorship cases, the court shall order that an approved corporate surety bond be filed in estates with a net value of more than \$10,000. The bond shall be in an amount of the aggregate capital value of the personal property of the estate in the guardian/conservator's control plus 1 year's estimated income from all sources minus the value of securities and other assets deposited under arrangements requiring an order of the court for their removal. The court, in lieu of sureties on a bond, may accept other security for the performance of bond, including a pledge of securities or a mortgage of land owned by the conservator/guardian, that will fully protect the assets plus 1 year's estimated income. This bond shall be reviewed by the court periodically and adjusted to reflect any increase as set out in § 6-1439.

~~The court shall not order such a bond when (1) there are no assets, (2) the assets are in real estate or are in certificates of deposit or other accounts, which certificates or accounts are restricted to withdrawal by court order only, or (3) the guardian or conservator is a national banking association, a holder of a banking permit under the laws of this state, or a trust company holding a certificate to engage in trust business from the Department of Banking and Finance.~~

The court may eliminate the requirement of bond or decrease or increase the required amount of any such bond previously furnished for good cause shown.

The court shall not require a bond if the protected person executed a written, valid power of attorney that specifically nominates a guardian or conservator and specifically does not require a bond.

The court shall consider as one of the factors of good cause, when determining whether a bond should be required and the amount thereof, the protected person's choice of any attorney in fact or alternative attorney in fact.

No bond shall be required of any financial institution, as that term is defined in Neb. Rev. Stat. § 8-101(12), or any officer, director, employee, or agent of the financial institution serving as a conservator, or any trust company serving as a conservator.

§ 6-1442. Conservator/guardian inventory and accounts; initial filing; annual filing; amended inventories; restricted accounts; court review.

(A) Within 90 30 days after appointment, every guardian or conservator shall prepare and file with the court a complete inventory of the estate of the protected person pursuant to Neb. Rev. Stat. § 30-2647, together with his or her oath or affirmation that it is complete and accurate as far as he or she is informed. The inventory shall be sent to all interested parties with a notice to object form, notice of interested party form, and affidavit of mailing showing copies were sent to all interested parties by first-class mail. If an inventory is not filed within 30 days after the date it is due, the court shall issue an order to show cause why the conservator should not be removed and shall set the same for hearing.

(B) Unless otherwise ordered by the court, every conservator or guardian of the estate guardian that has control of the ward's estate shall, not later than 30 days after the expiration of 1 year after Hletters are issued and annually thereafter, file with the court a complete accounting of his or her administration with a certificate of proof of possession form, along with the required fee and an affidavit of mailing showing that copies and a notice to object form were sent to all interested parties, including the bonding company by first-class mail postage prepaid. The accounting shall include an updated inventory. Bank statements and brokerage reports or statements shall be submitted with all accountings. The account shall include an itemized statement of assets in his or her possession at the end of the accounting period.

(C) All guardians who do not have control of the ward's estate shall file an updated inventory every year.

~~The court shall schedule a formal due process hearing to approve the accounting upon (1) a petition requesting approval by the guardian/conservator, (2) the request or objection of any interested party, or (3) the court's own motion. Notice of such hearing must be given to all interested parties and the protected person's interest safeguarded as provided in the filing of the original petition (see Neb. Rev. Stat. § 30-2636). [moved and renumbered as (H) below]~~

~~The conservator or guardian of an estate shall exhibit to the court or attach to his or her account a certificate of proof of possession of all intangible personal property existing at the end of the accounting period. Such certificate shall substantially be in the form set forth herein as § 6-1449. [incorporated under (B) above]~~

~~The court shall monitor all cases in which annual accountings are required to see that the accountings are filed in a timely manner. If an accounting is not filed within 30 days after the date it is due, the court shall issue an order to show cause why the guardian/conservator should not be removed and shall set the same for hearing. [moved and renumbered as (E) below]~~

(D) A conservator who has restricted accounts shall file with the court a proof of restricted account form within 10 days of being appointed.

(E) A notice of newly discovered asset form is required to be filed within 30 days after the guardian or conservator becomes aware of additional assets, gifts, awards, settlements, or inheritances over \$500 not disclosed in the current inventory.

(F) The court shall monitor all cases in which annual accountings are required to see that the accountings are filed in a timely manner. If an accounting is not filed within 30 days after the date it is due, the court shall issue an order to show cause why the guardian/conservator should not be removed and shall set the same for hearing.

(G) All accountings, inventories, and condition of ward reports filed with the court shall be reviewed by an independent third party approved by the State Court Administrator's Office unless waived by the court. If there is a problem and/or concern with the report, the matter shall be set for hearing before the court with notice to all interested parties.

(H) All condition of ward reports shall be reviewed by an independent third party approved by the State Court Administrator's Office at the same time it is reviewing the accounting. If the accounting is not reviewed by an independent third party, or an accounting is not filed, then the court may direct the clerk magistrate, probate supervisor, or guardian ad litem, if one is appointed, to review the condition of ward report or set the matter for hearing. If the court receives notice that the review of the condition of ward report warrants further consideration, the court may set the matter for hearing with notice to all interested parties.

(I) The court shall schedule a formal due process hearing to approve the accounting upon (1) a petition requesting approval by the guardian/conservator, (2) the request or objection of any interested party, or (3) the court's own motion. Notice of such hearing must be given to all interested parties and the protected person's interest safeguarded as provided in the filing of the original petition (see Neb. Rev. Stat. § 30-2636).

§ 6-1443. Conservator/guardian Hletters.

(A) Prior to being issued Letters, the guardian or conservator shall file the following with the court:

(1) an acceptance, address information sheet, general information sheet, inventory with an affidavit of due diligence, and a bond if required; and

(2) an acknowledgment of financial institution form showing that the order appointing them guardian or conservator was provided to each financial institution in which the ward, protected person, or minor has an account;

(B) After the guardian or conservator has been issued Letters, the guardian or conservator shall file with the court an acknowledgment of financial institution form showing that Letters have been provided to each financial institution in which the ward, protected person, or minor has an account.

(C) Language expressly limiting powers shall be included on all HLetters of guardian/conservator in the following language: "You shall not pay yourself or your attorney compensation from the assets or income of your ward, nor sell real property of the estate, without first obtaining an order therefor, after an application, notice to the interested persons, and hearing thereon. The order may be entered ex parte if all interested persons have waived notice of hearing or have executed their written consent to the fee."

At the same time the annual accounting is filed with the court, the guardian/conservator shall file with the court an application for payment of the previous year's fees to the attorney and to the guardian/conservator. The specific amount of the fees requested shall be set out in the application.

(D) The filing requirements of the guardian/conservator shall be included on all Letters of guardianship/conservatorship.

The language on the Letters should be as follows for a conservatorship:

You are further directed to file a complete accounting of your administration of this estate, along with the required fee, notice of right to object form, and an affidavit of mailing showing copies were sent to all interested parties, including the bonding company, by first-class mail, postage prepaid, not later than 30 days after the expiration of 1 year after the date of these Letters and annually thereafter. The accounting shall include an updated inventory at the end of the accounting period and shall include certificates of proof of possession for all intangible personal property existing at the end of the accounting period.

For a guardianship:

You are further directed to file a condition of ward report, a complete accounting of your administration of this estate, if you have possession of the estate, along with the required fee, notice of right to object form, and an affidavit of mailing showing copies were sent to all interested parties, including the bonding company, by first-class mail, postage prepaid, not later than 30 days after the expiration of 1 year after the date of these Letters and annually thereafter. If you are filing an accounting, the accounting shall include an updated inventory at the end of the accounting period and shall include certificates of proof of possession for all intangible personal property existing at the end of the accounting period.

For a guardianship and conservatorship:

You are further directed to file a condition of ward report and a complete accounting of your administration of this estate, along with the required fee, notice of right to object form, and an affidavit of mailing showing copies were sent to all interested parties, including the bonding company, by first-class mail, postage prepaid, not later than 30 days after the expiration of 1 year after the date of these Letters and annually thereafter. The accounting shall include an updated inventory at the end of the accounting period and shall include certificates of proof of possession for all intangible personal property existing at the end of the accounting period.

(E) Guardians/Conservators shall not make ATM withdrawals or receive cash back on a debit transaction on a ward's or interested person's bank account without first receiving a court order to do so. The following language shall be included on all Letters:

No ATM withdrawals or cash back on debit transactions without court order.

(F) The court shall order guardians/conservators to file Letters with the Register of Deeds in any county where the ward has real property or an interest in real property. The following language shall be included on all Letters.

Guardians/conservators shall file Letters with the Register of Deeds in any county where the ward has real property or an interest in real property.

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§ 6-1445. Filing requirements; guardian/conservator standardized forms.

(A) Any order, notice signed by the court or the registrar, and the petition application or pleading on which it is based, is deemed to be immediately filed upon signing. All such documents must be taken

directly to the counter where a clerk will accept them and affix the court file stamp. In no instance shall any documents be taken from this court until they have been filed, posted, filed for permanent record, and placed in the court file.

(B) All courts shall accept for filing only the standardized forms approved by the State Court Administrator's Office as provided on the Nebraska Judicial Branch Web site in guardianship and conservatorship matters.

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§ 6-1449. Certificate of proof of possession. Background checks on guardians or conservators; appointment of guardian ad litem.

CERTIFICATE OF PROOF OF POSSESSION

Name of Fiduciary _____ () Guardian () Conservator
of _____

CERTIFICATE OF BALANCE ON DEPOSIT

(Name and Address of Institution)

I CERTIFY that on the _____ day of _____, _____, there was on deposit in this Institution to the credit of this Fiduciary the following:

Checking Account, No. <u>XXXXXXXX</u>	Balance of \$ _____
including interest of \$ _____	paid during period of statement of account.
Savings Account, No. <u>XXXXXXXX</u>	Balance of \$ _____
including interest of \$ _____	paid during period of statement of account.

(*Extend above format for additional accounts as required) (Signature and Title of Certifying Official)

CERTIFICATE AS TO SECURITIES

Line No.	KIND OF BOND OR SECURITY	Date of Purchase	Cost	Interest Rate	Present Value
(Identify U.S. Savings Bonds by series, number last four digits of bond, purchase date, and cost. Accounts by Number last four digits of account.)					

(*Extend format for additional bonds or securities as required)

I CERTIFY that the securities listed on lines 1 through _____ were exhibited to me by the above named fiduciary as being the property of the estate of the ward, said securities then and there being in the custody and control of the fiduciary.

Date of Signature

Address of Certifying Official

Signature and Title of Certifying Official

NOTE: This certificate may be executed by a bank official, an authorized official or agent of the company which is surety on your bonds; by a judge or clerk of the court.

***This form will be public information. For protection of financial information, give only the last four digits of accounts and bond information on this form. Complete account and bond information must be provided on Appendix 8, Neb. Ct. R. § 6-1464, Protection of personal and financial information in court records.**

(A) Disclosure of the content of the following reports to nonparties of this pending action is prohibited without the courts written consent.

(1) A person, except for a financial institution as that term is defined in subsection (12) of Neb. Rev. Stat. § 8-101 or its officers, directors, employees, or agents or a trust company, who has been nominated for appointment as a guardian or conservator shall obtain a national criminal history record check, a check of the Abuse and Neglect Registries for adults and children, a check with the sex offender registry, and a credit check through a process approved by the State Court Administrator's Office. The nominated guardian or conservator shall file the results of the reports with the court at least 10 days prior to the appointment hearing date, unless waived or modified by the court (a) for good cause shown by affidavit filed simultaneously with the petition for appointment or (b) in the event the protected person requests an expedited hearing under Neb. Rev. Stat. § 30-2630.01.

(2) An order appointing a guardian or conservator shall not be signed by the judge until such reports have been filed with the court and reviewed by the judge. Such reports, or the lack thereof, shall be certified either by affidavit or by obtaining a certified copy of the reports. No reports or national criminal history record check shall be required by the court upon the application of a petitioner for an emergency temporary guardianship or emergency temporary conservatorship. The court may waive the requirements of this section for good cause shown.

All reports filed for nondisclosure shall be handled in the same way as personal and financial information in court records under Neb. Ct. R. § 6-1464.

(B) If there are no interested parties identified for a ward or a protected person, the court shall appoint a guardian ad litem.