

Rule 416. Guardianships and Conservatorships

(a) Responsibility of Lawyer. Upon the appointment of a conservator or guardian of the estate, the appointee shall nominate a lawyer of record for that conservatorship or guardianship, or shall advise the court that he or she shall act pro se. The named lawyer shall be the lawyer of record until terminated by the conservator or guardian, or, with the consent of the court, by withdrawal of the lawyer. If the lawyer is terminated by the conservator or guardian, written notice of substitution or pro se representation shall be given to the court (by the conservator or guardian, or by the lawyer who has received oral or written notice of termination), and until such notice, the former lawyer shall be recognized.

(b) Visitors in Guardianship and Conservatorship Proceedings. A visitor, as defined by law, may be appointed in every general guardianship or conservatorship proceeding.

Every visitor shall have training and experience in law, health care or social work, as the case may be, depending upon the circumstances of the proposed person subject to guardianship or conservatorship.

The visitor shall be an officer of the court and shall be disinterested in the guardianship or conservatorship proceedings. If the court at any time determines that the visitor, or the firm or agency by which he or she is employed, has or had, at the time of the hearing, a conflict of interest, the court shall immediately appoint a new visitor and may, if necessary, require a hearing de novo.

The visitor shall, (a) without outside interferences, meet with the proposed person subject to guardianship or conservatorship, either once or more than once as the visitor deems necessary, (b) observe his or her appearance, lucidity and surroundings, (c) serve, read aloud, if requested, and explain the petition and notice of hearing, (d) assist, if requested, in obtaining a private or court appointed lawyer, (e) advise the proposed person subject to guardianship or conservatorship that a report will be filed at least 7 days before the hearing and that the report is available to the proposed person subject to guardianship or conservatorship or the person's lawyer, (f) prepare a written report to the court setting forth all matters the visitor deems relevant in determining the need for a guardian or conservator, including recommendations concerning appointment and limitation of powers, (g) file the original report with the court and, (h) serve a copy upon the petitioner or petitioner's lawyer at least 7 days before the hearing, (i) appear, testify and submit to cross examination at the hearing concerning his or her observations and recommendations, unless such appearance is excused by the court.

(c) Voluntary Petition. If an adult voluntarily petitions or consents to the appointment of a guardian or conservator of the estate as set forth in the law, then it is not necessary for such adult to be an "incapacitated person" as defined by the law.

(d) Amount of Bond. The court may, at any time, require the filing of a bond in such amount as the court deems necessary and the court, either on request of an interested party, or on its own motion, may increase or decrease the amount of the bond. The court, in requiring a bond, if any, or in determining the amount thereof, shall take into account not only the nature and value of the assets, but also the qualifications of the guardian or conservator.

(e) Required E-Filing by Guardians and Conservators. This rule applies to guardians and conservators appointed by the court. Conservator annual accounts and inventories, guardian annual personal well-being reports, corresponding affidavits of service, and any other account or report designated by the state court administrator, must be electronically filed with the court using a computer process designated by the state court administrator; provided that non-attorney guardians may continue to file guardian annual well-being reports and corresponding affidavits of service

conventionally with leave of the court for good cause shown. Directions for reporting and designations shall be posted on the judicial branch website (www.mncourts.gov). The filing, examination and acceptance of an annual account, without notice of hearing, shall not constitute a determination or adjudication on the merits of the account, nor does it constitute the court's approval of the account.

(f) Required Periodic Settlement of Accounts. No order settling and allowing an annual or final account shall be issued by the court except on a hearing with notice to interested parties. A hearing for the settlement and allowance of an annual or final account may be ordered upon the request of the court or any interested party. A hearing shall be held for such purpose in each guardianship or conservatorship of the estate at least once every five years upon notice as set forth in the law, and the rules pursuant thereto. However, in estates of the value of \$20,000 or less, the five-year hearing requirement may be waived by the court in its discretion. Such five-year hearings shall be held within 150 days after the end of the accounting period of each fifth annual unallowed account and the court administrator shall notify such guardian or conservator, the guardian's or conservator's lawyer and the court if the hearing is not held within the 150-day period.

(g) Notice of Hearing on Account. Notice of time and place for hearing on the petition for final settlement and allowance of any account shall be given to the person subject to conservatorship, to the conservator if such person was not the petitioner for settlement of the accounts, to the spouse, adult children and such other interested persons as the court may direct. Whenever any funds have been received by the estate from the Veterans Administration during the period of accounting, notice by mail shall be given to the regional office. The notice may be served in person or by depositing a copy in the U.S. mail to the last known address of the person or entity being served. Service shall be sent by electronic means in accordance with Rule 14 to any party that has agreed to or is required to accept electronic service under Rule 14. When a person subject to conservatorship is restored to capacity, that person is the only interested person. When a person subject to conservatorship dies, the personal representative of the estate is the only interested person.

(h) Appearance on Petition for Adjudication of Accounts. When a verified annual or final account is filed in accord with the law and an adjudication is sought, and notice given as required by the law or waived as provided below, and the court determines that the account should be allowed, the account may be allowed upon the pleadings without appearance of the conservator. If the person subject to conservatorship or any interested person shall object to the account, or demand the appearance of the conservator for hearing on the account, at any time up to and including the date set for the hearing, the court will continue the hearing, if necessary, to a later date and require the appearance of the conservator for examination. Notice of hearing may be waived with the consent of all interested persons.

(i) Successor Guardian or Conservator; Notice to Person Subject to Guardianship or Conservatorship. The notice required by law shall include the right of the person subject to guardianship or conservatorship to nominate and instruct the successor.

(Amended effective July 1, 2015; amended effective January 1, 2020; amended effective November 22, 2023; amended effective April 15, 2024.)

Advisory Committee Comment - 2023 Amendments

Rule 416(b), (g), (h) and (i) are modified in 2023 to reflect current statutory terminology. Minnesota Statutes, section 524.5-102, subdivisions 13a, 13b.

Rule 416(e) is modified in 2023 to recognize implementation of the MyMNGuardian System to collect Guardian annual personal well-being reports and corresponding affidavits of service.

Detailed information on the system is posted by the state court administrator on the main state court website (www.mncourts.gov).