

1 **State of Arkansas**
2 **78th General Assembly**
3 **Regular Session, 1991**

A Bill

SENATE BILL

4 **By: Senators Gordon and Hardin**

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6

7

For An Act To Be Entitled

8 "AN ACT TO REVISE LAWS RELATING TO GUARDIANSHIP; AND FOR
9 OTHER PURPOSES."

10

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

12

13 SECTION 1. Arkansas Code Annotated §28-65-213 is hereby amended to read
14 as follows:

15 "28-65-213. Hearing - Effect of determinations. (a) At the hearing,
16 the Respondent shall have the right to:

17

18 (1) Present evidence on his own behalf;

19 (2) Cross-examine adverse witnesses;

20 (3) Remain silent;

21 (4) Be present;

22 (5) Require the attendance by subpoena of one (1) or more of the
23 professionals who prepared the evaluation.

24 (b) The burden of proof by clear and convincing evidence is upon the
25 petitioner, and a determination of incapacity shall be made before a
26 consideration of a proper disposition.

27 (c) (1) The right to legal counsel to prepare and present a defense for
28 any person for whom any form of guardianship is sought shall be absolute and
29 unconditional. The court shall appoint counsel for the alleged incapacitated
30 person immediately upon the filing of a petition for any form of guardianship.

31 (2) Appointed counsel shall inform the alleged incapacitated
32 person that he or she shall be liable for attorney fees unless he or she is
33 found indigent by the court. The alleged incapacitated person may discharge
34 appointed counsel upon selection and employment of other legal counsel.

35 (3) Whenever legal counsel is appointed by the court, the court

1 shall determine the amount of the fee, if any, to be paid the attorney so
2 appointed. The amount allowed shall be based upon the time and effort of the
3 attorney expended in the investigation, preparation, and representation of the
4 client at the court hearings.

5 (4) The court shall issue an order of payment directing that the
6 attorney be compensated from the estate of the ward, unless the ward is
7 indigent. If the ward is indigent, the court shall order the attorney to be
8 paid from funds to be appropriated by the quorum courts of each county for the
9 purpose of payment of the attorney's fees provided for by this sub-chapter.
10 Upon presentment of a claim accompanied by an order the probate court fixing
11 the fees, the claims shall be approved by the county court and paid in the
12 same manner as other claims against the county are paid.

13 (d) The guardianship order may not be more restrictive of the liberty
14 of the ward than is reasonably necessary to protect the ward from physical and
15 mental harm by providing necessary care, including medical care and outpatient
16 mental health treatment. The guardianship order shall be designed to
17 encourage a ward to participate in all decisions that affect the ward and act
18 on the ward's own behalf to the maximum extent possible. The court may not
19 assign a duty or power to a guardian unless the need for it has been proven to
20 the satisfaction of the court and no less restrictive alternative or
21 combination of alternatives is sufficient to satisfy the need. Nothing in
22 this section shall be construed to authorize the guardian to take any action
23 which otherwise would require an order of commitment for either inpatient
24 mental health treatment or inpatient alcohol and drug abuse treatment."

25
26 SECTION 2 Arkansas Code Annotated §28-65-301(a)(2) is hereby amended to
27 read as follows:

28 "(2) The guardian of the person may be required to report the
29 condition of his ward to the court, at regular intervals or otherwise, as the
30 court may direct.

31 (A) A guardian shall submit a report to the court at least
32 annually. The guardian shall submit an additional report when: (1) the court
33 orders it; (2) there is a significant change in the capacity of the ward to
34 meet the essential requirements for health and safety or to protect the ward's
35 rights; (3) the guardian resigns or is removed; (4) the guardianship is

1 terminated; or (5) the ward requests it.

2 (B) At the time letters of guardianship are issued or the
3 guardian files a report, the clerk shall furnish the guardian with a reporting
4 form for future reports. The report shall, at a minimum, conform to the
5 following:

6 IN THE PROBATE COURT OF _____ COUNTY, ARKANSAS
7 IN THE MATTER OF _____
8 AN ALLEGED INCAPACITATED PERSON #P _____

9
10 GUARDIAN'S REPORT

11 **NOTICE**

12 A guardian of the person shall submit a report to the court on or before
13 the annual accounting of the order appointing the guardian, and shall submit
14 additional reports when: (1) the court orders it; (2) there is a significant
15 change in the capacity of the ward to meet the essential requirements for
16 health and safety or to protect the ward's rights; (3) the guardian resigns or
17 is removed; (4) the guardianship is terminated; or (5) the ward requests it.
18 Failure to submit an annual report when it is due may result in the guardian
19 being fined up to ten dollars (\$10.00) per day until the report is filed
20 unless the court has, prior to the date the annual report is due, entered a
21 written sixty (60) day extension. Only one extension may be granted annually.

22 Comes _____ of _____,
23 (name of guardian) (address)

24 the guardian of _____, of _____
25 (name of ward) (address of ward)

26 having been duly appointed guardian of the (person) (person and estate) of
27 _____ on the _____ day of _____, 19____,
28 (name of ward)

29 and for the guardian's annual report to the court states:

30 (1) The ward's present mental, physical, and social condition are:

31 _____

32 (2) The ward's present living arrangements are _____.

33 (3) The ward's opinion of the present living arrangements is

34 _____.

35 (4) Changes in the capacity of the ward to meet essential requirements

1 for physical health and safety are_____.

2 (5) The services being provided to the ward are_____.

3 (6) Significant actions taken by the guardian during the reporting
4 period in regard to the ward have been_____.

5 (7) The guardian and ward have had the following number and nature of
6 contacts (to be completed if the ward does not reside with the
7 guardian):_____.

8 (8) Other information requested by the court or necessary or desirable
9 in the opinion of the guardian is:_____.

10 (9) That if guardian was appointed for the estate the following
11 accounting should be completed and filed within sixty (60) days of the annual
12 accounting of the order appointing the guardian.

13 **ACCOUNTING BY PERSONAL REPRESENTATIVE**

14 Schedule A. Charges to Accountant. Accountant is charged with the
15 following:

16 (Inventory Value or Balance on Last Accounting)

17 (Other Charges)

18 Total charges to accountant \$_____

19 Schedule B. Credits, Other Than Payments to Distributees, to Which
20 Accountant is Entitled. Accountant is entitled to credit for the following:

21 Total \$_____

22 Schedule C. Credits for Money Paid or Assets Delivered to Distributees.
23 Accountant is entitled to credit for money paid and assets delivered to
24 distributees as follows:

25 Total \$_____

26 **SUMMARY OF ACCOUNT**

27 Charges to accountant \$_____

28 Credits as per Schedule B\$_____

29 Credits as per Schedule C\$_____

30 Total credits \$_____

31 Balance remaining in hands of accountant..... \$_____

32 Schedule D. Description of Balance. There remains in accountant's
33 hands, representing the above stated balance, the following:

34 Balance remaining in hands of accountant at end of period. \$_____

35 Schedule E. Changes in Form of Assets Not Affecting Balance.

1 Schedule F. Liabilities. All outstanding liabilities of the estate of
2 which accountant has knowledge are as follows:

3 Total liabilities \$ _____

4 Vouchers evidencing cash disbursements and receipts evidencing other
5 assets delivered for which accountant has taken credit herein are attached to
6 and filed with this account.

7 WHEREFORE, having fully accounted for the administration of this estate
8 for the period hereinabove set out, accountant prays that, after proper
9 advertisement and notice, if any, required by the law or by the court, this
10 account be examined, approved and confirmed by the court.

11 _____

12 **VERIFICATION**

13 STATE OF _____

14 COUNTY OF _____

15 The undersigned guardian on oath states that the facts set forth in the
16 foregoing report and account are true and that the account is complete.

17 _____

18 Subscribed and sworn to before me this ____ day of _____, 19____.

19 _____

20 Notary Public

21 My commission expires:

22 _____

23 (c) The guardian may be fined ten dollars (\$10.00) per day for an
24 overdue annual report. One-half (1/2) of the fine shall be paid to the clerk
25 for processing overdue reports, and one-half (1/2) of the fine shall be
26 deposited in the appropriate fund maintained by the county quorum court for
27 payment of fees ordered by the court to be paid to attorneys who are appointed
28 to represent indigent proposed wards. The court shall not waive the
29 requirement of an annual report under any circumstance, but may, prior to the
30 date the report is due, grant one sixty (60) day extension of time to file the
31 report without penalty. Any extension shall be in writing and a copy thereof
32 shall be provided to the clerk."

33

34 SECTION 3. Arkansas Code Annotated §28-65-304 is hereby amended to read
35 as follows:

1 "28-65-304. Title and possession of estate. The guardian of the estate
2 shall take possession of such of the ward's real and personal property as the
3 court shall specifically find and determine is necessary to protect the
4 interest of the ward. Such property may include rents, income, issue, and
5 proceeds arising from the sale, mortgage, lease, or exchange of the ward's
6 real or personal property. Subject to the possession, the title to all the
7 estate and to the increment and proceeds of the estate shall be in the ward
8 and not in the guardian."
9

10 SECTION 4. Arkansas Code Annotated §28-65-205(b) is hereby amended to
11 add the following sub-section:

12 "28-65-205. Petition.

13 (b) The petition shall state, insofar as can be ascertained:

14 (1) The name, age, residence, and post office address of the
15 incapacitated person;

16 (2) The nature of incapacity and purpose of the guardianship
17 sought in accordance with the classifications set forth in 28-65-104;

18 (3) The approximate value and a description of the incapacitated
19 person's property, including any compensation, pension, insurance, or
20 allowance to which he may be entitled;

21 (4) Whether there is, in any state, a guardian of the person or
22 of the estate of the incompetent;

23 (5) The residence and post office address of the person whom
24 petitioner asks to be appointed guardian;

25 (6) The names and addresses, so far as known or can be reasonably
26 ascertained, of the persons most closely related to the incapacitated person
27 by blood or marriage;

28 (7) The name and address of the person or institution having the
29 care and custody of the incapacitated person;

30 (8) The names and addresses of wards for whom any natural person
31 whose appointment is sought is already guardian;

32 (9) The reasons why the appointment of a guardian is sought and
33 the interest of the petitioner in the appointment;

34 (10) A statement of the respondent's alleged disability;

35 (11) A recommendation proposing the type, scope, and duration of

1 guardianship;

2 (12) A statement that any facility or agency from which the
3 respondent is receiving services has been notified of the proceedings;

4 (13) The names and addresses of others having knowledge about the
5 person's disability; and

6 (14) A statement regarding the alleged incapacitated person's
7 right to counsel. Said statement shall include notice: that the right to
8 counsel shall be absolute and unconditional; that the court shall appoint
9 counsel immediately upon the filing of a petition for any form of
10 guardianship; that the alleged incapacitated person shall be liable for
11 attorney fees unless he or she is found indigent by the court; and that the
12 alleged incapacitated person may choose and employ legal counsel instead of
13 being represented by appointed counsel."

14

15 SECTION 5. All provisions of this act of a general and permanent nature
16 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
17 Revision Commission shall incorporate the same in the Code.

18

19 SECTION 6. If any provision of this act or the application thereof to
20 any person or circumstance is held invalid, such invalidity shall not affect
21 other provisions or applications of the act which can be given effect without
22 the invalid provision or application, and to this end the provisions of this
23 act are declared to be severable.

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25 SECTION 7. Arkansas Code Annotated §28-65-322, all laws and parts of
26 laws in conflict with this act are hereby repealed.

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