

1 ENGROSSED HOUSE AMENDMENT
TO
2 ENGROSSED SENATE BILL NO. 1495 By: Brooks of the Senate
3 and
4 Johnson of the House
5
6

7 [adult guardianship and protective proceedings -
8 intervention - notice of hearing - effective date]
9
10

11 AMENDMENT NO. 1. Strike the stricken title, enacting clause and
12 entire bill and insert

13 "An Act relating to adult guardianship and protective
14 proceedings; amending 12 O.S. 2011, Section 2024,
15 which relates to intervention; creating certain
16 rebuttable presumption; amending 30 O.S. 2011,
17 Section 3-110, which relates to notice of hearing;
18 requiring notice to certain persons under certain
19 conditions; and providing an effective date.

19 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

20 SECTION 1. AMENDATORY 12 O.S. 2011, Section 2024, is
21 amended to read as follows:

22 Section 2024.

23 INTERVENTION
24

1 A. INTERVENTION OF RIGHT. Upon timely application anyone shall
2 be permitted to intervene in an action:

3 1. When a statute confers an unconditional right to intervene;
4 or

5 2. When the applicant claims an interest relating to the
6 property or transaction which is the subject of the action and the
7 applicant is so situated that the disposition of the action may as a
8 practical matter impair or impede the applicant's ability to protect
9 that interest; provided, there shall be a rebuttable presumption
10 that disposition of a petition requesting the appointment of a
11 guardian for an incapacitated or partially incapacitated person will
12 impair or impede the ability to protect property or other rights of
13 the persons required to receive notice of the appointment pursuant
14 to Section 3-110 of Title 30 of the Oklahoma Statutes.

15 B. PERMISSIVE INTERVENTION. Upon timely application anyone may
16 be permitted to intervene in an action:

17 1. When a statute confers a conditional right to intervene; or

18 2. When an applicant's claim or defense and the main action
19 have a question of law or fact in common.

20 When a party to an action relies for ground of claim or defense upon
21 any statute or executive order administered by a federal or state
22 governmental officer or agency or upon any regulation, order,
23 requirement or agreement issued or made pursuant to the statute or
24 executive order, the officer or agency upon timely application may

1 be permitted to intervene in the action. In exercising its
2 discretion the court shall consider whether the intervention will
3 unduly delay or prejudice the adjudication of the rights of the
4 original parties.

5 C. PROCEDURE. A person desiring to intervene shall serve a
6 motion to intervene upon the parties as provided in Section 2005 of
7 this title. The motion shall state the grounds therefor and shall
8 be accompanied by a pleading setting forth the claim or defense for
9 which intervention is sought. If the motion to intervene is
10 granted, the plaintiff or defendant, or both, may respond to the
11 pleading of the intervenor within twenty (20) days after the date
12 that the motion was granted unless the court prescribes a shorter
13 time.

14 D. INTERVENTION BY STATE OF OKLAHOMA.

15 1. In any action, suit, or proceeding to which the State of
16 Oklahoma or any agency, officer, or employee thereof is not a party,
17 wherein the constitutionality of any statute of this state affecting
18 the public interest is drawn ~~in~~ into question, the court shall
19 certify such fact to the Attorney General, and shall permit the
20 State of Oklahoma to intervene for presentation of evidence, if
21 evidence is otherwise admissible in the case, and for argument on
22 the question of constitutionality. The State of Oklahoma shall,
23 subject to the applicable provisions of law, have all the rights of
24 a party and be subject to all liabilities of a party as to court

1 costs to the extent necessary for a proper presentation of the facts
2 and law relating to the question of constitutionality.

3 2. Upon receipt of notice pursuant to paragraph 1 of this
4 subsection or other actual notice that the constitutionality of any
5 statute of this state affecting the public interest is drawn ~~in~~ into
6 question, the Attorney General shall immediately deliver a copy of
7 the proceeding to the Speaker of the House of Representatives and
8 the President Pro Tempore of the Senate who may intervene on behalf
9 of their respective house of the Legislature and who shall be
10 entitled to be heard. Intervention by the Speaker of the House of
11 Representatives or President Pro Tempore of the Senate shall not
12 constitute waiver of legislative immunity.

13 SECTION 2. AMENDATORY 30 O.S. 2011, Section 3-110, is
14 amended to read as follows:

15 Section 3-110. A. The court shall cause notice to be served of
16 the time and place of the hearing on the petition requesting the
17 appointment of a guardian for an incapacitated or partially
18 incapacitated person on:

19 1. The subject of the proceeding; and

20 2. The following persons, other than the petitioner, who are
21 known to the petitioner or whose existence and address can be
22 ascertained by the petitioner with reasonably diligent efforts:

23 a. the spouse, if any, of the subject of the proceeding,
24

- 1 b. the attorney, if any, of the subject of the
2 proceeding,
3 c. all adult children of the subject of the proceeding,
4 d. if there is no such adult child, the then living
5 parent or parents of the subject of the proceeding, or
6 e. if there is no such parent, all adult brothers and
7 sisters of the subject of the proceeding, and all
8 adult children of any deceased brothers or sisters of
9 the subject of the proceeding, and all adult
10 grandchildren of the subject of the proceeding;

11 3. In case no person listed in paragraph 2 of this subsection
12 is given notice, notice shall be given to at least one and not more
13 than three of the nearest adult relatives of the subject of the
14 proceeding who are known to the petitioner or whose existence and
15 address can be ascertained with reasonably diligent efforts;

16 4. If not the petitioner, any person or organization which, in
17 the petition, is proposed to serve as guardian or limited guardian
18 or, to the extent such nomination is known to the petitioner, who is
19 nominated by will or other writing to serve as guardian or limited
20 guardian;

21 5. To the extent known to the petitioner:

- 22 a. the person or facility having care or custody of the
23 subject of the proceeding, and
24

1 b. the Department of Human Services or the Department of
2 Mental Health and Substance Abuse Services, if said
3 Departments are providing services to the subject of
4 the proceeding;

5 6. As appropriate, the Veterans Administration pursuant to
6 Section 126.8 of Title 72 of the Oklahoma Statutes; and

7 7. Any other person as directed by the court.

8 B. A copy of the pleading which gave rise to the notice shall
9 be attached to any notice served pursuant to this section.

10 C. Except for actions appointing a special guardian pursuant to
11 Section 3-115 of this title:

12 1. Notice shall be served personally on the individual who is
13 the subject of the proceeding at least ten (10) days before the time
14 set for hearing. Such personal service may be made by the attorney
15 for the petitioner, sheriff, or licensed process server. The person
16 making such services shall make proper return thereof; and

17 2. Notice to other persons entitled to notice of a hearing on
18 the original petition requesting the appointment of a guardian shall
19 be mailed by regular first-class mail at least ten (10) days before
20 the time set for the hearing. Such service by mail may be made by
21 the court clerk, deputy court clerk or attorney for the petitioner.

22 D. The notice to the subject of the proceeding shall set forth
23 the date, time, place, and purpose of the hearing to which the
24

1 notice refers. Such notice shall be substantially in the following
2 form:

3 NOTICE OF HEARING

4 TO: _____

5 (Name of subject of proceeding)

6 Service Address _____

7 You are hereby notified that a petition has been filed alleging that
8 you are an __ incapacitated, __ partially incapacitated person and
9 are incapable of __ caring for yourself, __ managing your property.
10 The petition requests that a __ guardian, __ limited guardian be
11 appointed by the court to make decisions for you regarding __
12 yourself, __ your property. A copy of the petition is attached.
13 The hearing on the petition will be held on

14 _____.

15 (date, time and place of the hearing)

16 At the hearing a () guardian, () limited guardian may be appointed
17 for your () person, () property. The judge will explain to you
18 the nature, purpose and effect of the proceedings.

19 You have the right to attend the hearing. You may confront and
20 cross-examine all witnesses and present your own witnesses. You
21 have the right to request that your hearing be closed to the public.

22 You may request that an expert be appointed to examine you and if
23 the judge believes that an examination is necessary, the judge will
24 order an evaluation to be done.

1 ENGROSSED SENATE
2 BILL NO. 1495

By: Brooks of the Senate
and
Johnson of the House

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7 intervention - notice of hearing - effective date]
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18 2. When the applicant claims an interest relating to the
19 property or transaction which is the subject of the action and the
20 applicant is so situated that the disposition of the action may as a
21 practical matter impair or impede the applicant's ability to protect
22 that interest; provided, there shall be a rebuttable presumption
23 that disposition of a petition requesting the appointment of a
24 guardian for an incapacitated or partially incapacitated person will

1 impair or impede the ability to protect property or other rights of
2 the persons required to receive notice of the appointment pursuant
3 to Section 3-110 of Title 30 of the Oklahoma Statutes.

4 B. PERMISSIVE INTERVENTION. Upon timely application anyone may
5 be permitted to intervene in an action:

6 1. When a statute confers a conditional right to intervene; or

7 2. When an applicant's claim or defense and the main action
8 have a question of law or fact in common.

9 When a party to an action relies for ground of claim or defense upon
10 any statute or executive order administered by a federal or state
11 governmental officer or agency or upon any regulation, order,
12 requirement or agreement issued or made pursuant to the statute or
13 executive order, the officer or agency upon timely application may
14 be permitted to intervene in the action. In exercising its
15 discretion the court shall consider whether the intervention will
16 unduly delay or prejudice the adjudication of the rights of the
17 original parties.

18 C. PROCEDURE. A person desiring to intervene shall serve a
19 motion to intervene upon the parties as provided in Section 2005 of
20 this title. The motion shall state the grounds therefor and shall
21 be accompanied by a pleading setting forth the claim or defense for
22 which intervention is sought. If the motion to intervene is
23 granted, the plaintiff or defendant, or both, may respond to the
24 pleading of the intervenor within twenty (20) days after the date

1 that the motion was granted unless the court prescribes a shorter
2 time.

3 D. INTERVENTION BY STATE OF OKLAHOMA.

4 1. In any action, suit, or proceeding to which the State of
5 Oklahoma or any agency, officer, or employee thereof is not a party,
6 wherein the constitutionality of any statute of this state affecting
7 the public interest is drawn in question, the court shall certify
8 such fact to the Attorney General, and shall permit the State of
9 Oklahoma to intervene for presentation of evidence, if evidence is
10 otherwise admissible in the case, and for argument on the question
11 of constitutionality. The State of Oklahoma shall, subject to the
12 applicable provisions of law, have all the rights of a party and be
13 subject to all liabilities of a party as to court costs to the
14 extent necessary for a proper presentation of the facts and law
15 relating to the question of constitutionality.

16 2. Upon receipt of notice pursuant to paragraph 1 of this
17 subsection or other actual notice that the constitutionality of any
18 statute of this state affecting the public interest is drawn in
19 question, the Attorney General shall immediately deliver a copy of
20 the proceeding to the Speaker of the House of Representatives and
21 the President Pro Tempore of the Senate who may intervene on behalf
22 of their respective house of the Legislature and who shall be
23 entitled to be heard. Intervention by the Speaker of the House of
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1 Representatives or President Pro Tempore of the Senate shall not
2 constitute waiver of legislative immunity.

3 SECTION 2. AMENDATORY 30 O.S. 2011, Section 3-110, is
4 amended to read as follows:

5 Section 3-110. A. The court shall cause notice to be served of
6 the time and place of the hearing on the petition requesting the
7 appointment of a guardian for an incapacitated or partially
8 incapacitated person on:

9 1. The subject of the proceeding; and

10 2. The following persons, other than the petitioner, who are
11 known to the petitioner or whose existence and address can be
12 ascertained by the petitioner with reasonably diligent efforts:

13 a. the spouse, if any, of the subject of the proceeding,

14 b. the attorney, if any, of the subject of the
15 proceeding,

16 c. all adult children of the subject of the proceeding,

17 d. if there is no such adult child, the then living
18 parent or parents of the subject of the proceeding, or

19 e. if there is no such parent, all adult brothers and

20 sisters of the subject of the proceeding, and all
21 adult children of any deceased brothers or sisters of

22 the subject of the proceeding, and all adult

23 grandchildren of the subject of the proceeding;

24

1 3. In case no person listed in paragraph 2 of this subsection
2 is given notice, notice shall be given to at least one and not more
3 than three of the nearest adult relatives of the subject of the
4 proceeding who are known to the petitioner or whose existence and
5 address can be ascertained with reasonably diligent efforts;

6 4. If not the petitioner, any person or organization which, in
7 the petition, is proposed to serve as guardian or limited guardian
8 or, to the extent such nomination is known to the petitioner, who is
9 nominated by will or other writing to serve as guardian or limited
10 guardian;

11 5. To the extent known to the petitioner:

12 a. the person or facility having care or custody of the
13 subject of the proceeding, and

14 b. the Department of Human Services or the Department of
15 Mental Health and Substance Abuse Services, if said
16 Departments are providing services to the subject of
17 the proceeding;

18 6. As appropriate, the Veterans Administration pursuant to
19 Section 126.8 of Title 72 of the Oklahoma Statutes; and

20 7. Any other person as directed by the court.

21 B. A copy of the pleading which gave rise to the notice shall
22 be attached to any notice served pursuant to this section.

23 C. Except for actions appointing a special guardian pursuant to
24 Section 3-115 of this title:

1 1. Notice shall be served personally on the individual who is
2 the subject of the proceeding at least ten (10) days before the time
3 set for hearing. Such personal service may be made by the attorney
4 for the petitioner, sheriff, or licensed process server. The person
5 making such services shall make proper return thereof; and

6 2. Notice to other persons entitled to notice of a hearing on
7 the original petition requesting the appointment of a guardian shall
8 be mailed by regular first-class mail at least ten (10) days before
9 the time set for the hearing. Such service by mail may be made by
10 the court clerk, deputy court clerk or attorney for the petitioner.

11 D. The notice to the subject of the proceeding shall set forth
12 the date, time, place, and purpose of the hearing to which the
13 notice refers. Such notice shall be substantially in the following
14 form:

15 NOTICE OF HEARING

16 TO: _____

17 (Name of subject of proceeding)

18 Service Address _____

19 You are hereby notified that a petition has been filed alleging that
20 you are an __ incapacitated, __ partially incapacitated person and
21 are incapable of __ caring for yourself, __ managing your property.
22 The petition requests that a __ guardian, __ limited guardian be
23 appointed by the court to make decisions for you regarding __
24 yourself, __ your property. A copy of the petition is attached.

1 The hearing on the petition will be held on

2 _____.

3 (date, time and place of the hearing)

4 At the hearing a () guardian, () limited guardian may be appointed
5 for your () person, () property. The judge will explain to you
6 the nature, purpose and effect of the proceedings.

7 You have the right to attend the hearing. You may confront and
8 cross-examine all witnesses and present your own witnesses. You
9 have the right to request that your hearing be closed to the public.

10 You may request that an expert be appointed to examine you and if
11 the judge believes that an examination is necessary, the judge will
12 order an evaluation to be done.

13 You have the right to hire an attorney of your choice to represent
14 you. If you do not have an attorney and you wish to be represented
15 by an attorney at the hearing, the court will appoint one for you.

16 You may request the appointment of an attorney orally or in writing
17 prior to the hearing or at the hearing. If you are able, you will
18 be required to pay the cost of an attorney appointed by the court.

19 SECTION 3. This act shall become effective November 1, 2016.

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