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February 23, 2016

AS AMENDED

SENATE BILL NO. 1495

By: Brooks of the Senate

and

Johnson of the House

[adult guardianship and protective proceedings -
intervention - notice of hearing - effective date]

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

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

Section 2024.

INTERVENTION

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

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

2. When the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest; provided, there shall be a rebuttable presumption

1 that disposition of a petition requesting the appointment of a
2 guardian for an incapacitated or partially incapacitated person will
3 impair or impede the ability to protect property or other rights of
4 the persons required to receive notice of the appointment pursuant
5 to Section 3-110 of Title 30 of the Oklahoma Statutes.

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

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

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

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

20 C. PROCEDURE. A person desiring to intervene shall serve a
21 motion to intervene upon the parties as provided in Section 2005 of
22 this title. The motion shall state the grounds therefor and shall
23 be accompanied by a pleading setting forth the claim or defense for
24 which intervention is sought. If the motion to intervene is

1 granted, the plaintiff or defendant, or both, may respond to the
2 pleading of the intervenor within twenty (20) days after the date
3 that the motion was granted unless the court prescribes a shorter
4 time.

5 D. INTERVENTION BY STATE OF OKLAHOMA.

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

18 2. Upon receipt of notice pursuant to paragraph 1 of this
19 subsection or other actual notice that the constitutionality of any
20 statute of this state affecting the public interest is drawn in
21 question, the Attorney General shall immediately deliver a copy of
22 the proceeding to the Speaker of the House of Representatives and
23 the President Pro Tempore of the Senate who may intervene on behalf
24 of their respective house of the Legislature and who shall be

1 entitled to be heard. Intervention by the Speaker of the House of
2 Representatives or President Pro Tempore of the Senate shall not
3 constitute waiver of legislative immunity.

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

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

10 1. The subject of the proceeding; and

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

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

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

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

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

20 e. if there is no such parent, all adult brothers and
21 sisters of the subject of the proceeding, and all
22 adult children of any deceased brothers or sisters of
23 the subject of the proceeding, and all adult
24 grandchildren of the subject of the proceeding;

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

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

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

NOTICE OF HEARING

TO:

(Name of subject of proceeding)

Service Address

You are hereby notified that a petition has been filed alleging that you are an ___ incapacitated, ___ partially incapacitated person and are incapable of ___ caring for yourself, ___ managing your property. The petition requests that a ___ guardian, ___ limited guardian be appointed by the court to make decisions for you regarding ___ 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.

20 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
21 February 23, 2016 - DO PASS AS AMENDED

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