

STATE OF OKLAHOMA

2nd Session of the 55th Legislature (2016)

SENATE BILL 1495

By: Brooks

AS INTRODUCED

An Act relating to adult guardianship and protective proceedings; amending 12 O.S. 2011, Section 2024, which relates to intervention; creating certain rebuttable presumption; amending 30 O.S. 2011, Section 3-110, which relates to notice of hearing; requiring notice to certain persons under certain conditions; and providing an 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

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

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

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

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

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

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

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

6 D. INTERVENTION BY STATE OF OKLAHOMA.

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

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

1 of their respective house of the Legislature and who shall be
2 entitled to be heard. Intervention by the Speaker of the House of
3 Representatives or President Pro Tempore of the Senate shall not
4 constitute waiver of legislative immunity.

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

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

11 1. The subject of the proceeding; and

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

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

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

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

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

21 e. if there is no such parent, all adult brothers and
22 sisters of the subject of the proceeding, and all

23 adult children of any deceased brothers or sisters of
24

1 the subject of the proceeding, and all adult
2 grandchildren of the subject of the proceeding;

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

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

13 5. To the extent known to the petitioner:

14 a. the person or facility having care or custody of the
15 subject of the proceeding, and

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

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

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

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

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

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

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

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

17 NOTICE OF HEARING

18 TO: _____

19 (Name of subject of proceeding)

20 Service Address _____

21 You are hereby notified that a petition has been filed alleging that
22 you are an __ incapacitated, __ partially incapacitated person and
23 are incapable of __ caring for yourself, __ managing your property.
24 The petition requests that a __ guardian, __ limited guardian be

1 appointed by the court to make decisions for you regarding __
2 yourself, __ your property. A copy of the petition is attached.
3 The hearing on the petition will be held on

4 _____.

5 (date, time and place of the hearing)

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

9 You have the right to attend the hearing. You may confront and
10 cross-examine all witnesses and present your own witnesses. You
11 have the right to request that your hearing be closed to the public.
12 You may request that an expert be appointed to examine you and if
13 the judge believes that an examination is necessary, the judge will
14 order an evaluation to be done.

15 You have the right to hire an attorney of your choice to represent
16 you. If you do not have an attorney and you wish to be represented
17 by an attorney at the hearing, the court will appoint one for you.
18 You may request the appointment of an attorney orally or in writing
19 prior to the hearing or at the hearing. If you are able, you will
20 be required to pay the cost of an attorney appointed by the court.

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

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