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- 32.12 **Bench Warrants, Bonds, Hearings.** A bench warrant may be issued if the obligor fails to appear for a contempt hearing. The amount of cash bond for bench warrants upon a first and subsequent failure to appear shall be the amount of the unpaid judgment.

If the debtor cannot post a cash bond, the amount of the bond shall be reviewed on a weekly basis.

- 32.13 **Multiple Defendants.** In multiple defendant cases, if service is made on less than all of the defendants, the plaintiff must elect to proceed against the served defendant(s), dismissing the unserved defendant(s), or allow the case to be dismissed as a whole.

RULE 33 PROBATE PROCEEDINGS

- 33.1 **Form of Pleadings.** In all cases coming under Chapter 59, K.S.A. applications made to the court are to be made in the form of a written petition, signed by the petitioning party, and verified upon oath taken before a notary public or other person authorized to administer oaths. Every application made to the court shall comply in form to the requirements of K.S.A. 59-2201, K.S.A. 59-2202, and K.S.A. 59-103(b) in a probate proceeding.

- 33.2 **Scheduling of Cases.** It shall be the duty of the filing attorney (or *pro-se* petitioner) to obtain, at the time of the filing of the petition, a hearing date for the hearing of the petition filed, and to provide an “Order for Hearing” presented to the Court for execution and filing.

Comment. Commencement of any action requires both the filing of the petition and the obtaining of an “Order for Hearing” (or equivalent.) Just filing the petition will not result in the matter being scheduled for hearing and may result in substantial prejudice to the petitioning party.

Cases shall be scheduled for hearing by contacting the Court Clerk’s Office or the office of the judge in order to obtain a calendar setting. The Order for Hearing shall be presented to the judge’s office for signing.

It shall be the duty of the filing attorney to know the law with respect to notice requirements and time limitations imposed by statute as it applies to the case being filed. It shall not be the duty of the Clerk of the Court to give advice either on substantive or procedural aspects of the law.

- 33.3 **Standing Orders; Scheduling Approval of Annual Accounting.** The Court shall issue an order to the Clerk directing the scheduling of Petitions to Approve Annual Accountings – Trusts, Conservatorships, Curatorships. Any order setting such hearing which is signed by the Clerk, or a duly appointed deputy, shall have the same effect as if signed personally by

the judge.

33.4 **DECEDENT’S ESTATES: Extension of Time for Final Settlement.** The verified accounting, as required by K.S.A. 59-1502, shall be filed at the same time as the filing of the petition requesting extension of time with notice given to the affected parties. Any approval of the extension shall require approval of the accounting before an extension is granted. Notice of the request for extension shall be given to the interested parties except where written consent or waiver has been executed and filed.

33.5 **TRUSTS: Accountings; Requirement for Filing; Approval.** The filing of annual accountings is required in every trust unless waived by the trust instrument or in writing by all beneficiaries.

No approval of accountings will be considered except where a petition for approval is filed and notice given to all beneficiaries.

33.6(a) **ADOPTIONS: Required Accounting.** The accounting required by K.S.A. 59-2121 is to be filed **at the time of filing the case.** No case will be set for hearing without the accounting having first been filed. The accounting shall be signed by all petitioners and by the attorney representing the petitioner(s).

33.6(b) **Required “Assessment”.** The Assessment, as required by K.S.A. 59-2132, shall be done by a person holding, at least, a masters degree in social work and holding a current Kansas license or shall be done by a licensed child-placing agency. The choice, subject to the above requirement, is left to the petitioner but shall be someone disinterested in the outcome of the proposed adoption.

33.6(c) **Rights of Missing Fathers - Notice.** In all adoptions where “identity” of a father is unknown or whereabouts unknown, notice by publication is required. An attorney, chosen by the Court, will be appointed, to represent the absent, or unknown, father’s interest and to aid in providing him notice.

Filing attorney is required to make known, at the time of scheduling the hearing on the petition, the fact of an “unknown” or “unknown whereabouts” status.

33.6(d) **Venue.** In an independent adoption venue shall be in the county in which the petitioner resides or in the county in which the child to be adopted resided. K.S.A. 59-2126.

Where reliance for venue is based on residence of a newborn child and mother has come to Kansas from another state during the time of her pregnancy, it shall be presumed that residence of mother and child is not in Kansas but in the former state. This presumption may be overcome if the mother appears in person before the Court and by her testimony, and any other evidence, concerning the matter, satisfies

that she was a resident of Kansas at the time of the placing of the child for adoption.

33.6(e) **Report of Adoption.** No adoption is complete until counsel for the adoptive parent(s) provides the “Report of Adoption” form required by the Bureau of Vital Statistics. No Decree of Adoption will be signed or filed without the simultaneous presentation of this form.

33.7(a) **GUARDIANSHIPS AND CONSERVATORSHIPS: Petition.** In addition to the content of the petition prescribed by the statute [K.S.A. 59-3009(b)] the petition shall include a statement of the reason for the need of a guardianship.

33.7(b) **Consent of Parents Required; Exceptions.** Consent of both natural parents is required in order to establish a guardianship of a minor. Exceptions are as follows:

1. Where the parent or parents are deceased;
2. Where the parental rights have been terminated by a separate court proceeding;
3. Where the child is the product of rape (no consent of the father shall be required);
4. Where lawful notice has been given to the parent and such parent then fails to appear at the time scheduled for hearing or otherwise answer;
5. Where, upon proper hearing, petitioner is able to establish, by clear and convincing evidence, that the non-consenting parent is an unfit parent.

33.7(c) **Notice Requirements.** The duty to provide notice shall be on the petitioner. Notice shall be given to the lawful custodian and to the parents (except where written consent has been obtained and filed in the record). Where the identity or whereabouts of a parent is unknown the Court may require that notice be given by publication.

33.7(d) **Hearings; Required Appearances.** Minors 14 years of age and older shall appear in person at the hearing on the petition for appointment of a guardian and/or conservator. In all other cases, the proposed ward and/or conservatee shall appear in person at the hearing on the petition unless such appearance has been excused, in advance, by the Court.

In all cases the nominee(s) for guardian and/or conservator shall appear personally before the Court at the time of the scheduled hearing. The petitioner shall have the duty to present evidence sufficient to show the nominee(s) to be qualified to serve in the position for which he or she has been nominated.

33.8(a) **GUARDIANSHIP; QUALIFICATION TO SERVE: Effect of Prior Abuse**

Confirmation. Any person whose name appears on (Child Abuse registry) such a report as having been confirmed for abuse shall be presumed to be ineligible to serve as guardian of a minor.

Every petitioner seeking to establish a guardianship for a minor shall have the duty to obtain and file with the court, prior to the hearing on the petition, a written report from (Child Abuse registry) with respect to the nominee(s).

33.8(b) **Effect of Criminal Record.** Any person who has a record of having committed, within the past ten (10) years, any crime identified as a felony or any crime of violence or of dishonesty shall be presumed to be ineligible to serve as guardian or other position of trust. Such presumption shall not be overcome by proof that the nominee is a relative of the proposed ward or conservatee.

33.8(c) **Bond; Surety Required; Use of “Order Freezing Assets”.** Bond with sufficient sureties shall be required in all conservatorships (and curatorships). “Personal bonds” shall not be accepted except where supported by sufficient non-exempt property with proof of same filed as part of the record.

The amount of the bond shall be set at 125% of the annual income plus the value of all the assets, not including real property, of the conservatorship estate. The amount of the bond requirement may be reduced by reducing the amount of the assets at risk by use of an “Order Freezing Assets”.

33.8(d) **Use of “Order Freezing Assets”.** Any asset otherwise subject to the bond requirement may be deposited in any federally insured banking institution authorized and doing business in Kansas and approval of the Court subject to an “Order Freezing Assets”. The amount of the bond to be required shall then be calculated excluding the amount subject to the “Order Freezing Assets”. No such order shall be effective unless the institution, by a qualified officer, agrees in writing to be subject to such order or the court. Release of all or part of assets subject to an Order Freezing Assets shall only be made upon proper application to and approval by the Court.

33.9 **Custody of Minors - Limitation on Changes.** No guardian, having been given custody of a minor, may thereafter return the minor to his or her parents or to any other person without first obtaining written authorization for the Court to do so. Violation of this provision shall be regarded as contempt of court and punished accordingly.

33.10 **Move Out of State Without Court Consent Prohibited.** No guardian shall permit or cause the ward under his or her care to be moved to any other state or foreign county without first having obtained the approval of the supervising court.

Violation of this provision shall be grounds for immediate termination of authority of

the guardian an such other action as necessary to protect the rights of the ward/conservatee.

- 33.11 **“Report of Guardian” or “Accounting” Required Form; Date Due.** The Report of Guardian shall be filed on an approved court form.

The due date shall be thirty (30) days after the end of the calendar year or thirty (30) days after the end of the 12 month period immediately following and including the month in which the case is filed. The period shall be considered to have started on the first day of the month in which the case is filed and the reporting period shall be for the 12-month period following that date and like periods thereafter. The Order establishing the guardianship or conservatorship shall include a statement of the due date of the Report or Accounting.

- 33.12(a) **Guardianship/Conservatorship Cases - Records, Limitation of Access.** No medical examination reports or other medical information used in establishing or maintaining a guardianship/conservatorship or curatorship case shall be made available to anyone without a written order of the supervising court. Provided, such prohibition shall not apply to: (1) the attorney representing the ward/conservatee, (2) the appointed guardian or conservator, or (3) the attorney representing the petitioner in establishing the guardianship/conservatorship or appointing any successor.

- 33.12(b) The medical information shall be maintained in an envelope in the file and may not be checked out with the file.

- 33.12(c) **Issuance of Subpoenas - Limitation.** The Clerk shall not issue a subpoena in any guardianship/conservatorship/curatorship case except where there is pending a hearing set by the Court for which the subpoena is intended to produce the appearance of a witness or production of records for such hearing.

- 33.12(d) **Curatorships - Accounting procedure.** Approval of accountings will not be considered unless same has been first submitted to and approved by the Veterans Administration Regional Office or such requirement is waived by that agency.

- 33.12(e) **Forms.** Guardianship and Conservatorship forms are, generally, those provided by Kansas Judicial Council, and the same are adopted by reference. The required inventory shall be filed on a form approved by the Court.

- 33.13 **Access to Adoption files.** Access to review an adoption file must be requested in writing and specifically authorized by a judge except:

Adoptive parents, upon proof of identification, may be given access by a clerk.

