

ESSB 5607 - H COMM AMD
By Committee on Judiciary

ADOPTED 4/14/2015

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 11.88.120 and 1991 c 289 s 7 are each amended to
4 read as follows:

5 (1) At any time after establishment of a guardianship or
6 appointment of a guardian, the court may, upon the death of the
7 guardian or limited guardian, or, for other good reason, modify or
8 terminate the guardianship or replace the guardian or limited
9 guardian((-

10 ~~(2) Any person, including an incapacitated person, may apply to~~
11 ~~the court for an order to modify or terminate a guardianship or to~~
12 ~~replace a guardian or limited guardian. If applicants are represented~~
13 ~~by counsel, counsel shall move for an order to show cause why the~~
14 ~~relief requested should not be granted. If applicants are not~~
15 ~~represented by counsel, they may move for an order to show cause, or~~
16 ~~they may deliver a written request to the clerk of the court.~~

17 ~~(3) By the next judicial day after receipt of an unrepresented~~
18 ~~person's request to modify or terminate a guardianship order, or to~~
19 ~~replace a guardian or limited guardian, the clerk shall deliver the~~
20 ~~request to the court. The court may (a) direct the clerk to schedule~~
21 ~~a hearing, (b) appoint a guardian ad litem to investigate the issues~~
22 ~~raised by the application or to take any emergency action the court~~
23 ~~deems necessary to protect the incapacitated person until a hearing~~
24 ~~can be held, or (c) deny the application without scheduling a~~
25 ~~hearing, if it appears based on documents in the court file that the~~
26 ~~application is frivolous. Any denial of an application without a~~
27 ~~hearing shall be in writing with the reasons for the denial~~
28 ~~explained. A copy of the order shall be mailed by the clerk to the~~
29 ~~applicant, to the guardian, and to any other person entitled to~~
30 ~~receive notice of proceedings in the matter. Unless within thirty~~
31 ~~days after receiving the request from the clerk the court directs~~
32 ~~otherwise, the clerk shall schedule a hearing on the request and mail~~
33 ~~notice to the guardian, the incapacitated person, the applicant, all~~

1 ~~counsel of record, and any other person entitled to receive notice of~~
2 ~~proceedings in the matter.~~

3 ~~(4) In a hearing on an application to modify or terminate a~~
4 ~~guardianship, or to replace a guardian or limited guardian, the court~~
5 ~~may grant such relief as it deems just and in the best interest of~~
6 ~~the incapacitated person.~~

7 (5)) or modify the authority of a guardian or limited guardian.
8 Such action may be taken based on the court's own motion, based on a
9 motion by an attorney for a person or entity, based on a motion of a
10 person or entity representing themselves, or based on a written
11 complaint, as described in this section. The court may grant relief
12 under this section as it deems just and in the best interest of the
13 incapacitated person. For any hearing to modify or terminate a
14 guardianship, the incapacitated person shall be given reasonable
15 notice of the hearing and of the incapacitated person's right to be
16 represented at the hearing by counsel of his or her own choosing.

17 (2)(a) An unrepresented person or entity may submit a complaint
18 to the court. Complaints must be addressed to one of the following
19 designees of the court: The clerk of the court having jurisdiction in
20 the guardianship, the court administrator, or the guardianship
21 monitoring program, and must identify the complainant and the
22 incapacitated person who is the subject of the guardianship. The
23 complaint must also provide the complainant's address, the case
24 number (if available), and the address of the incapacitated person
25 (if available). The complaint must state facts to support the claim.

26 (b) By the next judicial day after receipt of a complaint from an
27 unrepresented person, the court's designee must ensure the original
28 complaint is filed and deliver the complaint to the court.

29 (c) Within fourteen days of being presented with a complaint, the
30 court must enter an order to do one or more of the following actions:

31 (i) To show cause, with fourteen days' notice, directing the
32 guardian to appear at a hearing set by the court in order to respond
33 to the complaint;

34 (ii) To appoint a guardian ad litem to investigate the issues
35 raised by the complaint or to take any emergency action the court
36 deems necessary to protect the incapacitated person until a hearing
37 can be held;

38 (iii) To dismiss the complaint without scheduling a hearing, if
39 it appears to the court that the complaint: Is without merit on its
40 face; is filed in other than good faith; is filed for an improper

1 purpose; regards issues that have already been adjudicated; or is
2 frivolous. In making a determination, the court may review the matter
3 and consider previous behavior of the complainant that is documented
4 in the guardianship record;

5 (iv) To direct the guardian to provide, in not less than fourteen
6 days, a written report to the court on the issues raised in the
7 complaint;

8 (v) To defer consideration of the complaint until the next
9 regularly scheduled hearing in the guardianship, if the date of that
10 hearing is within the next three months, provided that there is no
11 indication that the incapacitated person will suffer physical,
12 emotional, financial, or other harm as a result of the court's
13 deferral of consideration;

14 (vi) To order other action, in the court's discretion, in
15 addition to doing one or more of the actions set out in this
16 subsection.

17 (d) If after consideration of the complaint, the court believes
18 that the complaint is made without justification or for reason to
19 harass or delay or with malice or other bad faith, the court has the
20 power to levy necessary sanctions, including but not limited to the
21 imposition of reasonable attorney fees, costs, fees, striking
22 pleadings, or other appropriate relief.

23 (3) The court may order persons who have been removed as
24 guardians to deliver any property or records belonging to the
25 incapacitated person in accordance with the court's order. Similarly,
26 when guardians have died or been removed and property or records of
27 an incapacitated person are being held by any other person, the court
28 may order that person to deliver it in accordance with the court's
29 order. Disobedience of an order to deliver shall be punishable as
30 contempt of court.

31 (4) The administrative office of the courts must develop and
32 prepare in consultation with interested persons, a model form for the
33 complaint described in subsection (2)(a) of this section and a model
34 form for the order that must be issued by the court under subsection
35 (2)(c) of this section.

36 (5) The board may send a grievance it has received regarding an
37 active guardian case to the court's designee with a request that the
38 court review the grievance and take any action the court deems
39 necessary. This type of request from the board must be treated as a
40 complaint under this section and the person who sent the complaint

1 must be treated as the complainant. The court must direct the clerk
2 to transmit a copy of its order to the board. The board must consider
3 the court order when taking any further action and note the court
4 order in any final determination.

5 (6) In any court action under this section that involves a
6 professional guardian, the court must direct the clerk of the court
7 to send a copy of the order entered under this section to the board.

8 (7) The definitions in this subsection apply throughout this
9 section unless the context clearly requires otherwise.

10 (a) "Board" means the certified professional guardianship board.

11 (b) "Complaint" means a written submission by an unrepresented
12 person or entity, who is referred to as the complainant."

13 Correct the title.

EFFECT: (1) Requires that an incapacitated person be given reasonable notice of any hearing to modify or terminate the guardianship and of his or her right to be represented at the hearing by counsel of his or her own choosing.

(2) Removes a requirement that certain actions of the Certified Professional Guardianship Board must be consistent with court orders, and instead requires the Certified Professional Guardianship Board to consider court orders when taking any further action and note court orders in any final determinations.

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