

**Effective 5/10/2016**

**75-5-312.5 Association between an adult ward and a relative of the adult ward.**

- (1) As used in this section:
  - (a) "Associate" or "association" means:
    - (i) visitation of an adult ward by a relative or qualified acquaintance; or
    - (ii) communication between an adult ward and a relative or qualified acquaintance in any form, including by telephone, mail, or electronic communication.
  - (b) "Qualified acquaintance" means an individual, other than a relative of the adult ward, who:
    - (i) has established a significant, mutual friendship with the adult ward; or
    - (ii) is clergy in the adult ward's religion or religious congregation.
  - (c) "Relative" means an adult ward's spouse, parent, step-parent, child, step-child, sibling, step-sibling, half-sibling, grandparent, grandchild, uncle, aunt, nephew, niece, or first cousin.
- (2)
  - (a) Except as otherwise provided by court order, a guardian may not restrict or prohibit the right of an adult ward to associate with a relative or qualified acquaintance of the adult ward.
  - (b) If an adult ward is unable to express consent to visitation by a relative or a qualified acquaintance of the adult ward, the consent of the adult ward is presumed based on evidence of a prior relationship between the adult ward and the relative or qualified acquaintance of the adult ward.
  - (c) A guardian may not permit a relative or qualified acquaintance of an adult ward to associate with the adult ward:
    - (i) if a court order prohibits the association;
    - (ii) in a manner prohibited by court order; or
    - (iii) if the adult ward expresses a desire to not associate with the relative or qualified acquaintance.
- (3) A guardian may, as part of the initial guardianship proceeding, petition the court to issue an order:
  - (a) prohibiting or placing conditions on association between an adult ward and a relative or qualified acquaintance of the adult ward; or
  - (b) granting the guardian the authority to prohibit or place conditions on association between an adult ward and a relative or qualified acquaintance of the adult ward.
- (4) A guardian may, at any time after the initial guardianship proceeding, petition the court to issue an order described in Subsection (3) or to rescind or modify an order described in Subsection (3).
- (5) An adult ward, a relative of an adult ward, or a qualified acquaintance of an adult ward may, at any time after the initial guardianship proceeding, petition the court to rescind or modify an order described in Subsection (3).
- (6) If a guardian violates Subsection (2), the adult ward, a relative of the adult ward, or a qualified acquaintance of the adult ward may do one or more of the following, as applicable:
  - (a) petition the court to issue an order to show cause why the guardian should not be held in contempt of court;
  - (b) seek an injunction to enforce compliance by the guardian with the law and any applicable court order; or
  - (c) petition the court to have the guardian removed as guardian of the adult ward.
- (7) For a hearing on a petition filed under this section, a court:
  - (a) may appoint a court visitor to meet with the adult ward to determine the wishes of the adult ward regarding association;

- (b) shall give notice and an opportunity to be heard to the guardian, the adult ward, and the relative or qualified acquaintance;
  - (c) shall preserve the right of the adult ward to be present at the hearing; and
  - (d) may order supervised visitation by the relative or qualified acquaintance before the hearing.
- (8) A court may not enter an order prohibiting or placing restrictions on association between an adult ward and a relative or qualified acquaintance, unless the court finds by a preponderance of the evidence that:
- (a) the adult ward desires the prohibition or restriction;
  - (b) if the adult ward had the capacity to make a knowing and intelligent decision regarding the association, the adult ward would prohibit the association or impose the restriction; or
  - (c) the prohibition or restriction is the least restrictive means necessary to protect the health or welfare of the adult ward.
- (9) In making the determination described in Subsection (8), the court may consider any relevant evidence, including:
- (a) the wishes of the adult ward, expressed during or before the guardianship;
  - (b) the history of the relationship between the adult ward and the relative or qualified acquaintance;
  - (c) any history of criminal activity, abuse, neglect, or violence by the relative or qualified acquaintance; or
  - (d) whether a protective order was ever issued against the relative or qualified acquaintance with respect to the adult ward.
- (10) Except as provided in Subsection (11), the guardian shall have the burden of proof when:
- (a) seeking an order prohibiting association or placing restrictions on association with a relative or qualified acquaintance of the adult ward;
  - (b) modifying an order to place additional prohibitions or restrictions on association with a relative or qualified acquaintance of the adult ward; or
  - (c) opposing an action described in Subsection (6)(a) or (b).
- (11) The relative or qualified acquaintance shall have the burden of proof if the relative or qualified acquaintance is seeking to modify an order previously entered by a court under this section.
- (12)
- (a) If, in a proceeding under this section, the court finds that the petition was filed frivolously or in bad faith, the court shall award attorney fees to a party opposing the petition.
  - (b) If, in a proceeding under this section, the court finds that the guardian is in contempt of court or has acted frivolously or in bad faith in prohibiting or restricting association, the court:
    - (i) may award attorney fees to the prevailing party; and
    - (ii) may impose a sanction, not to exceed \$1,000, against the guardian.
  - (c) A court shall prohibit attorney fees awarded under this section from being paid by the adult ward or the adult ward's estate.

Enacted by Chapter 293, 2016 General Session