

Effective 5/4/2022

75-5-312.5 Association between an adult ward and a relative or acquaintance 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:
 - (a) petition the court to issue an order described in Subsection (3) or to rescind or modify an order described in Subsection (3); or
 - (b) petition, subject to notice, the court on an emergency basis to issue a temporary order until further order of the court 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, as applicable:
 - (a) file an ex parte motion to enforce an order or to obtain sanctions;
 - (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) shall 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 Subsection (12) from being paid by the adult ward or the adult ward's estate.

Amended by Chapter 441, 2022 General Session