

IN THE SUPREME COURT OF THE STATE OF ALASKA
ORDER NO. 1575

Amending Probate Rules 2, 14, 16,
and 17 concerning Masters, Protective
Proceedings, Guardianship, and
Conservatorship.

IT IS ORDERED:

1. Probate Rule 2(d) is amended to read as follows:

Rule 2. Appointment and Authority of Masters.

(d) **Standing Master's Authority to Enter Orders.** A standing master is authorized to take the following actions without further approval by a superior court judge:

1. any actions authorized to be taken by a master as a registrar;
2. appoint counsel and guardians ad litem;
3. order home studies, visitor's reports, and psychological, psychiatric, and medical evaluations;
4. set hearings and order continuances of the master's hearings;
5. issue orders on motions requesting expedited review pursuant to Civil Rule 77(g);
6. accept and approve stipulations;
7. review and approve uncontested orders on annual review; and

8. order mediation and other forms of alternative dispute resolution under Probate Rule 4.5.

2. Probate Rule 14(b) is amended to read as follows:

Rule 14. Protective Proceedings.

(a) **Applicability.** This rule applies to all proceedings under AS 13.26, Protection of Persons Under Disability and Their Property.

(b) **Review.** Upon the request of any interested person, or on the court's own motion, the court may set a review hearing to inquire as to the welfare and best interests of the respondent or ward and to take any other appropriate action necessary to protect the interests and welfare of the respondent.

3. Probate Rule 16 is amended to read as follows:

Rule 16. Guardianship of Incapacitated Persons.

(a) **Petition.** A petition for guardianship must contain the information required by AS 13.26.105(b). The petition must be verified by the petitioner or signed by an attorney representing the petitioner. The petition must state the priority of the nominee under AS 13.26.145 and, if known, the names and addresses of any person with a higher priority.

(b) **Notice.** Notice must be given as provided by AS 13.26.107, AS 13.26.135, AS 13.06.110, and AS 13.26.185.

(c) **Letters of Guardianship and Mandatory Education.** Letters of guardianship may not issue without the written acceptance of the person to be named guardian. The acceptance must state that the person has read and understands the duties and powers of a guardianship under AS 13.26.150 with any restrictions imposed by the court, as well as the reporting requirements, of AS 13.26.117 and AS 13.26.118. A relative or friend of the ward who is appointed as a guardian must complete one hour of mandatory education on the basics of guardianship before the appointment or within 30 days after the appointment as provided by AS 13.26.145(c).

(d) **Compensation.** Except as provided in AS 13.26.410(a), compensation may not be paid for guardianship services without written order of the court. As provided in AS 08.26.110, private professional guardians must obtain court approval of a proposed fee schedule, which must include an hourly fee and a monthly maximum amount that can be charged.

(e) **Reporting.**

(1) *By the Guardian.*

(A) *Guardianship Plan and Implementation Report.* The guardian must file a guardianship plan within 30 days after distribution of the order of appointment as guardian and an implementation report no later than 90 days after distribution of the order of appointment as guardian.

(B) *Annual Report.* The guardian must file an annual report with the court within 30 days after the anniversary of the guardianship order or as otherwise ordered by the court. The annual report must include:

(i) the name and current address of the ward and guardian;

(ii) the ward's present mental, physical and social condition, the ward's living arrangements, and the ward's opinion of those living arrangements;

(iii) changes in the capacity of the ward to meet essential requirements for the ward's physical health and safety;

(iv) the services provided to the ward, including all medical and mental health treatment, during the year;

(v) any significant actions taken by the guardian during the reporting period;

(vi) a financial accounting of the estate of the ward that has been subject to the possession and control of the guardian;

(vii) a list of the number and nature of contacts between the guardian and the ward if the ward does not reside with the guardian; and

(viii) any other information requested by the court or considered necessary by the guardian to make the court fully aware of the ward's current circumstances.

(C) *Final Report.* Within 90 days after appointment of a successor guardian or termination of a guardianship for any reason, including the death of the ward, the guardian

whose authority is being terminated shall file a final report.

Unless otherwise ordered, the final report must include:

(i) a statement of the reason the guardianship was terminated;

(ii) the services provided to the ward, including all medical and mental health treatment since the date of the last annual report;

(iii) any significant actions taken by the guardian since the date of the last annual report;

(iv) a financial accounting of the estate of the ward that has been subject to the possession and control of the guardian, including a statement of when and to whom the assets have been released to include the name, address, and the authority of such person to receive the property;

(v) a list of the number and nature of contacts between the guardian and the ward if the ward did not reside with the guardian;

(vi) a detailed report of all disbursements, including a detailed statement of fees and expenses charged by the guardian or reimbursed to the guardian from the estate of the ward; and

(vii) any other information requested by the court.

(2) *By the Court Visitor.* As provided in AS 13.26.108, the court visitor must file a visitor's report with the court within 90 days after the date on which the petition is filed or by a time otherwise ordered by the court, but no later than 10 days before the guardianship hearing. In addition, every third year, the court shall appoint a court visitor to file a

report reviewing the guardianship and any conservatorship during the period since the last visitor's report, as provided in AS 13.26.118.

(3) *Service*. Unless otherwise ordered by the court, all reports described in paragraphs (e)(1) and (e)(2) of this rule must be served on the following persons: (1) the ward; (2) the guardian, if appointed under this rule; (3) the conservator, if appointed under Probate Rule 17; and (4) anyone designated by the court as an interested person or special advocate. If the person to be served is represented by an attorney or guardian ad litem, the report must be served on the attorney or guardian ad litem.

(f) Authority of Guardian After Death of Ward. Once a guardian knows that the ward has died, the guardian has no further authority over the ward's affairs and estate except:

(1) to preserve, account, and transfer control of assets to a personal representative or special administrator appointed by the court or to a temporary property custodian appointed by the court or authorized to take custody of personal property by affidavit; and

(2) as provided in AS 13.26.120(b).

Guardians who have the powers of a conservator may also exercise authority as provided in Probate Rule 17(h).

4. Probate Rule 17 is amended to read as follows:

Rule 17. Conservatorships.

(a) **Petition.** A petition for conservatorship must contain the information required by AS 13.26.180(b). The petition must be verified by the petitioner or signed by an attorney representing the petitioner. A petition for conservatorship of a minor must state who has legal custody of the minor and the birthdate of the minor. The petition must state the priority of the nominee under AS 13.26.210 and, if known, the names and addresses of any person with a higher priority.

(b) **Notice.** Notice must be given as provided by AS 13.26.185 and AS 13.06.110.

(c) **Letters of Conservatorship and Mandatory Education.** Letters of conservatorship may not issue without the written acceptance of the person to be named conservator. The acceptance must state that the person has read and understands the duties and powers of conservatorship under AS 13.26.245 — 13.26.320, with any restrictions imposed by the court. A relative or friend of the protected person who is appointed as a conservator must complete one hour of mandatory education on the basics of conservatorship before the appointment or within 30 days after the appointment as provided by AS 13.26.210(g).

(d) **Compensation.** Except as provided in AS 13.26.410(a), compensation may not be paid for conservatorship services without written order of the court.

As provided in AS 08.26.110, private professional conservators must obtain court approval of a proposed fee schedule, which must include an hourly fee and a monthly maximum amount that can be charged.

(e) **Reporting.**

(1) *By the Conservator.* Within 90 days after distribution of the order of appointment, the conservator must file a conservator implementation report and an inventory pursuant to AS 13.26.250. The conservator also must file an annual report with the court within 30 days after the anniversary of the conservatorship order or as otherwise ordered by the court. The annual report must include:

1. the total assets at the beginning and end of the calendar year;
2. the total liabilities at the beginning and end of the calendar year;
3. income received from all sources;
4. a detailed report on all disbursements with explanations; and
5. actions of the conservator during the year regarding the protected funds.

(2) *By the Court Visitor.* If the court appoints a visitor as provided in AS 13.26.195(b), the court visitor must file a visitor's report with the court within 90 days after the date on which the petition is filed or by a time otherwise ordered by the court, but no later than 10 days before the conservatorship hearing. In addition, every third year, the court may appoint a court visitor to file a report reviewing

the conservatorship during the period since the last visitor's report, as provided in AS 13.26.257(b).

(3) *Service*. Unless otherwise ordered by the court, all reports described in paragraphs (e)(1) and (e)(2) of this rule must be served on the following persons: (1) the protected person; (2) the guardian, if appointed under Probate Rule 16; (3) the conservator, if appointed under this rule; and (4) anyone designated by the court as an interested person or special advocate. If the person to be served is represented by an attorney or guardian ad litem, the report must be served on the attorney or guardian ad litem.

(f) **Discharge**. A final accounting with appropriate provision for the subsequent control of the estate must be submitted and accepted by the court under AS 13.26.255 before the court may discharge a conservator under AS 13.26.310. A final accounting must be filed no later than 90 days after entry of an order transferring conservatorship authority or 90 days after termination of the conservatorship for any reason, including the death of the protected person, by the conservator whose authority is being terminated. The conservator shall not be fully discharged from responsibility in the matter until the court accepts this final accounting after notice to all parties and a hearing. The final accounting shall include:

(1) a statement of the reason the conservatorship was terminated;

(2) any significant actions taken by the conservator since the date of the last annual report;

(3) the total assets at the date of the last annual report and total assets at the date of the termination of the conservatorship;

(4) the total liabilities at the date of the last annual report;

(5) a detailed report of all disbursements with explanations to include any fees charged by the conservator or reimbursed to the conservator from the estate of the protected person;

(6) income received from all sources since the date of the last annual report;

(7) actions of the conservator since the date of the last annual report regarding the protected funds; and

(8) any other information requested by the court.

(g) **Minor Settlement.** A conservatorship proceeding for a minor initiated because funds are part of a settlement or judgment in favor of a minor must comply with Civil Rule 90.2.

(h) **Authority of Conservator After Death of Protected Person.** Once a conservator knows that the protected person has died, the conservator has no further authority over the protected person's affairs and estate except as provided in AS 13.26.285(e).

DATED: July 7, 2005

EFFECTIVE DATE: October 15, 2005

Chief Justice Bryner

Justice Matthews

Justice Eastaugh

Justice Fabe

Justice Carpeneti