

IN THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 1317

Amending Probate Rule 2 and adopting new Probate Rule 4.5 concerning mediation and other forms of alternative dispute resolution.

IT IS ORDERED:

1. Paragraph (d) of Probate Rule 2 is amended to read:

(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(i);
6. accept and approve stipulations; and
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. The Probate Rules are amended to include new Probate Rule 4.5 which reads:

Probate Rule 4.5. Mediation and Other Forms
of Alternative Dispute Resolution.

(a) Application. This rule applies to
all actions filed under Title 13. At any time
after an action under Title 13 is filed, an
interested person as defined in AS
13.06.050(24) may file a motion with the court
requesting mediation for the purpose of
providing an alternative to litigation. The
motion must address how the mediation should
be conducted as specified in paragraph (b),
including the names of any acceptable
mediators. In matters not covered by AS 25,
the court may order mediation in response to
such a motion, or on its own motion, whenever
it determines that mediation may result in an
equitable settlement. In making this
determination, the court shall consider
whether there is a history of domestic
violence between the interested persons which
could be expected to affect the fairness of
the mediation process or the physical safety
of the domestic violence victim. Mediation may
not be ordered between the parties to, or in,
a case filed under AS 18.66.100 - 18.66.180.

(b) Order. An order of mediation must

state:

(1) the name of the mediator or how the mediator will be decided upon;

(2) any changes in the procedures specified in paragraphs (d) and (e), or any additional procedures;

(3) that the costs of mediation are to be borne equally by the interested persons unless the court apportions the costs differently; estate funds may be used to pay the costs of mediation only upon order of the court or agreement of all persons whose interests would be affected by payment from the estate; and

(4) a date by which the initial mediation conference must commence.

(c) Challenge of Mediator. Each interested person has the right once to challenge peremptorily any mediator appointed by the court if the "Notice of Challenge of Mediator" is timely filed pursuant to Civil Rule 42(c).

(d) Mediation Briefs. Any interested person may provide a confidential brief to the mediator explaining its view of the dispute. If an interested person elects to provide a brief, the brief may not exceed five pages in length and must be provided to the mediator not less than three days prior to the

mediation. An interested person's mediation brief may not be disclosed to anyone without the person's consent and is not admissible in evidence.

(e) Conferences. Mediation will be conducted in informal conferences at a location agreed to by the interested persons or, if they do not agree, at a location designated by the mediator. All interested persons shall attend the initial conference at which the mediator shall first meet with all participants. Thereafter the mediator may meet with the participants separately. Counsel for an interested person may attend all conferences attended by that person. If the mediator believes the presence of third parties is critical to the resolution of a case, the mediator may request them to attend the mediation.

(f) Authority of Mediators. Mediators shall work with the interested persons to facilitate agreements on substantive and procedural matters and attempt to aid in the voluntary resolution of cases. Mediators shall not issue decisions or make procedural or substantive recommendations to the court.

(g) Termination. After the initial joint conference and the first round of separate conferences if separate conferences are required by the mediator, an interested person may withdraw from mediation, or the mediator may terminate the process if the

mediator determines that mediation efforts likely to be unsuccessful. Upon withdrawal by an interested person or termination by the mediator, the mediator shall notify the court that mediation efforts have been terminated.

(h) Confidentiality. Mediation proceedings shall be held in private and are confidential. Unless otherwise ordered, the mediator shall not testify as to any aspect of the mediation proceedings. Evidence of conduct or statements made in the course of court-ordered mediation shall be inadmissible to the same extent that conduct or statements are inadmissible under Alaska Rule of Evidence 408. This rule does not relieve any person of a duty imposed by statute.

(i) Stipulation. If the mediation is successful, the interested persons shall prepare and file with the court a stipulation setting forth their agreement.

(j) Other Forms of Alternative Dispute Resolution.

(1) Early Neutral Evaluation. Parties or the court may use the procedure set out in this rule to refer a case to early neutral evaluation instead of mediation. All provisions of this rule apply to a case in which early neutral evaluation has been ordered under paragraph (a).

(2) Settlement Conference. At any time

after a complaint is filed, a party may file a
motion with the court requesting a settlement
conference with a judge for the purpose of
achieving a mutually agreeable settlement.
The court may order a settlement conference in
response to such a motion or on its own
motion.

DATED: March 5, 1998

EFFECTIVE DATE: July 15, 1998

/s/
Chief Justice Matthews

/s/
Justice Compton

/s/
Justice Eastaugh

/s/
Justice Fabe

/s/
Justice Bryner