

IN THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 1443

Amending Probate Rules 16, 17 & 19
governing guardianships and
conservatorships.

IT IS ORDERED:

- I. Probate Rule 16 is amended to incorporate changes to existing paragraphs (d) and (e) and to add new paragraphs (f) and (g), to read as follows:

Rule 16. Guardianship of Incapacitated Persons.

* * * *

(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.

(e) **Reporting.**

(1) *By the Guardian.*

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

(B) *Annual Report.* The guardian must file an annual report with the court on the anniversary of the guardianship order or as otherwise provided by the court. The annual report must include:

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

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

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

(iv) the services provided to the respondent, 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 respondent 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 respondent if the respondent 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 respondent's current circumstances.

(C) *Final Report.* Within 60 days after appointment of a successor guardian or termination of a guardianship for any reason, including the death of the respondent, 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 respondent, 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 respondent 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 respondent if the respondent 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 respondent; and

(vii) any other information requested by the court.

(2) *By the Court Visitor.* 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 in no event later than 10 days before the guardianship hearing. In addition, every third year, the Court Visitor shall be appointed by the court to file a report reviewing the guardianship and any conservatorship during the period since the last visitor's report.

(3) *Service.* All reports described in subparagraphs (e)(1) and (e)(2) of this rule must be served on the following persons: (1) the respondent; (2) the guardian, if appointed under this rule; (3) the conservator, if appointed under Probate Rule 17; and (4) anyone designated as an interested person or special advocate by court order. 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 Respondent.** Once a guardian knows that the respondent has died, the guardian has no further authority over the respondent's affairs and estate except 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.

- II. Probate Rule 17 is amended to incorporate changes to existing paragraphs (d) and (f) and to add a new paragraph (h), to read as follows:

Rule 17. Conservatorships.

* * * *

(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.

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(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 30 days after entry of an order transferring conservatorship authority or 30 days after termination of the conservatorship for any reason, including the death of the respondent, 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. Such 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 respondent;

(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.

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(h) **Authority of Conservator After Death of Respondent.** Once a conservator knows that the respondent has died, the conservator has no further authority over the respondent's affairs and estate except

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.

III. A new Rule 19 is added to the Probate Rules, to read as follows:

Rule 19. Authority of Attorney or Guardian Ad Litem for Respondent.

(a) Once an attorney or a guardian ad litem is appointed or appears in a conservatorship or guardianship case, the attorney or guardian ad litem must be served with all pleadings, reports, and filings in the case.

(b) Unless otherwise ordered by the court, the authority of an attorney or guardian ad litem to act on behalf of an incapacitated person terminates as follows:

(1) upon order of the court allowing the attorney or guardian ad litem to withdraw or removing the attorney or guardian ad litem from the case;

(2) upon entry of an order closing the case; or

(3) upon the death of the respondent.

DATED: July 11, 2001

EFFECTIVE DATE: October 15, 2001

/s/ Wm. Faber
Chief Justice Faber

/s/ Wm. Matthews
Justice Matthews

/s/ Paul Eastaugh
Justice Eastaugh

/s/ J. Bryner
Justice Bryner

/s/ Walter D. Carpeneti
Justice Carpeneti