

IN THE SUPREME COURT OF THE STATE OF ALASKA
ORDER NO. 1961

Amending Probate Rule 4.5 to update statutory citation; Amending Probate Rules 14, 15, 16, and 17 concerning guardianship and conservatorship proceedings; adopting Probate Rule 14.1 concerning a hearing on shortened time.

IT IS ORDERED:

1. Probate Rule 4.5 is amended to read as follows:

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(26)~~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.

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

Rule 14. Protective Proceedings.

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(d) **Confidentiality.** All information contained in the court records relating to proceedings for guardianship, conservatorship, or other protective proceeding brought under AS 13.26 is confidential and is available only upon court order for good cause shown or to the persons listed in AS 13.26.021(a), except that the date a petition was filed, the name of each petitioner and respondent, the case number, the docket, and the final dispositional order for each protective proceeding are a matter of public record, as provided by AS 13.26.021. A non-party motion for a finding of good cause to access information in a file shall not be denied solely for lack of party status.

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(g) Venue.

(1) Filing Petition. A petition for protection must be filed in the superior court in the venue district where the respondent or ward resides or is present except as follows:

(A) Minor Guardianship. If the respondent or ward is a minor in state custody under AS 47.10, venue is in the superior court where the child in need of aid proceeding is pending or, if the petitioner provides notice to all parties to the child in need of aid proceeding and no party objects, venue is in the judicial district where the petitioner resides, as provided in AS 13.26.137.

(B) Incapacitated Adult Guardianship. If the incapacitated person has been admitted to an institution under

court order, venue is also in the judicial district of the court that entered the institutional admission order.

(C) *Conservatorship.* If the person the petition seeks to protect does not live in the state, venue is in the judicial district where the person to be protected has property.

(2) *Change of Venue.* A court may change venue to another appropriate venue in accordance with court rules and applicable statutes.

(h) Service. In a protective proceeding, unless otherwise ordered, service must be made as follows:

(1) All filings, reports, and orders must be served on the respondent or ward, guardian, and conservator. Service is required on a court visitor, if appointed.

(2) Service on a petitioner is required for filings, reports, and orders related to his or her petition, but not filings, reports, and orders related to a petition filed by another person. If the court consolidates related petitions, all petitioners shall be served with filings, reports, and orders related to the consolidated petitions. Unless otherwise ordered, the requirement to serve the petitioner expires when the court decides the petition that the petitioner filed.

(3) A person may move to formally intervene in a protective proceeding under Civil Rule 24. If intervention is granted, the intervenor must be served with all filings, reports, and orders until the intervenor withdraws or until further court order.

(4) Following each review hearing, the court shall indicate persons that must be served with any future filings, reports, and orders.

(i) **Notice.** As provided in AS 13.26.425, a person who files a request for notice as an interested person as defined in AS 13.06.050(26) is entitled to notice before an order is entered in a protective proceeding. A request must include the basis of the person's interest and, unless the person is represented by an attorney, the person's address.

Note: Civil Rule 42 governs consolidation of actions and matters in issue, such as consolidating related petitions.

3. Probate Rule 14.1 is adopted as follows:

Rule 14.1 Motion for Hearing on Shortened Time.

A motion for a hearing on shortened time may be filed with a petition or at any time a petition is pending. The motion must be titled "Motion for Hearing on Shortened Time under Probate Rule 14.1," and must include the reason for the motion and the time within which a hearing is needed. If the motion is filed with a petition, the motion must be served with the petition. The court must rule on the motion within three days.

4. Probate Rule 15 is amended to read as follows:

Rule 15. Guardianship of a Minor.

* * * *

(c) **Nomination of Proposed Guardian.** Any party or other person nominating a person or entity as a guardian for a minor must notify the proposed guardian of the nomination and of the date and time of the hearing on the petition, unless notice is waived by the court for good cause.

(d)(e) **Letters of Guardianship.** Letters of guardianship of a minor 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 guardian of a minor as stated by AS 13.26.16713-26.070.

(e)(d) Reporting. * * * *

(f)(e) Application of the Indian Child Welfare Act and Regulations. * * * *

(g) Transition to Adult Guardianship. A petition for an adult guardianship under Rule 16 may be filed for a minor ward who will turn 18 years old within 120 days of the petition filing date, unless otherwise ordered by the court for good cause shown.

5. 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 13.26.221(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 13.26.311 and, if known, the names and addresses of any person with a higher priority. A petition may be filed under this rule for a minor who will turn 18 years old within 120 days of the petition filing date, unless otherwise ordered by the court for good cause shown.

(b) **Notice.** Notice must be given as provided by AS 13.26.231, AS 13.26.296, AS 13.06.110, and AS 13.26.420. For good cause shown, the court may also authorize alternative methods of service. Proof of service by certified mail may be made by certificate rather than by affidavit.

(c) Nomination of Proposed Guardian. Any party or other person nominating a person or entity as a guardian for a minor must notify the proposed guardian of the nomination and of the

date and time of the hearing on the petition, unless notice is waived by the court for good cause.

~~(d)~~**(e) 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 understands the duties and powers of a guardianship under AS 13.26.316, with any restrictions imposed by the court, as well as the reporting requirements of AS 13.26.271 and AS 13.26.276. ~~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 13.26.311(c).~~

(e) **Mandatory Education.** 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 13.26.311(c).

~~(f)~~**(d) Compensation.** Except as provided in AS ~~13.26.750(a)~~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.

~~(g)~~**(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 ward's estate of the ward that has been subject to the possession and control of the guardian, which must include the relevant account statements for the reporting period and any other information requested by the court;

(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 13.26.236, 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 13.26.276. The court may waive a three-year report if a report generated as a result of a petition for review has been filed within six months of the due date of a three-year report, and the report filed as a result of the petition for review meets the standards for a three-year report under AS 13.26.276. The court visitor shall use the court forms for reports listed in this paragraph.

~~(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.~~

~~(h)(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) * * * *~~

~~(2) as provided in AS 13.26.281(b)~~13.26.120(b)~~.~~

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

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

Rule 17. Conservatorships, Protective Proceedings, and Minor Settlements.

* * * *

(c) **Nomination of Proposed Conservator.** Any party or other person nominating a person or entity as a conservator

must notify the proposed conservator of the nomination and of the date and time of the hearing on the petition, unless notice is waived by the court for good cause.

~~(d)(e)~~ **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 understands the duties and powers of conservatorship under AS 13.26.500–13.26.580, with any restrictions imposed by the court, as well as the reporting requirements of AS 13.26.505 and AS 13.26.510. ~~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 13.26.465(g).~~

(e) **Mandatory Education.** 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 13.26.465(g).

~~(f)(d)~~ **Compensation.** Except as provided in AS ~~13.26.750(a)~~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.

(g)(e) **Reporting.**

- (1) *By the Conservator.* * * * *
- (2) *By the Court Visitor.* If the court appoints a visitor as provided in AS 13.26.430(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 13.26.515(b). The court may waive a three-year report if a report generated as a result of a petition for review has been filed within six months of the due date of a three-year report, and the report filed as a result of the petition for review meets the standards for a three-year report under AS 13.26.515. The court visitor shall use the court forms for reports listed in this paragraph.

~~(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.~~

(Re-letter subsequent subsections.)

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DATED: June 16, 2021

EFFECTIVE DATE: October 15, 2021

/s/
Chief Justice Bolger

/s/
Justice Winfree

/s/
Justice Maassen

/s/
Justice Carney

/s/
Justice Borghesan