

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
AT _____

In the Matter of the Protective Proceeding of _____)
_____)
_____)
_____)
_____)
_____)
Respondent (person who needs a guardian) _____)
_____)
_____)

CASE NO. _____

**ORDER APPOINTING
PARTIAL GUARDIAN**

A hearing in this matter was held on _____ before Judge/Master _____

Present were:

- Respondent Respondent was not present for the reason stated on the record
- Respondent's Attorney _____ Visitor _____
- Expert _____ Petitioner _____
- Guardian Ad Litem _____ Others: _____

The court has reviewed the petition, the visitor's report, the expert's report
 the master's findings and recommendations, and any objections from the parties.

FINDINGS

The court finds that:

1. Notice of the Hearing.
 - a. The court gave notice of the hearing to the petitioner.
 - b. The visitor gave notice of the hearing to the respondent. AS 13.26.296(a)(1)
 - c. The petitioner served notice of the hearing on
 - the persons listed in AS 13.26.296 (for the **guardianship** powers), and
 - the persons listed in AS 13.26.420 (for the **conservator** powers).
2. Subject Matter Jurisdiction. The court has jurisdiction under AS 13.27.110 because
 - Alaska is the respondent's home state as defined in AS 13.27.180.
 - the requirements of the following statute have been met:
 - AS 13.27.110(2) AS 13.27.110(3) AS 13.27.110(4)
3. Venue.
 - a. Alaska is the proper location for the **guardianship** because the respondent
 - lives here is present here. AS 13.26.216
 - b. Alaska is the proper location for **granting the powers of a conservator** because the respondent lives here does not reside in Alaska, but has property here. AS 13.26.411

4. Incapacity.

- It has been shown by clear and convincing evidence that the respondent is incapacitated as defined in AS 13.26.005(5). [Someone is incapacitated if his or her ability to receive and evaluate information or to communicate decisions is so impaired that the person cannot provide for their physical health or safety without court-ordered help (including health care, food, shelter, clothing, personal hygiene, and protection).]
- The respondent agrees to the finding of incapacity as defined above. AS 13.26.251(b).
- Partial Guardian.** The respondent is able to perform some, but not all, of the functions necessary to care for himself/herself, and alternatives to guardianship are not feasible or adequate to provide for the needs of the respondent. Therefore, the court will appoint a **partial guardian**. [AS 13.26.251(e)].

The respondent lacks the ability to provide for himself/herself in the following areas:

- (1) Medical Care.
- (2) Mental Health Treatment (if any is required).
- (3) Housing.
- (4) Personal care, educational and vocational services necessary for the physical and mental welfare of the respondent.
- (5) Application for health and accident insurance and any other private or governmental benefits to which the respondent may be entitled.
- (6) Physical and mental examinations necessary to determine the respondent's medical and mental health treatment needs.
- Control and management of the respondent's property and affairs in order to pay for the cost of services.

[AS 13.26.266(a)(2)]

- Powers of a Conservator.** A basis for giving the guardian the powers of a conservator exists because it has been established that respondent is
 - (1) unable to effectively manage his/her property and affairs, and
 - (2) has property that will be wasted or used up unless someone manages it.[AS 13.26.430(c), AS 13.26.401(2)]

As required by AS 13.26.430(d), the court has investigated the alternatives to appointing a conservator and concludes that the powers of a conservator should be given to the guardian because the alternatives under AS 13.26.440 are not adequate to protect the respondent's estate.

5. _____ is suitable, under AS 13.26.311, to act as the respondent's **guardian**, and
- has priority for appointment under AS 13.26.311.
 - is best qualified among those having equal priority for appointment.
 - does not have priority for appointment, but this appointment is in the respondent's best interest
 - because _____
 - _____
 - _____
 - for the reasons stated in the attached written findings. AS 13.26.311(f)
- This person or entity is also competent to act as respondent's **conservator**, and
- has priority for appointment under AS 13.26.465.
 - is best qualified among those having equal priority for appointment.
 - does not have priority for appointment, but this appointment is in the respondent's best interest
 - because _____
 - _____
 - _____
 - for the reasons stated in the attached written findings. AS 13.26.465(f).

6. Consideration of Respondent's Preference.

- a. Pursuant to the AS 13.26.251(g) requirement that the court consider respondent's preference in selecting a **guardian**, the court
 - has considered respondent's preference.
 - has not considered respondent's preference in guardians for the reasons stated on the record in the attached findings.
- b. Pursuant to the AS 13.26.430(d) requirement that the court, to the maximum extent possible, consult with the respondent in determining what action should be taken with respect to appointment of a **conservator**, the court
 - has consulted with respondent about whether the guardian should be given the powers of a conservator.
 - has not consulted with respondent concerning the conservator issue for the reasons stated on the record in the attached findings.

7. License. The guardian

- has the required professional license under AS 08.26
- is the Public Guardian.
- is exempt from the license requirement under AS 08.26.180 because the individual is employed by a regulated financial institution and will provide these guardian services in the course of this employment.
- is not engaged in the business of providing guardian or conservator services and, therefore, is not required to be licensed; and has has not satisfied the one-hour mandatory education requirement on the basics of guardianship and conservatorship. (AS 13.26.311(c) and 13.26.465(g))

ORDER

IT IS ORDERED:

1. _____ is appointed to be respondent's guardian.

Personal Contact.

- The respondent appeared for court either in person or by video connection.
- The respondent did not appear in court but the court visitor had personal or video contact with the respondent.
- The court visitor shall have personal or video contact with the respondent within the next one year and shall file notice with the court that the contact occurred.
- The court finds good cause to waive the requirement for personal contact.

2. Powers and Duties. The guardian will be a **partial guardian**, with the authority and responsibility to arrange for the respondent's

- (1) Medical care
- (2) Any mental health treatment that is necessary
- (3) Housing. Limitations:
 - The guardian cannot move the respondent out of the respondent's current home without written permission from the court.
 - _____
- (4) Personal care, educational and vocational services necessary for the physical and mental welfare of the respondent
- (5) Application for health and accident insurance and any other private or governmental benefits to which the respondent may be entitled
- (6) Physical and mental examinations necessary to determine the respondent's medical and mental health treatment needs
- (7) Asset and income management. **The guardian will have the powers and duties of a conservator under AS 13.26.500 - .575, except the following:**
 - the guardian cannot sell _____ without prior written permission from the court.
 - _____

AS 13.26.266

In exercising these conservator powers, the guardian must act as a fiduciary and must observe the standards of care applicable to trustees under AS 13.36.225-13.36.290, AS 13.26.500.

Large Expenditures.

- The guardian may manage the respondent's estate to benefit the respondent without obtaining court approval for large expenditures. However, the guardian must report annually on all expenses paid for the respondent's best interest.
- Other than payments for the respondent's medical and mental health treatment needs, the guardian may not make use of the respondent's funds for any non-budgeted expense exceeding \$_____ without first obtaining the permission of the court.

3. Mandatory Education (Non-Professional Guardians). If the guardian is not engaged in the business of providing guardian services, the guardian must complete one hour of mandatory education on the basics of guardianship and file proof of completion with the court within 30 days after this appointment order is distributed. (Use the [PG-120 Affirmation](#) form.) AS 13.26.311(c) and 13.26.465(g).

4. Bond. AS 13.26.470 - .475. The guardian
 - must post a bond in the amount of \$_____ by _____
 - is not required to post a bond for the reasons stated on the record in the attached findings.

5. Reporting Requirements. The guardian must file the following reports with the court:
 - a. *Guardianship Plan* (form [PG-401](#)). Within 30 days after this appointment order is distributed, the guardian must submit to the court a Guardianship Plan. [Probate Rule 16(e)(1)].
The Guardianship Plan must describe the guardian’s plans for caring for the respondent. The Plan must be designed to encourage the respondent to participate in all decisions affecting the respondent to the maximum extent possible. The Plan may not restrict the respondent’s liberty more than is reasonably necessary to protect the respondent and to provide for the respondent’s needs. [AS 13.26.266(c)].

 - b. *A Guardianship Implementation Report and Inventory of the Estate* (on form [PG-205](#)) must be filed with the court within 90 days after distribution of this order. [AS 13.26.271 & .505; Probate Rules 16(e)(1)(A) & 17(e)]
Specific Due Date: _____

 - c. *Budget*.
 - The guardian shall create a budget for the respondent. The budget shall be filed with the court no later than
 - the following date_____
 - the time of the filing of the *Guardianship Implementation Report and Inventory of the Estate*.
 - The court finds good cause to allow the guardian to serve without creating a budget.

 - d. *Guardianship Annual Reports* (on form [PG-210](#)) must be filed each year until the guardianship is terminated. Unless specific dates are set below, the report must cover the 12-month period beginning the 1st of the month in which this appointment order is signed and ending 12 months later. The report is due 30 days after the end of the reporting period. [For example, if the order is signed anytime in January, the reporting period will be January 1 to December 31; and a report will be due each January 31.] [Probate Rule 16(e)(1)(B) and AS 13.26.276]

Specific Dates.

Reporting Period: From _____ To _____ each year.
Report is due 30 days after end of reporting period:_____.

- e. A *Final Guardianship Report* (on form [PG-215](#)) must be filed when the guardianship ends the guardian is replaced, or when the respondent dies. [Probate Rule 16(e)(1)(C)]

6. **If the respondent or the guardian changes his/her address, the guardian must immediately provide written notice to the court and all parties.** *(Include your case number. You can find a "Change of Address" form ([PG-195](#)) and court addresses on the court system website: www.state.ak.us/courts)*

7. Term of Guardianship. Unless previously terminated by the court, the guardianship will end upon the death of the respondent or _____.

Once the guardian knows that the respondent has died, the guardian has no further authority over the respondent's affairs and estate except to:

- a. preserve, account, and transfer control of assets to a personal representative or special administrator appointed by the court, a temporary property custodian appointed by the court, or someone authorized to take custody of personal property by affidavit (as provided in AS 12.65.105 -.110 and Probate Rule 9.1); and
- b. arrange for the body of the respondent to be transported to a funeral home and make funeral and burial arrangements, if the respondent does not have a living family member or someone available to do these tasks. The guardian may also apply for assistance with burial expenses from the state or a municipality if the respondent's estate does not have enough money to pay for burial; and
- c. because the partial guardian has the power of a conservator, the guardian may also pay reasonable burial expenses from the estate. Probate Rules 16(f) and 17(h); AS 13.26.266(d), .281(b) & .545(e).

8. The appointment of respondent's attorney, the court visitor and any guardian ad litem end:

- on the date this order is signed.
- 30 days after the guardianship implementation report is filed, so that the attorney, visitor and guardian ad litem can review the report and file objections or other responses if appropriate.
- _____

9. Payment of Respondent's Court-Appointed Attorney. The respondent's attorney in the guardianship proceedings will be paid by

- the Office of Public Advocacy because the respondent cannot afford an attorney. (AS 13.26.226(b), AS 13.26.291(c), AS 44.21.410(a)(4), and Administrative Rule 12(c)(2))
- the respondent.

10. Compensation or Reimbursement of Guardian. [AS 13.26.316(c)(6), 08.26.110, and Probate Rules 16(d) and 17(d)]

- The guardian is entitled to fees for his/her services. However, he/she may not pay himself/herself more than the following amounts from the respondent's assets without a written court order approving such additional fees:
 - a fee for guardian and conservator services of \$ _____ per hour, which cannot be more than \$ _____ per month.
 - reimbursement of the case opening fee in the amount of \$ _____.
 - a fee to manage the respondent's property of \$ _____ per month.
 - the monthly fees, case opening fee, property management fees and other fees that the Office of Public Advocacy (OPA) is required to charge by 2 AAC 60.080.
 - payment or reimbursement for room and board not to exceed \$ _____ per month without further written court order.
- The guardian is not authorized to charge any fees.

11. Additional Orders. _____

12. Additional Persons Who Must Be Served With Documents. [AS 13.26.425 and Probate Rule 16(e)(3)]

In addition to the parties in this case, the guardian must provide the following persons with copies of all pleadings, reports, and notices of hearing until further court order:

<u>Name</u>	<u>Mailing Address</u>	<u>Daytime Phone</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

Recommended for Approval by

 Standing Master on _____ Superior Court Judge _____ Date _____

 Type Judge's Name

Clerk's Certificate of Distribution
 I certify that on _____,
 a copy of this order was sent to:
 petitioner respondent visitor guardian
 respondent's attorney _____ _____

Clerk: _____

Notice to Respondent
About Right to Request Changes in This Order

AS 13.26.251(h)

At any time in the future, you may ask the court to dismiss your guardian or change this guardianship order. You may use court form [PG-190](#) to ask the court to do this, or you may write a letter to the court. Form [PG-190](#) is available at any state court and on the court system's website: <http://www.state.ak.us/courts/forms/index.htm>