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REQUEST FOR COMMENTS ON PROPOSED RULE CHANGES
(Comments Due by Monday, January 25, 2021)

The Alaska Supreme Court seeks comments on the following proposed changes to the Probate Rules for guardianship and conservatorship cases. Proposed changes to existing rules are shown in “legislative” style: new language is underlined, and deleted language is struck through.

*Comments are due by **Monday, January 25, 2021.***

Please direct your comments via email to hflint@akcourts.us, or use the mailing address shown above. Thank you for your time and consideration.

Proposed Changes to the Probate Rules

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INTRODUCTION

In October 2018, Chief Justice Joel Bolger issued an order establishing a special committee to consider and recommend new or amended Probate Rules to improve the handling of guardianship and conservatorship cases.¹ He appointed judicial officers, agency attorneys, private practitioners, and non-profit law firm attorneys from around the state to serve on the committee. The committee met from December 2018 through July 2020. The committee made several rule recommendations to provide procedural clarity, efficiency, and uniformity in guardianship and conservatorship proceedings in Alaska courts. The committee recommendations, including proposed rule language, are explained below.

THE GUARDIANSHIP AND CONSERVATORSHIP RULES COMMITTEE RECOMMENDS THE FOLLOWING PROPOSALS:

1. **Probate Rule 4.5** – Corrects a statutory reference.

The statutory reference AS 13.06.050(24) in subsection (a) is corrected to AS 13.06.050(26). Paragraph (24) of the statute was renumbered to (26) in 2016. Thus, the committee recommends the following change:

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)~~ 13.06.050(26) 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** – Clarifies general provisions including access to confidential documents and adds new subsections (g), (h), and (i) addressing venue, service, and notice.

The committee made several recommendations to amend Probate Rule 14 governing the general provisions in protective proceedings.

- Adding a sentence to subsection (d) that clarifies that a nonparty motion to access a confidential document in a protective proceeding file shall not be denied solely because the movant is not a party. Alaska Statute 13.26.021 addresses confidentiality of court records in guardianship and conservatorship proceedings and lists who has access to the confidential portions of the file. The statute also provides for the court to allow others to review the file “upon order for good cause shown.” When a person or agency not listed in subsection (a) files a motion to access the file, sometimes the motion is denied simply on the basis that the person or agency is not a “party” without any analysis of the “good

¹ In July 2020, Chief Justice Joel H. Bolger issued an order turning the special committee into a permanent, standing committee. See Special Order of the Chief Justice No. 8171.

cause” provided for in the statute. This proposed amended language is a reminder that lack of party status is not the end of the analysis.

- Adding a new subsection (g) addressing venue. Some committee members noted that protective petitions are not always filed in the correct court location so the committee recommended amending Rule 14 to include the venue provisions for the different protective proceedings under AS 13.26.
- Adding a new subsection (h) addressing service. The committee noted that a protective proceeding can involve various participants that serve different roles and have different rights. Thus, the committee recommended that the rule list who gets served and the documents that must be served. Also, unlike other court cases, the individuals or entities that are “parties” during the life of a protective proceeding may change, thus the committee also recommended that the rule require the court, after each review hearing, to indicate the persons that must be served with future filings, reports, and orders.
- Adding a new subsection (i) addressing notice. The committee also recommended adding a subsection addressing notice to an “interested person” as defined in AS 13.06.050(26), a category of persons unique to probate and protective proceedings.

Here are the recommended amendments to Rule 14:

Rule 14. Protective Proceedings.

* * * *

(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.** 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:](#)

[\(1\) *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.](#)

[\(2\) *Incapacitated Adult Guardianship.* If the incapacitated person is admitted to an institution under court order, venue is also in the judicial district of the court that entered the institution admission order.](#)

[\(3\) *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.](#)

[\(h\) **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. 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 the person's address, unless the person is represented by an attorney.

3. New Probate Rule 14.1 – New rule outlines the procedure to request a hearing on shortened time.

For a temporary (i.e. “emergency”) guardianship proceeding under AS 13.26.301, the court must conduct a hearing within 72 hours after the petition is filed. In contrast, for a regular guardianship proceeding, the court must hold a hearing within 120 days after the petition is filed. Some cases fall in the gap: the circumstances do not justify a 72-hour hearing but an issue is time sensitive and a hearing is needed prior to the standard 120-day timeframe. Thus, the committee proposed a specific rule outlining the process to request a hearing prior to the regular timeframe. The committee preferred a specific rule in the Probate Rules instead of relying on expedited consideration under Civil Rule 77(g) that is not well-suited for guardianship cases. The committee recommended the following new rule:

Rule 14.1 Request for Hearing on Shortened Time.

A request for a hearing on shortened time may be filed with a petition or at any time a petition is pending. The request must be titled “Request for Hearing on Shortened Time,” and must include the reason for the request and the time within which a hearing is needed. If the request is filed with a petition, the request must be served with the petition. The court must rule on the request within three days.

4. Probate Rule 15 – Addresses various changes to minor guardianship proceedings.

The committee recommended three changes to Probate Rule 15 addressing a guardianship for a minor child.

- Requiring a person nominating a guardian to inform them of the nomination and provide the date and time of the hearing on the petition. Sometimes a person or entity nominated as a guardian is not notified of the nomination or the date and time of the hearing. This has caused problems when the court appoints the nominated person or entity at the hearing and the nominated guardian was not present. After the hearing and appointment, the newly-appointed guardian identifies an issue with the appointment that could have been addressed at the hearing.

- Correcting a statutory citation in subsection (c). AS 13.26.070 cited in the rule was renumbered AS 13.26.167 in 2016.
- Setting a transition period for an adult guardianship petition to be filed for a minor - as early as 120 days before the minor turns 18 years old. The committee identified a problem on the timing to convert an existing minor guardianship to an adult guardianship or file a new guardianship for a minor who will soon turn 18 years old. Some courts allow an adult petition to be filed when the minor is within a couple of months of turning 18 years old while other courts require the minor to be 18 years old at the time of filing, thus necessitating an expedited request on the adult petition. This new 120-day transition period allows for uniformity among courts and an orderly transition from a minor to an adult guardianship.

Here are the committee's recommended amendments:

Rule 15. Guardianship of a Minor.

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(c) **Letters of Guardianship.** 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. 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 ~~13.26.167~~13.26.070.

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(f) **Transition to Adult Guardianship.** A petition for an adult guardianship under Rule 16 may be filed on behalf of a minor ward no earlier than 120 days before the minor turns 18 years old, unless otherwise ordered by the court for good cause shown.

5. Probate Rule 16 – Addresses various changes to adult guardianship proceedings.

The committee recommended many changes to Probate Rule 16 addressing a guardianship for an adult. Some of the same changes are found in Rules 15 and 17.

- Setting a 120-day transition period to file an adult guardianship for a minor who will soon turn 18 years old. The same 120-transition period recommended for Rule 15 (Minor Guardianship) is also added to this rule for adult guardianship petitions. The committee thought it would be helpful for practitioners and court staff to have the transition period set forth in both Rule 15 and 16.
- Requiring a person nominating a guardian to inform them of the nomination and provide the date and time of the hearing on the petition. This mirrors the language in Rule 15 and the same rationale applies here.
- Breaking the mandatory education requirement out of subsection (c) into its own subsection, new subsection (d). This highlights the mandatory education requirement and makes it easier to find. Subsequent subsections are re-lettered.
- Correcting a statutory citation in re-lettered subsection (e). AS 13.26.410 cited in the rule was renumbered AS 13.26.750 in 2016.
- Adding clarification to (f)(1)(B)(vi) regarding the financial accounting the guardian must provide in the annual report. It requires relevant account statements for the reporting period and any other information requested by the court.

- Allowing the court to waive the court visitor's three-year report if the visitor has already filed a report within the last six months as part of a petition for review and if that report meets the standards for a three-year report under AS 13.26.276. This is already a practice in some courts.
- Requiring the court visitor to use court forms for visitor reports. This change would provide consistency and uniformity for these reports. The court system has already developed court forms for the court visitor's initial and three-year report.
- Deleting (e)(3) addressing service including eliminating service of guardian and court visitor reports on an "interested person" or a "special advocate." Service is now addressed in Rule 14, new subsection (h)(discussed above). After review of the probate statutes, the committee determined that an "interested person" is entitled to notice but not service of all filings, reports, and orders in the case. Also, the committee could not find a definition of "special advocate" in the probate statutes or rules or any authority requiring service of reports on a "special advocate."
- Correcting a statutory citation in re-lettered subsection (g). AS 13.26.120(b) cited in the rule was renumbered AS 13.26.281(b) in 2016.

Here are the committee's recommended amendments:

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) **Letters of Guardianship ~~and Mandatory Education.~~** [Any party or other person nominating a person or entity as a guardian for an incapacitated person 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.](#) 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).~~

(d) **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\(c\).](#)

(e)(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.

(f)(e) Reporting.

(1) *By the Guardian.*

(A) *Guardianship Plan and Implementation Report.* * * * *

(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:

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

* * * *

(C) *Final Report.* * * * *

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(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.~~

(g)(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

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(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 – Addresses various changes to conservatorship proceedings.

The committee recommended several changes to Probate Rule 17 addressing conservatorships. All of changes are found in Rules 15 or 16.

- Requiring a person nominating a conservator to inform them of the nomination and provide the date and time of the hearing on the petition. This mirrors the language in Rules 15 and 16; the same rationale applies here.
- Breaking the mandatory education requirement out of subsection (c) into its own subsection, new subsection (d), just like the recommended amendment to Rule 16 (see discussion above). Subsequent subsections are re-lettered.
- Correcting the reference to AS 13.26.410 to AS 13.26.750, just like Rule 16(e)(above).
- Allowing the court to waive the court visitor's three-year report if the visitor has already filed a report within the last six months as part of a petition for review and if that report meets the standards for a three-year report under AS 13.26.276, just like Rule 16(f)(2)(above).
- Requiring the court visitor to use court forms for visitor reports, just like Rule 16(f)(2)(above).
- Deleting (e)(3) addressing service including eliminating service of conservator and court visitor reports on an "interested person" or a "special advocate," just like Rule 16. (See discussion, above.)

Here are the committee's recommended amendments:

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

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(c) **Letters of Conservatorship** ~~and Mandatory Education~~. 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. 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 basis of conservatorship before the appointment or within 30 days after the appointment as provided by AS 13.26.465(g).~~

(d) **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 basis of conservatorship before the appointment or within 30 days after the appointment as provided by AS 13.26.465(g).

(e)~~(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.

(f)~~(e)~~ **Reporting**.

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(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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