

# ALASKA RULES OF COURT 2017-2018 Edition

## RULES OF PROBATE PROCEDURE

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**PART I. GENERAL PROVISIONS****Rule 1. Title—Scope—Construction—Situations Not Covered by the Rules.**

(a) **Title.** These rules will be known and cited as the Probate Rules.

(b) **Scope.** These rules govern practice and procedure in the trial courts in all phases of proceedings brought under Title 13 of the Alaska Statutes, proceedings related to the release of personal property under AS 12.65.105 and AS 22.15.110(a)(3), and mental commitments under AS 47.30.

(c) **Construction.** These rules will be construed and applied to promote fairness, accurate fact-finding, and prompt decisions.

(d) **Legal Effect of Rules.** These rules are promulgated pursuant to Alaska constitutional authority granting rulemaking power to the Alaska Supreme Court. To the extent that the rules are inconsistent with a procedural provision of any Alaska statute not enacted for the specific purpose of changing a rule, these rules supersede the statute.

(e) **Situations Not Covered by the Rules.** Where no specific procedure is prescribed by these rules, the court may proceed in any lawful manner, including application of the Civil and Evidence Rules, applicable statutes, the Alaska and United States Constitutions or common law. Such a procedure may not be inconsistent with these rules and may not unduly delay or otherwise interfere with the unique character and purpose of probate proceedings.

(f) **Definitions.** For purposes of proceedings under AS 13.06 through AS 13.36, “minor” means a person who is under 18 years of age.

(SCO 1014 effective January 15, 1990; amended by SCO 1188 effective July 15, 1995; by SCO 1261 effective September 26, 1996; by SCO 1279 effective July 31, 1997; by SCO 1612 effective October 15, 2006; by SCO 1740 effective nunc pro tunc to September 7, 2010; and by SCO 1893 effective August 10, 2016)

**Note:** Chapter 64, SLA 2010 (SB 60), effective September 7, 2010, enacted changes relating to the Uniform Probate Code. According to section 12(d) of the Act, AS 13.12.550, as enacted by section 8 of the Act, has the effect of amending Probate Rule 1 by establishing special hearing and notice requirements for a hearing to determine the validity of a will or a trust under AS 13.12.530 and 13.12.535, enacted by section 8 of the Act.

**Cross References**

(f) **CROSS REFERENCE:** AS 13.06.050.

**Rule 2. Appointment and Authority of Masters.**

(a) **Appointment.** The presiding judge may appoint a standing master to conduct any or all of the probate proceedings listed in subparagraph (b)(2). Appointment of

standing masters must be reviewed annually. A standing master in probate shall serve as a registrar. The presiding judge may appoint a special master to conduct a proceeding which is specified in the order of reference and is listed in subparagraph (b)(2).

**(b) Authority, Order of Reference.**

1. An order of reference specifying the extent of the master’s authority and the type of appointment must be entered in every case assigned to a master. The order of reference must be served on all parties.

2. The following proceedings may be referred to a master:

A. all decedent estate hearings;

B. guardianship, conservatorship, and protection from financial abuse hearings under Title 13;

C. mental commitment, alcohol or substance abuse commitment, and medication consent hearings under Title 47; for mental commitment, alcohol or substance abuse commitment, and medication consent hearings under Title 47, the master must file a transcript or electronic recording of the proceedings with the master’s report;

D. hearings on trusts;

E. hearings on emancipations; and

F. authorization of emergency life-saving procedures pursuant to AS 13.26.140(f).

3. A master’s report is not binding until approved by a superior court judge pursuant to Civil Rule 53(d) and paragraph (f) of this rule, except:

A. a master may enter orders without further approval of the superior court pursuant to Civil Rule 53(b) and (c), and paragraph (d) of this rule;

B. a master’s order of removal of a personal representative and appointment of a successor personal representative is effective pending superior court review;

C. a master’s orders authorizing hospitalization for evaluation and for commitment to a treatment facility are effective pending superior court review;

D. a master’s determination of a patient’s capacity to give informed consent to medication under AS 47.30.839 is effective pending superior court review; and

E. a master’s authorization of emergency life-saving procedures pursuant to AS 13.26.140(f) is effective pending superior court review.

(c) **Objection to Reference to a Master.** In addition to the peremptory challenge of a master provided for in Civil Rule 42(c), a party may object to the assignment of a master for good cause. The procedural requirements of Civil Rule 42(c) apply to the objection.

(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, screening investigations, 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(g);
6. accept and approve stipulations;
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.

(e) **Master’s Report, Recommendations.** A master may issue a written report or oral findings on the record concerning an order or recommendation which must be approved by a superior court judge.

(f) **Objections to Master’s Report, Recommendations.**

1. *Objections, Reply, Oral Argument.* Objections to a master’s report or recommendation must be filed within 10 days of the date of notice of the report as provided by Civil Rule 58.1(c), unless the court otherwise provides. A reply to the objections must be filed within three days of service of the objections. The superior court may permit oral argument, order additional briefing or the taking of further evidence, or grant a hearing de novo.

2. *Request for Stay, Immediate Review.* A party may request that a superior court judge stay a master’s order issued under paragraph (b)(3)(B)—(D) pending review of the order.

(SCO 1014 effective January 15, 1990; amended by SCO 1199 effective July 15, 1995; by SCO 1270 effective July 15, 1997; by SCO 1279 effective July 31, 1997; by SCO 1317 effective July 15, 1998; by SCO 1567 effective April 15, 2005; by SCO 1575 effective October 15, 2005; by SCO 1685 effective December 19, 2008; by SCO 1893 effective August 10, 2016; by SCO 1906 effective February 22, 2017; and by SCO 1910 effective October 16, 2017)

**Rule 3. Probate Indices.**

(a) **Estate Index.** An alphabetical index of all estate cases will be kept under the name of the person to whose estate the case relates.

(b) **Will Index.** An alphabetical index of all wills on deposit will be kept under the name of the person whose will is deposited.

(c) **Protective Proceeding Index.** An alphabetical index of all protective proceedings will be kept under the names of the respondents.

(d) **Mental Commitment Index.** An alphabetical index of all mental commitments will be kept under the names of the respondents, except for those files for which the records have been expunged pursuant to AS 47.30.850. An index of expunged files will be kept by number.

(e) **Registered Trust Index.** An alphabetical list of all registered trusts will be kept under the name of the trust.

(f) **Judicial Bypass Proceeding Index.** An alphabetical index of all proceedings to bypass parental consent to an abortion will be kept under the name of the petitioner.

(g) **Confidentiality.** The mental commitment index and the judicial bypass proceeding index are confidential. Other indices are public records even though the files may be confidential.

(SCO 1014 effective January 15, 1990; amended by SCO 1227 effective July 15, 1996; and by SCO 1279 effective July 31, 1997)

**Rule 4. Attorneys.**

(a) **Entry of Appearance.** An attorney representing the personal representative or any other interested person shall file an entry of appearance with the court. Unless otherwise stated in the entry of appearance, an attorney representing the personal representative represents the personal representative only in the personal representative’s fiduciary capacity and does not represent the beneficiaries of the estate.

(b) **Withdrawal.** Civil Rule 81(e) governs the withdrawal of attorneys from cases under these rules.

(SCO 1014 effective January 15, 1990; amended by SCO 1674 effective April 15, 2009)

**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 are 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.

(SCO 1317 effective July 15, 1998)

## PART II. WILLS AND ESTATES

### Rule 5. Deposit of Wills for Safekeeping and Acceptance.

(a) **Deposit of Will.** Upon the deposit of a will by the testator or the testator’s agent for safekeeping in the superior court, the clerk or registrar in the probate division shall:

1. Require the testator or the testator’s agent to sign an agreement setting forth the names and addresses of the person or persons to receive the will upon the death of the testator, and the clerk or registrar shall in turn sign a receipt for the will to be given to the testator or the testator’s agent. If the agreement is signed by the testator’s agent, the agent’s written authorization from the testator to deposit the will with the court, or a copy of a general power of attorney of the agent from the testator, must be attached to the agreement. The agent shall provide the court with the address of the testator and the court shall mail a copy of the “Agreement and Receipt for Deposit of Will” to the testator. The agreement and receipt will be in form and content substantially as follows:

#### AGREEMENT AND RECEIPT FOR DEPOSIT OF WILL

The purpose of depositing a Will with the court is to provide a safe place for the Will. It is not required by law that a Will be deposited with the court. The acceptance of a will for safekeeping by the court in no way ensures the validity of any provision contained in the will, nor does acceptance in any way enhance the force or effect of the Will.

AGREEMENT

I, the undersigned, deposit the Last Will and Testament of \_\_\_\_\_ for safekeeping with the Superior Court of Alaska. I state that \_\_\_\_\_, whose address \_\_\_\_\_, is named personal representative in the Will and is designated to receive a copy of the Will upon testator's death and that \_\_\_\_\_, whose address is \_\_\_\_\_, is named alternate personal representative and is designated to receive a copy of the Will upon testator's death if the personal representative named above is unable to serve or receive the Will. The original Will shall be kept by the court for safekeeping until filed in an estate proceeding.

This Will is a confidential document before the testator dies and cannot be released except to the testator or someone with the testator's written authority without court order. After death, it becomes a matter of public record.

\_\_\_\_\_ Date Testator/Agent

(Agent's authorization must be attached)

RECEIPT

I acknowledge receipt of the above mentioned Will for safekeeping.

Attached is the agent's written authorization or general power of attorney from the testator as required by Probate Rule 5.

\_\_\_\_\_ (Date) Superior Court Clerk/Registrar

2. Assign a number to the will upon its deposit and shall maintain an alphabetical index to all wills on deposit.

3. Store the wills in a locked fireproof filing cabinet or safe.

4. During the lifetime of the testator, allow the will to be viewed by or released only to the testator upon showing of positive identification, or to the person to whom the testator has given the specific power in writing to receive or view the will, and who shall also be required to show positive identification. A conservator of the testator may examine the deposited will only after showing proper positive identification.

(b) Designated Persons to Accept Wills. The presiding judge for each judicial district may designate in writing those persons within the judicial district who may accept, for transmittal purposes only, wills to be deposited with the court for safekeeping. The designated person shall require the depositor to execute the agreement, shall issue the receipt as set out in Rule 5(a), and shall forward immediately to the clerk or the registrar of the superior court in the judicial district, by certified or registered mail, the will and the fee for deposit, together with the original of the agreement and receipt executed by the designated person and the depositor.

(c) Death of Testator. Upon notification of the death of the testator, the court shall contact the person designated to receive the will and mail a copy to that person. The original will must be kept on file as a public document and, when a probate case is opened on the decedent, the clerk shall place the will in the file. Upon written notification by another court that the original will is needed for filing in an estate, the original will must be transferred to the other court. A copy must be retained.

(d) Deposit of Wills by Guardians and Conservators. A guardian or conservator may deposit the will of a deceased ward or protected person with the court for safekeeping as required by AS 13.26.285(e).

(SCO 1014 effective January 15, 1990; amended by SCO 1062 effective July 15, 1991; and by SCO 1623 effective October 15, 2006)

Rule 6. Finding of Presumptive Death of Missing Persons.

Whenever, pursuant to AS 13.06.035, the court determines that a missing person is presumed dead, a certified copy of this finding and of the order authorizing administration of the person's assets must be forwarded to the office of the registrar of vital statistics in the district of the missing person's last known Alaskan residence.

(SCO 1014 effective January 15, 1990)

Rule 7. Duties and Responsibilities of the Personal Representative.

Before letters testamentary issue, the personal representative shall sign and file with the court an acceptance of the appointment which recites that the personal representative understands and accepts the duties and liabilities that accompany the appointment. The acceptance must include acknowledgement of the duty of the personal representative to:

(a) take possession and control of the decedent's property as required by AS 13.16.380, determine the liabilities of the estate, and complete an inventory as required by AS 13.16.365;

(b) provide notices to heirs and devisees as required by AS 13.16.360, except as provided by AS 13.16.690;

(c) provide notice to creditors as required by law,\* publish notice when required, and review and either accept or reject claims as required by AS 13.16.455 - 13.16.515;

(d) advise the court in writing of the personal representative's address and telephone number as required by Probate Rule 8;

(e) file returns for state estate taxes if required by AS 43.31.121 and AS 43.31.250;

(f) pay homestead, exempt property and family allowances as required by AS 13.12.401-13.12.405, costs of

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administration and other claims as required by AS 13.16.470, and distribute the assets of the estate; and

(g) close the estate as soon as appropriate as required by AS 13.16.620 - 13.16.670.

(SCO 1014 effective January 15, 1990; amended by SCO 1270 effective July 15, 1997)

**\*Committee Note:** Actual notice may be constitutionally required in order to bar a known or reasonably ascertainable creditor's claim. See *Tulsa Professional Collection Agency v. Pope*, 108 S. Ct. 1340 (1988).

### Rule 7.1. Personal Representative's Fee.

A personal representative's fee shall be reasonable. The following factors may be considered in determining the reasonableness of the fee:

- (1) the time and labor reasonably required of the personal representative;
- (2) the complexity of the estate;
- (3) the skill and training required to perform the personal representative's duties;
- (4) the amount and degree of individual liability to which the personal representative may be exposed during the performance of the personal representative's duties;
- (5) the amount of time taken from the personal representative's profession;
- (6) the expenses and costs incurred by the personal representative and whether those expenses and costs were charged to the estate;
- (7) whether the personal representative retained agents and the fees charged, if any, by those agents;
- (8) if the personal representative served in more than one capacity as attorney, accountant, appraiser, property manager, investment advisor, or another capacity, whether the personal representative charged separately for those other services or did not charge for those services;
- (9) whether one or more persons or corporate fiduciaries are appointed personal representative; and
- (10) other equitable factors deemed relevant.

(SCO 1197 effective July 15, 1995; amended by SCO 1299 effective January 15, 1998)

### Rule 8. Change of Address and Telephone.

(a) **Personal Representative.** The personal representative shall advise the court in writing of all changes of the personal representative's address and telephone numbers from the date of the opening of the estate until the estate is closed and the personal representative is discharged.

(b) **Heirs and Devisees.** Heirs and devisees shall inform the personal representative in writing of any changes of address and telephone numbers. The personal representative shall give notice of this duty in the notice required by AS 13.16.360.

(SCO 1014 effective January 15, 1990)

### Rule 9. Special Administrators.

If a special administrator is appointed pursuant to AS 13.16.310–13.16.330, the appointment is effective only until a personal representative is appointed or for a set term with extensions granted for good cause. The order of appointment must specifically state the powers, duties and the set term, if any, of the special administrator.

(SCO 1014 effective January 15, 1990)

#### Rule 9.1. Temporary Property Custodians.

##### (a) Affidavit for Release of Property to Temporary Property Custodian.

(1) An affidavit for release of tangible personal property to a temporary property custodian under AS 12.65.105 must include:

- (A) the affiant's name, mailing address, physical address, telephone number, employer, date of birth, and driver's license number, state identification number, or passport number;
- (B) the decedent's name and date of death;
- (C) decedent's domicile at the time of death;
- (D) the relationship between the affiant and the decedent;
- (E) the name and address of any relatives of the decedent who are known to the affiant;
- (F) an acknowledgment that AS 12.65.105 authorizes the affiant to take custody of tangible personal property only;
- (G) an acknowledgment that the affiant is taking custody of the property solely for the purpose of preserving the property pending appointment of a personal representative or other transfer under AS 13.16;
- (H) an acknowledgment that the affiant is answerable and accountable for the property to any personal representative of the decedent's estate or to another person having superior right;
- (I) an acknowledgment of the affiant's duty under subparagraph (a)(2) to mail or deliver a copy of the affidavit and an inventory to the superior court;
- (J) an acknowledgment of affiant's duty under subparagraph (a)(3) to notify the Department of Revenue if the property is not claimed; and



(K) notice to persons having possession of a decedent’s property that they are not required to release the property to the affiant.

(2) Upon receipt of property, the affiant must mail or deliver a copy of the affidavit and an inventory to (A) the superior court in the judicial district where the decedent was domiciled at the time of death that is nearest to the place of domicile; or (B) if the decedent was not domiciled in this state, to the superior court in the judicial district where the property was located at the time of death that is nearest to the location of the property. The inventory must be signed by the affiant and the person from whom the property was received and must indicate where the property will be taken or held. The clerk shall provide a copy of the affidavit and inventory to any personal representative of the decedent’s estate.

(3) If the property is not claimed by the personal representative of the decedent’s estate or another person having superior right within three years after the decedent’s death, and the affiant has no lawful claim to the property under AS 13.16.005, the affiant must notify the Department of Revenue that the affiant possesses property of a decedent that appears to have passed to the state under AS 13.11.025 [AS 13.12.105 as of January 1, 1997] and to be subject to AS 34.45.280–34.45.780.

**(b) Appointment of Temporary Property Custodian.**

(1) An order appointing a temporary property custodian under AS 22.15.110(a)(3) must:

(A) include the basis for the court’s finding that the applicant is an appropriate person to assume temporary custody of the decedent’s property;

(B) describe the property to be released to the custodian and where the property will be taken; and

(C) specify what action the custodian must take if the property is not claimed by the personal representative of the decedent’s estate or another person having superior right, and the custodian has no lawful claim to the property under AS 13.16.005.

(2) The court making the appointment shall send a copy of the appointment order to (A) the superior court in the judicial district where the decedent was domiciled at the time of death that is nearest to the place of domicile; or (B) if the decedent was not domiciled in this state, to the superior court in the judicial district where the property was located at the time of death that is nearest to the location of the property. The clerk of that court shall provide a copy of the order to any personal representative of the decedent’s estate.

(SCO 1261 effective September 26, 1996)

**Rule 10. Creditor’s Claims.**

(a) **Presentation.** Claims of creditors against a decedent’s estate either must be filed with the probate registrar or clerk in the court in which the estate is being administered,

or delivered or mailed to the personal representative of the estate.

(b) **Secured Claims.** A secured creditor who wishes to surrender the security must so notify the personal representative in writing on or before the last day a claim can be filed.

(SCO 1014 effective January 15, 1990)

**Rule 11. Jury Trial.**

A demand for jury trial pursuant to AS 13.06.085 is governed by Civil Rules 38 and 39, except that the demand must be served no later than 20 days after service of the first pleading directed to a triable issue or five days before the scheduled hearing, whichever is earlier. The first pleading in a creditor’s claim is the petition for allowance. The demand for jury trial must specify the issues to be tried by jury and the legal basis supporting the right to jury trial on those issues.

(SCO 1014 effective January 15, 1990)

**Rule 12. Closing Estates.**

(a) **Duty to Close Estates.** When a personal representative has completed administration of the estate, the personal representative either shall petition to close the estate by formal closing under AS 13.16.620 or AS 13.16.625 or file a sworn statement under AS 13.16.630 or AS 13.16.695. Notice must be given as provided by these statutes.

(b) **Final Account.** Unless additional detail is ordered by the court, a final account under AS 13.16.620 or AS 13.16.625 must contain enough information to put interested persons on notice of all significant cash and property transactions affecting administration since the date of the last accounting, or, if none, from the commencement of administration. Unless otherwise ordered by the court, no specific format is required for a final account.

**(c) Formal Closing.**

1. The petition for an order of settlement of the estate when brought by the personal representative under AS 13.16.620 or AS 13.16.625 shall state:

A. that the personal representative has fully administered the estate;

B. that all claims which were presented have been paid, settled, adequately provided for, or otherwise disposed of;

C. that the personal representative has paid or made provisions for taxes and expenses of administration;

D. the amount of compensation paid or to be paid to the personal representative, attorneys, accountants, appraisers, or other agents employed by the personal representative; and

E. that any objections to the petition must be presented to the court at or before the hearing on the petition.

2. The petition for an order of settlement of the estate brought by the personal representative under AS 13.16.620 or AS 13.16.625 shall contain a plan or statement of distribution which shall include:

A. a statement of all prior distributions;

B. the assets remaining in the hands of the personal representative for distribution; and

C. a schedule describing the proposed distribution of any remaining assets.

(d) **Administrative Closing.** If no action is taken in an estate for more than one year, the clerk may send a notice to the last known address of the personal representative, to all attorneys of record, and to any person who has filed a demand for notice under AS 13.16.070, stating that the file will be closed in 30 days if no objection is received. The order closing the file must also be sent to the last known address of the personal representative, all attorneys of record, and any person who has filed a demand for notice under AS 13.16.070. Administrative closure does not discharge the personal representative or terminate the personal representative's powers and duties.

(SCO 1014 effective January 15, 1990; by SCO 1117 effective July 15, 1993; by SCO 1696 effective October 15, 2009; and by SCO 1743 effective April 15, 2011)

### **Rule 13. Decedents' Estates—Substantive Rights Under Old Code Remain Inviolable—Procedure.**

All substantive rights accruing prior to January 1, 1973, under Title 13, Alaska Statutes, prior to its repeal by 78 SLA 1972, remain in full force and effect subsequent to that date.

Probate of any decedent's estate commenced and pending prior to January 1, 1973, may be continued to conclusion under the procedures established under Title 13 as it existed prior to its repeal by 78 SLA 1972 provided the personal representative of the decedent files a notice in writing of this intention with the superior court within 30 days of the promulgation of this rule. If no such notice is filed, the rules of procedure prescribed by the present Title 13, which became effective January 1, 1973, are applicable.

(SCO 1014 effective January 15, 1990)

## **PART III. PROTECTIVE PROCEEDINGS**

### **Rule 14. Protective Proceedings.**

(a) **Applicability.** This rule applies to all proceedings under AS 13.26, Protection of Persons Under Disability and Their Property.

(b) **Review.** Upon the request of any interested person, or on the court's own motion, the court may set a review hearing to inquire as to the welfare and best interests of the respondent or ward and to take any other appropriate action

necessary to protect the interests and welfare of the respondent or ward.

(c) **Change of Address.** A guardian or conservator shall advise the court in writing of any change in the address and telephone number of the ward, guardian or conservator.

(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 13.26.013(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 13.26.013.

(e) **Combined Cases.** Guardianship and conservatorship proceedings may be combined. The applicable burdens of proof of each type of proceeding must be met in each case.

(f) **Caption.** In all protective proceedings, the caption must provide, "In the Matter of the Protective Proceeding of \_\_\_\_\_."

(SCO 1014 effective January 15, 1990; amended by SCO 1575 effective October 15, 2005; and by SCO 1635 effective October 15, 2007)

**Note:** Chapter 64 SLA 2005 (HB 53) enacted extensive changes to the child in need of aid and adoption statutes. According to section 60(a) of the Act, AS 13.26.064, enacted by section 2, amends Probate Rule 14 by providing that retained privileges be set out in the guardianship decree and by providing additional procedures related to a voluntary relinquishment of parental rights.

### **Rule 15. Guardianship of a Minor.**

(a) **Petition.** A petition for guardianship of a minor must state the name, address and telephone number of the petitioner and any living parents of the minor, as well as the person having principal care and custody of the minor for the 60 days preceding the date of the petition. A petition involving a minor must also state the date of birth of the minor and state whether the minor is or is not an Indian child as defined by the Indian Child Welfare Act. The petition must be verified by the petitioner or signed by an attorney representing the petitioner.

(b) **Notice.** Notice must be given as provided in AS 13.06.110 and AS 13.26.060. In a petition for guardianship of an Indian child as defined in the Indian Child Welfare Act, notice must be sent to the child's tribe, which may move to intervene as provided by 25 U.S.C. Section 1911(c). However, notice is not required if the parents of the Indian child agree in writing to the guardianship and file a statement that the tribe has not been served with notice in order to protect the privacy of the parents.

(c) **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 13.26.070.

(d) **Reporting.** A guardian of a minor ward shall file a brief annual report on the welfare of the minor and the condition of the minor’s estate.

(e) **Application of the Indian Child Welfare Act and Regulations.** In all cases involving an Indian child, the statutory provisions of 25 U.S.C. 1901 et seq., and the ICWA regulations at 25 C.F.R. Part 23, published at 81 Fed Reg. 38778 (June 14, 2016) and effective December 12, 2016, shall apply.

(SCO 1014 effective January 15, 1990; amended by SCO 1063 effective July 15, 1991; by SCO 1198 effective July 15, 1995; and by SCO 1897 effective December 12, 2016)

**Note:** Chapter 64 SLA 2005 (HB 53) enacted extensive changes to the child in need of aid and adoption statutes. According to section 60(a) of the Act, AS 13.26.064, enacted by section 2, amends Probate Rule 15 by providing that retained privileges be set out in the guardianship decree and by providing additional procedures related to a voluntary relinquishment of parental rights.

**Rule 15.1. Testamentary Appointment of Guardian of a Minor.**

(a) **Application.** This rule governs the procedure for appointment of a guardian named by will.

(b) **Acceptance.** Upon the death of a parent who has appointed a guardian of an unmarried minor in a will, the guardian shall file an acceptance in the court in which the will is probated. The acceptance must state that both parents of the minor are dead or that the surviving parent has been adjudged incapacitated and that the guardian has read the duties and powers of a guardian of a minor as stated in AS 13.26.070. The appointment of the guardian is effective upon the filing of the acceptance.

(c) **Notice.** Within ten days after filing the acceptance, the guardian must give written notice of the acceptance to the persons named in AS 13.26.035. If the minor is 14 years of age or older, the notice must advise the minor that the minor may object to the appointment by filing a written objection within 30 days after the date of service of the notice, and that the minor may request expedited consideration of the objection. Proof of service of the notice must be filed with the court.

(d) **Objection by Minor.** If a minor 14 years of age or older objects to the appointment of the guardian named in the will within 30 days after notice of acceptance having been served upon the minor, the court shall schedule a hearing on the objection. If either the minor or the guardian request expedited consideration of the objection, the hearing shall be held within three business days after filing of the request.

(e) **Letters of Guardianship.** Letters of guardianship shall issue upon the filing of the acceptance.

(f) **Reporting.** A guardian appointed by will is not required to file an annual report unless ordered to do so by the court upon a showing of good cause.

(SCO 1198 effective July 15, 1995; amended by SCO 1270 effective July 15, 1997)

**\* Committee Notes:** If the minor’s assets are above those necessary for maintenance of the minor, the testamentary guardian has a duty to open a conservatorship under AS 13.26.165–13.26.320.

(c): In the case of an Indian child as defined in the Indian Child Welfare Act, some practitioners contend that the Indian Child Welfare Act applies. *See* 25 U.S.C. §§ 1901-1923, 1951.

**Rule 16. Guardianship of Incapacitated Persons.**

(a) **Petition.** A petition for guardianship must contain the information required by AS 13.26.105(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 13.26.145 and, if known, the names and addresses of any person with a higher priority.

(b) **Notice.** Notice must be given as provided by AS 13.26.107, AS 13.26.135, AS 13.06.110, and AS 13.26.185. 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.** 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 13.26.150, with any restrictions imposed by the court, as well as the reporting requirements of AS 13.26.117 and AS 13.26.118. 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 13.26.145(c).

(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. 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.

(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 estate of the ward 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 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 13.26.108, 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 13.26.118.

(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.

(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) 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; and

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

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

(SCO 1014 effective January 15, 1990; amended by SCO 1160 effective July 15, 1994; by SCO 1443 effective October 15, 2001; by SCO 1575 effective October 15, 2005; by SCO 1674 effective April 15, 2009; and by SCO 1697 effective October 14, 2011)

**Note:** Chapter 84 SLA 04 (HB 427) enacted extensive changes to the guardianship and conservatorship statutes. According to Section 32 of the Act, AS 13.26.120(b), enacted in Section 11, has the effect of changing Probate Rule 16(f) by giving guardians additional authority to perform certain acts for a deceased ward.

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

(a) **Petition.** A petition for conservatorship must contain the information required by AS 13.26.180(b). The petition must be verified by the petitioner or signed by an attorney representing the petitioner. A petition for conservatorship of a minor must state who has legal custody of the minor and the birthdate of the minor. The petition must state the priority of the nominee under AS 13.26.210 and, if known, the names and addresses of any person with a higher priority.

(b) **Notice.** In conservatorships and other protective proceedings, notice must be given as provided by AS 13.26.185 and AS 13.06.110. 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 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 13.26.245–13.26.320, with any restrictions imposed by the court, as well as the reporting requirements of AS 13.26.250 and AS 13.26.255. 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 13.26.210(g).

(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. 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.

(e) **Reporting.**

(1) *By the Conservator.* Within 90 days after distribution of the order of appointment, the conservator must file a conservator implementation report and an inventory pursuant to AS 13.26.250. The conservator also must file an annual report with the court within 30 days after the anniversary of the conservatorship order or as otherwise ordered by the court. The annual report must include:

1. the total assets at the beginning and end of the calendar year;
2. the total liabilities at the beginning and end of the calendar year;
3. income received from all sources;
4. a detailed report on all disbursements with explanations; and
5. actions of the conservator during the year regarding the protected funds.

(2) *By the Court Visitor.* If the court appoints a visitor as provided in AS 13.26.195(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 13.26.257(b).

(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.

(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 90 days after entry of an order transferring conservatorship authority or 90 days after termination of the conservatorship for any reason, including the death of the protected person, 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. The 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 protected person;
- (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.

(g) **Minor Settlement.** A conservatorship proceeding for a minor initiated because funds are part of a settlement or judgment in favor of the minor must comply with Civil Rule 90.2.

(h) **Authority of Conservator After Death of Protected Person.** Once a conservator knows that the protected person has died, the conservator has no further authority over the protected person’s affairs and estate except as provided in AS 13.26.285(e).

(SCO 1014 effective January 15, 1990; amended by SCO 1443 effective October 15, 2001; by SCO 1575 effective October 15, 2005; by SCO 1674 effective April 15, 2009; by SCO 1697 effective October 14, 2011; and by SCO 1787 effective July 1, 2012)

**Note:** Chapter 84 SLA 04 (HB 427) enacted extensive changes to the guardianship and conservatorship statutes. According to Section 32 of the Act, AS 13.26.250, amended by Section 22, has the effect of amending Probate Rule 17(e) by changing when a report is due and adding additional material to be included in the report.

**Note:** Chapter 71 SLA 2012 (SB 86) added new sections to AS 13.26 relating to the protection of vulnerable adults, effective July 1, 2012. According to section 48(a) of the Act, AS 13.26.207, 13.26.208, and 13.26.209(a) – (g), enacted by section 10, have the effect of amending Alaska Rule of Probate Procedure 17, relating to conservatorships and protective proceedings, by allowing ex parte and temporary orders and modifications of orders to be issued related to protecting the assets of a person otherwise subject to AS 13.26.165 from financial exploitation.

**Rule 18. Emergency Lifesaving Medical Authorization.**

The court may authorize emergency lifesaving services pursuant to AS 13.26.140(f) over the telephone or in writing. A court file must be opened and a report included in the file as soon as possible after issuance of the authorization. The report must include a brief statement of the basis for the authorization and the names of the persons who supplied the information. The duration of the authorization must be set forth in the report and copies must be sent to all interested persons.

(SCO 1014 effective January 15, 1990)

**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.

(SCO 1443 effective October 15, 2001)

**Rule 20. Judicial Bypass Procedure to Authorize Minor to Consent to an Abortion.  
(Rescinded)**

(Added by SCO 1279 effective July 31, 1997; by SCO 1748 effective December 14, 2010; amended by SCO 1755 effective nunc pro tunc to December 14, 2010; by SCO 1829 effective October 15, 2014; and rescinded by SCO 1893 effective August 10, 2016)

**PART IV. INVOLUNTARY COMMITMENTS**

**Rule 21. Involuntary Commitments and Involuntary Administration of Medications—Case Captions.**

In all cases involving involuntary commitments and cases involving the involuntary administration of medications, the caption must provide, “In the Matter of Necessity for the Hospitalization of \_\_\_\_\_.”

(Enacted by SCO 1744 effective April 15, 2011)

**APPENDIX**

**PROBATE FORMS**

Alaska Court System forms for probate, guardianships and conservatorships are available online at <http://courts.alaska.gov/forms/index.htm#p>.

For more information, please visit the Self-Help Probate Estates website at <http://courts.alaska.gov/shc/probate/probate.htm>