

IN THE SUPREME COURT FOR THE STATE OF ALASKA

ORDER NO. 1014

Revising the Alaska Probate
Rules

IT IS ORDERED:


1. Existing Probate Rules 1-9 are rescinded.
2. The attached Probate Rules 1-18 are adopted.

DATED: October 12, 1989

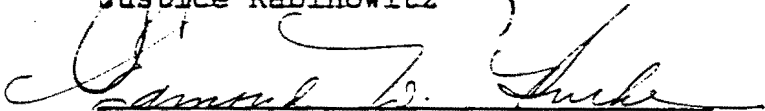
EFFECTIVE DATE: January 15, 1990



Chief Justice Matthews



Justice Rabinowitz



Justice Burke

Justice Compton



Justice Moore

* I would require in Probate Rule 15(b) that notice be provided to an Indian child's tribe even if the parents of the Indian child request that notice not be given.

PROBATE RULES

General Provisions

- Rule 1. TITLE - SCOPE - CONSTRUCTION - SITUATIONS NOT COVERED BY THE RULES
- Rule 2. APPOINTMENT AND AUTHORITY OF MASTERS
- Rule 3. PROBATE INDICES
- Rule 4. ATTORNEYS

Wills and Estates

- Rule 5. DEPOSIT OF WILLS FOR SAFEKEEPING AND ACCEPTANCE
- Rule 6. FINDING OF PRESUMPTIVE DEATH OF MISSING PERSONS
- Rule 7. DUTIES AND RESPONSIBILITIES OF THE PERSONAL REPRESENTATIVE
- Rule 8. CHANGE OF ADDRESS AND TELEPHONE
- Rule 9. SPECIAL ADMINISTRATORS
- Rule 10. CREDITOR'S CLAIMS
- Rule 11. JURY TRIAL
- Rule 12. CLOSING ESTATES
- Rule 13. DECEDENTS' ESTATES - SUBSTANTIVE RIGHTS UNDER OLD CODE REMAIN INVIOLETE - PROCEDURE

Protective Proceedings

- Rule 14. PROTECTIVE PROCEEDINGS
- Rule 15. GUARDIANSHIP OF A MINOR
- Rule 16. GUARDIANSHIP OF INCAPACITATED PERSONS
- Rule 17. CONSERVATORSHIPS
- Rule 18. EMERGENCY LIFESAVING MEDICAL AUTHORIZATION

Mental Commitments

[No separate mental commitment rules have been adopted.]

Rule 1. TITLE - SCOPE - CONSTRUCTION - SITUATIONS NOT COVERED BY THESE 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 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.

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 and conservatorship hearings under Title 13;
- C. mental commitment hearings under Title 47;
- 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 order of commitment to a treatment facility is effective pending superior court review; and

D. 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, 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(i);
6. accept and approve stipulations; and
7. review and approve uncontested orders on annual review.

(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.

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) Confidentiality. The mental commitment index is confidential. Other indices are public records even though the files may be confidential.

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.

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

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

I, the undersigned, deposit the Last Will and Testament of _____ for safekeeping with the Superior Court of Alaska. I state that _____ whose address is _____ is named personal representative in my will and is designated to receive the will upon my death and that _____ whose address is _____ is named alternate personal representative and is designed to receive a copy of my will upon my death and in the event my personal representative above named 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.

It is understood that upon the death of the testator the Clerk of the Superior Court or the Superior Court Registrar is authorized to open and inspect the will in order that any burial or other emergency provisions of the will may be carried out without delay in the event the personal representative or the alternate above named is not immediately available to receive the will.

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.

Dated this _____ day of _____, 19____.

Testator/Agent

I hereby acknowledge receipt of the above mentioned will for safekeeping. The acceptance of the 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. The purpose of accepting the will is to provide a safe place for that legal document and to provide for the orderly administration of the decedent's estate.

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.

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.

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-.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 13.11.125-.140, costs of 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-.670.

* 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 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 written notice of this duty in the notice required by AS 13.16.360.

Rule 9. SPECIAL ADMINISTRATORS.

If a special administrator is appointed pursuant to AS 13.16.310-.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.

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.

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.

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 file a sworn statement under AS 13.16.625 or AS 13.16.630. Notice must be given as provided by these statutes.

(b) Formal Closing.

1. The final accounting, if required, must include an accounting of all cash and property transactions since the date of the last accounting or, if none, from the commencement of administration.

2. The petition for order of settlement of the estate must state:

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

B. that all claims which were presented have been paid, settled, 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. the date of the hearing on formal closing, and that any objections must be presented to the court at or before the hearing.

3. The petition shall contain a plan or statement of distribution which shall include:

Probate Rules SCO

- A. a statement of all prior distributions;
- B. the property remaining in the hands of the personal representative for distribution; and
- C. a schedule describing the proposed distribution of any remaining assets.

(c) Discharge. On receipt of evidence that the estate has been fully administered and properly distributed, the court shall enter an order discharging the personal representative. Discharge of the personal representative is not required to close the estate.

(d) Administrative Closing. If no action is taken in an estate for more than one year, the clerk may send a notice that the file will be closed in 30 days if no objection is received. The order must be served on the personal representative to the estate. Administrative closure does not discharge the personal representative.

Rule 13. DECEDENTS' ESTATES - SUBSTANTIVE RIGHTS UNDER OLD CODE
REMAIN INVIOLETE - 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.

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, 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.

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

(d) Confidentiality. All proceedings for guardianship, conservatorship or other protective proceeding brought under AS 13.26 are confidential except 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 _____."

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.

(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. § 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 guardianship of a minor as stated by AS 13.26.070.

(d) Duty to Inform. A testamentary guardian shall inform any ward age 14 or older within ten days of appointment of the ward's right to object to the appointment.

(e) 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.

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 and AS 13.06.110.

(c) Letters of Guardianship. Letters of guardianship 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 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.

(d) Compensation. Compensation may not be paid for guardianship services without written order of the court.

(e) Reporting. A guardianship plan must be filed before entry of the order of guardianship or within 30 days of entry of the order. An implementation report must be filed no more than 90 days from the filing of the guardianship plan or entry of the order of guardianship. An annual report must be filed with the court on the anniversary of the guardianship order or as otherwise provided by the court, except that every third year a visitor's report must be filed. The annual report must include:

1. the name and current address of respondent and guardian;
2. the respondent's present mental, physical and social condition, respondent's living arrangements and respondent's opinion of those living arrangements;

3. changes in the capacity of the respondent to meet essential requirements for respondent's physical health and safety;
4. the services provided to the respondent, including all medical and mental health treatment, during the year;
5. any significant actions taken by the guardian during the reporting period;
6. a financial accounting of the estate of the respondent that has been subject to the possession and control of the guardian;
7. a list of the number and nature of contacts between the guardian and the respondent if the respondent does not reside with the guardian; and
8. any other information requested by the court or considered necessary by the guardian to make the court fully aware of the respondent's current circumstances.

Rule 17. CONSERVATORSHIPS.

(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. Notice must be given as provided by AS 13.26.185 and AS 13.06.110.

(c) Letters of Conservatorship. Letters of conservatorship may not issue without the written acceptance of the person to be named conservator. The acceptance must state that the person has read and understands the duties and powers of conservatorship under AS 13.26.245 - .315, with any restrictions imposed by the court.

(d) Compensation. Compensation may not be paid for conservatorship services without written order of the court.

(e) Reporting. Within 90 days of appointment, the conservator shall file an inventory pursuant to AS 13.26.250. The conservator also shall file an annual report on May first of each year or as otherwise ordered. 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.

(f) Discharge. A final accounting with appropriate provision for the subsequent control of the estate must be submitted and accepted by the court before the court may discharge a conservator under AS 13.26.310.

(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.

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.