

SENATE BILL NO. 190

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY SENATOR WILKEN

Introduced: 4/11/00

Referred: State Affairs, Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to guardianships, conservatorships, and protective orders; relating to**
2 **the actions of the office of public advocacy concerning guardianships and**
3 **conservatorships; relating to the appointment and duties of a court visitor appointed for**
4 **a patient through the office of public advocacy; amending Rule 77, Alaska Rules of Civil**
5 **Procedure; and providing for an effective date."**

6 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

7 *** Section 1.** AS 13.26.111(a) is amended to read:

8 (a) The principal duty of an attorney representing a ward or respondent is to
9 represent the ward or respondent zealously. Zealous representation includes at least

10 (1) personal interviews with the ward or respondent; unless good cause
11 exists, the first contact with the ward or respondent shall be at least two weeks before
12 the hearing;

13 (2) explaining, if possible, to the ward or respondent in terms that the

1 ward or respondent can understand, the nature and possible consequences of the
 2 proceeding, the alternatives that are available, and the rights to which the ward or
 3 respondent is entitled;

4 (3) securing and presenting evidence and testimony and offering
 5 arguments that would tend to protect the ward's or respondent's rights [AND THAT
 6 WOULD TEND TO FURTHER THE INTERESTS OF THE WARD OR
 7 RESPONDENT].

8 * **Sec. 2.** AS 13.26.140(b) is amended to read:

9 (b) At a [THE] temporary or interim guardianship hearing, the respondent
 10 shall have the rights set out in AS 13.26.113(a).

11 * **Sec. 3.** AS 13.26.140(d) is amended to read:

12 (d) If the court determines that a temporary or interim guardian should be
 13 appointed, it shall make the appointment and grant to the guardian only the authority
 14 that is least restrictive upon the liberty of the respondent and that enables the
 15 temporary or interim guardian to provide the emergency services necessary to protect
 16 the respondent [FROM SERIOUS INJURY, ILLNESS, OR DISEASE].

17 * **Sec. 4.** AS 13.26.140(e) is amended to read:

18 (e) The temporary or interim guardianship shall expire at the time of the
 19 appointment of a full or partial guardian or upon the dismissal of the petition for
 20 guardianship.

21 * **Sec. 5.** AS 13.26.140 is amended by adding new subsections to read:

22 (g) The court, during the pendency of an initial petition for guardianship and
 23 upon request, may appoint an interim guardian if a failure to appoint an interim
 24 guardian would likely result in substantial harm to the respondent's health, safety, or
 25 welfare. The interim guardian may exercise only the powers specified in the interim
 26 guardianship order.

27 (h) A hearing on the appointment of an interim guardian under (g) of this
 28 section shall be conducted by the court within 21 days after the filing of a motion.
 29 Reasonable notice of the time and place of the hearing shall be given to the respondent
 30 and any other persons as the court directs.

31 * **Sec. 6.** AS 13.26.145(d) is amended to read:

1 (d) Subject to (e) of this section, qualified persons have priority for
2 appointment as guardian in the following order:

3 (1) a person, **including an individual, an** association, **a for-profit**
4 **corporation,** or **a** private nonprofit corporation nominated by the incapacitated
5 person, if at the time of the nomination the incapacitated person had the capacity to
6 make a reasonably intelligent choice;

7 (2) the spouse of the incapacitated person;

8 (3) an adult child or parent of the incapacitated person;

9 (4) a relative of the incapacitated person with whom the incapacitated
10 person has resided for more than six months during the year before the filing of the
11 petition;

12 (5) a relative or friend who has demonstrated a sincere, longstanding
13 interest in the welfare of the incapacitated person;

14 (6) **an** [A PRIVATE] association, **including a for-profit corporation**
15 or **a** nonprofit corporation with a guardianship program for incapacitated persons;

16 (7) the public guardian.

17 * **Sec. 7.** AS 13.26.145(e) is amended to read:

18 (e) The priorities established in (d) of this section are not binding, and the
19 court shall select the person, **whether an individual, an** association, **a for-profit**
20 **corporation,** or **a** nonprofit corporation, that is best qualified and willing to serve.
21 The court shall also give consideration to a nomination by a person described in (d) of
22 this section and to a nomination in the will of a deceased parent or spouse of the
23 incapacitated person.

24 * **Sec. 8.** AS 13.26.150(c) is amended to read:

25 (c) A full guardian of an incapacitated person has the same powers and duties
26 respecting the ward that a parent has respecting an unemancipated minor child except
27 that the guardian is not liable for the care and maintenance of the ward and is not
28 liable, solely by reason of the guardianship, to a person who is harmed by acts of the
29 ward. Except as modified by order of the court, a full guardian's powers and duties
30 include, but are not limited to, the following:

31 (1) the guardian is entitled to custody of the person of the ward and

1 shall assure that the ward has a place of abode in the least restrictive setting consistent
2 with the essential requirements for the ward's physical health and safety;

3 (2) the guardian shall assure the care, comfort, and maintenance of the
4 ward;

5 (3) the guardian shall assure that the ward receives the services
6 necessary to meet the essential requirements for the ward's physical health and safety
7 and to develop or regain, to the maximum extent possible, the capacity to meet the
8 ward's needs for physical health and safety;

9 (4) the guardian shall assure through the initiation of court action and
10 other means that the ward enjoys all personal, civil, and human rights to which the
11 ward is entitled;

12 (5) the guardian may give consents or approvals necessary to enable
13 the ward to receive medical or other professional care, counsel, treatment, or services
14 except as otherwise limited by (e) of this section;

15 (6) **the guardian has the powers and duties of a conservator under**
16 **this chapter** if a conservator for the estate of the ward has not been appointed [, THE
17 GUARDIAN MAY RECEIVE MONEY AND PROPERTY DELIVERABLE TO
18 THE WARD AND APPLY THE MONEY AND PROPERTY FOR SUPPORT,
19 CARE, AND EDUCATION OF THE WARD]; however, the guardian may not apply
20 the ward's money or property for the services as guardian or for room and board that
21 the guardian, or the guardian's spouse, parent, or child has furnished the ward unless,
22 before payment, the court finds that the ward is financially able to pay and that the
23 charge is reasonable; notice of a request for payment approval shall be provided to at
24 least one relative of the ward if possible; the guardian shall exercise care to conserve
25 any excess money or property for the ward's needs;

26 (7) if a conservator of the estate of the ward has **also** been appointed,
27 the guardian shall pay all of the ward's estate received by the guardian in excess of the
28 money expended to meet current expenses for support, care, and education of the
29 ward, to the conservator for management as provided in AS 13.26.165 - 13.26.315,
30 and the guardian shall account to the conservator for money expended.

31 * **Sec. 9.** AS 13.26.195(b) is amended to read:

1 (b) Upon receipt of a petition for appointment of a conservator or other
 2 protective order for reasons other than minority, the court shall set a date for hearing.
 3 Unless the person to be protected has counsel of the person's own choice, the court
 4 must appoint a lawyer to represent the person [WHO THEN HAS THE POWERS
 5 AND DUTIES OF A GUARDIAN AD LITEM]. If the alleged disability is mental
 6 illness, mental deficiency, physical illness or disability, advanced age, chronic use of
 7 drugs, or chronic intoxication, the court may direct that the person to be protected be
 8 examined by a physician designated by the court, preferably a physician who is not
 9 connected with any institution in which the person is a patient or is detained. The
 10 court may send a visitor to interview the person to be protected. [THE VISITOR
 11 MAY BE A GUARDIAN AD LITEM OR AN OFFICER OR EMPLOYEE OF THE
 12 COURT.]

13 * **Sec. 10.** AS 13.26.380(b) is amended to read:

14 (b) The public guardian, when appointed as guardian or conservator, shall
 15 endeavor, for as long as practical, to find a suitable private guardian or conservator for
 16 the public guardian's ward or protected person. For each ward and protected person,
 17 the public guardian shall **include in its annual** report **under AS 13.26.118** to the court
 18 having jurisdiction of the ward or protected person **information on the availability of**
 19 **a private guardian or conservator** [, AT LEAST ONCE EVERY SIX MONTHS,
 20 EFFORTS TO FIND A PRIVATE GUARDIAN OR CONSERVATOR].

21 * **Sec. 11.** AS 44.21.440 is amended by adding a new subsection to read:

22 (b) The office of public advocacy may not use improper pressure to influence
 23 the professional judgment of a person who is paid by the office of public advocacy to
 24 act as an attorney, a guardian ad litem, or a visitor for a guardianship or
 25 conservatorship under AS 13.26.

26 * **Sec. 12.** AS 47.30.839(d) is amended to read:

27 (d) Upon the filing of a petition under (b) of this section, the court **may**
 28 [SHALL] direct the office of public advocacy to provide a visitor to assist the court in
 29 investigating the issue of whether the patient has the capacity to give or withhold
 30 informed consent to the administration of psychotropic medication. The visitor shall
 31 gather pertinent information and present it to the court in written or oral form at the

1 hearing. The information may [MUST] include documentation of the following:

2 (1) the patient's responses to a capacity assessment instrument
3 administered at the request of the visitor;

4 (2) any expressed wishes of the patient regarding medication,
5 including wishes that may have been expressed in a power of attorney, a living will, or
6 oral statements of the patient, including conversations with relatives and friends who
7 [THAT] are significant persons in the patient's life as those conversations are
8 remembered by the relatives and friends; oral statements of the patient should be
9 accompanied by a description of the circumstances under which the patient made the
10 statements, when possible.

11 * **Sec. 13.** AS 13.26.112(c) is repealed.

12 * **Sec. 14.** The uncodified law of the State of Alaska is amended by adding a new section to
13 read:

14 INDIRECT COURT RULE CHANGE. AS 13.26.140(h), added by sec. 5 of this Act,
15 has the effect of changing Rule 77, Alaska Rules of Civil Procedure, by requiring that a court
16 conduct a hearing on the appointment of an interim guardian, by establishing when the
17 hearing must be conducted, and by requiring that reasonable notice be given to the respondent
18 and certain other persons.

19 * **Sec. 15.** The uncodified law of the State of Alaska is amended by adding a new section to
20 read:

21 APPLICABILITY. This Act applies to all proceedings and actions in a guardianship
22 or conservatorship that is begun under AS 13.26 on or after the effective date of this Act.

23 * **Sec. 16.** The uncodified law of the State of Alaska is amended by adding a new section
24 to read:

25 CONDITIONAL EFFECT. AS 13.26.140(h), added by sec. 5 of this Act, takes effect
26 only if sec. 14 of this Act receives the two-thirds majority vote required by art. IV, sec. 15,
27 Constitution of the State of Alaska.

28 * **Sec. 17.** This Act takes effect immediately under AS 01.10.070(c).