

GUARDIAN- SHIP

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 15, 1985

SUBJECT: Guardianship for incapacitated persons
(Work Order No. 14-0647)

TO: Senator Pat Rodey
Chair, Senate Judiciary Committee

FROM: Michael F. Ford *M.F.*
Legislative Counsel

You have requested a review of the procedures concerning guardianship for incapacitated persons, particularly as to a natural parent becoming a guardian for their child. The relevant statutory provisions are contained in AS 13.26.005 - 13.26.155. As you may recall, the statutes concerning guardianship underwent comprehensive revision in 1981, specifically as to incapacitated persons.

The guardianship laws are designed to promote and protect individuals who cannot, because of impairment, do so themselves. Guardianship is also intended to be limited to the extent necessitated by the person's mental and physical abilities. The process that results in this particular kind of guardianship does not hinge on the age of the person, but relates to the ability to provide for essential physical health or safety. Therefore a persons status as an adult or a minor is not relevant to initiating or reviewing the guardianship of an incapacitated person. Guardianship of a minor is an entirely separate procedure, and terminates when the minor reaches the age of majority, which in Alaska is 18.

Assuming that a person is incapacitated and a parent or other person wished to have a guardian appointed for health or safety reasons, the process starts with the filing of a petition in Superior Court. A hearing is held on the petition and the person alleged to be incapacitated is entitled to legal counsel for these proceedings. Also the court is required to appoint an independent professional to

perform an evaluation. This person writes an evaluation report that includes recommendations regarding the type and extent of assistance needed, and the appropriate type of guardianship, if any, that should be implemented. Assuming that the court finds that guardianship is necessary, then the court may appoint either a full or partial guardian. The court then enters an order that appoints a guardian and adopts a guardianship plan. The duration of the term of guardianship is determined by court order.

Concerning changes in a guardianship order, the court may review an order at any time upon receipt of a "report or other information", if the court determines that the hearing is in the best interests of the ward. Concerning changes in the guardian, AS 13.26.125 provides that the ward, the guardian, or anyone interested in the welfare of the ward can petition the court for removal of the guardian and appointment of a successor. These procedures appear to be quite straightforward, and designed to place the best interest of the ward before all other considerations.

Natural parents are given some priority as guardians, under AS 13.26.145, assuming that the parent is qualified. These priorities are not binding on the court however, and again it is the question of who is best qualified and willing to serve as guardian, that is the determining factor. Without changing this basic premise, it is difficult to see how the present law regarding guardianship could be changed to make it easier for a natural parent to become a guardian. It is not difficult to foresee that in specific cases, it may be a very close question as to who is best qualified to serve as a guardian. However the statutes provide for appointment of legal counsel for the person who is claimed to be incapacitated, for appointment of a professional in the field of law, medicine, mental health care, or related area, to do an independent evaluation, and also for appointment of a guardian ad litem, to assist the ward in regard to explaining the legal proceedings. In making a final determination the court must base it's decision to either appoint a guardian or choose an alternative form of protection based on clear and convincing evidence.

In conclusion, it would appear that the procedures to determine the guardianship of incapacitated persons are designed to place the needs of that person foremost, and favor natural parents only if they are qualified as guardians, as determined by the court. Guardianship is a process that is

Senator Pat Rodey
February 15, 1985
Page 3

selected only after the court has determined that no other alternative is available. In this sense it requires the court make a detailed and careful examination of the person claimed to be incapacitated. Likewise changes in a guardianship require that the court make a careful review to insure that the best interests of the ward are foremost in any decision, and that the proposed guardian is qualified to meet the needs of the ward.

This review of the law of guardianship has been quite general of course, and is not intended to address particular guardianship cases. If you have specific issues or sections of the statutes that you wish me to examine further please let me know.

MFF:ojb
J11/098