



DISABILITY
LAW CENTER

O F A L A S K A



GUARDIANSHIP IN ALASKA

A GUIDE TO UNDERSTANDING AND
PETITIONING FOR GUARDIANSHIP
OF ADULTS WITH DISABILITIES

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All laws are subject to change by legislation and by court decisions. This information is not intended to be legal advice. It is a Public Education resource. Readers should use the guide for information, and then ask question about their own individual needs.

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Table of Contents

Introduction to Guardianship.....	1
Explanation of Booklet.....	1
How to Use This Booklet.....	2
What Kind of Person Needs A Guardian?.....	2
Degrees of Guardianship.....	3
Duties of a Guardian.....	4
Are There Things a Guardian Cannot Do?.....	4
Can a Guardian Be Paid for Their Services?.....	5
Who May Be a Guardian?.....	5
Does the Petitioner Have to Be The Guardian?.....	6
What is the Petitioner’s Liability in Filing a Guardianship Petition?.....	6
How is the Petition Filed?.....	6
What Happens After the Petition is Filed?.....	7
What Does the Visitor’s Evaluation Report Contain?.....	8
Can the Petitioner & Respondent Respond to the Reports?.....	9
Can the Respondent’s Attorney Assist the Petitioner?.....	9
What is a Guardian Ad Litem?.....	9
What Will Happen in Court?.....	10
What if a Guardianship is Needed in a Hurry?.....	10
How Does a Guardianship End?.....	10
Does the Guardian Need to Report to the Court?.....	11

What is a Conservator?.....	11
When Would a Petitioner Choose to Petition for Conservatorship Instead of Guardianship?....	11
Forms.....	12
Filing the Petition.....	13
Notice.....	13
How to Give Notice of the Hearing.....	13
Superior Courts of the State of Alaska.....	15
Mediation.....	16
What is Mediation?.....	16
Why Would We Use Mediation?.....	16
What Issues Can Be Mediated?.....	16
When Would We Use Mediation?.....	17
What Happens in Mediation?.....	17
Do I Need an Attorney for Mediation?.....	17
What if No Agreement is Reached in Mediation?.....	18
How Do I Find a Mediator?	18
Who Pays for Mediation?.....	18
Glossary.....	11

INTRODUCTION TO GUARDIANSHIP

When you petition for guardianship, you begin the process of legally taking away rights from a person who lacks the ability to make decisions. The person who is appointed by a court to make those decisions is called a “guardian”. A person who has a guardian is called a “ward”. Any person may petition the court for a finding of incapacity and the appointment of a guardian for oneself or another person.

You may have also heard about a process called “conservatorship”. This is another way in which the right to make decisions can be taken away from a person. Usually conservatorships involve only decisions about money and property. The person who makes the decisions is called a “conservator” and the person who cannot make their own decisions is called the “protected person”. The same goal can be accomplished by obtaining a limited or partial guardianship.

These words and others are explained at the end of this booklet. As you read through this booklet you will get an understanding of how these words are used.

EXPLANATION OF BOOKLET

This booklet is offered to provide an explanation of guardianship of adults as it works in Alaska and to provide information to a person who may wish to file a petition for guardianship of another individual.

This booklet does not deal with guardianships or conservatorships of minor children, which are separate court proceedings brought under Alaska Statute 13.26.030.

The decision to remove civil rights from an incapacitated person by appointing a guardian for that person is one that the courts do not take lightly. The process of getting guardianship of another person is difficult, as it should be. The protections afforded to the Respondent (the allegedly incapacitated person) may seem like a monumental hurdle to the Petitioner (the person who asks the court to appoint a guardian). However, the Petitioner must keep in mind that it should not be simple to take away rights. The protections that the statutes give to the Respondent are merely those guaranteed by the Alaska and U.S. constitutions.

One of the protections that the guardianship statutes insist upon is that the court must consider what alternatives there may be to guardianship. This means that the court must look at whether other less intrusive means can be found to give the incapacitated person the same assistance. For example, if a person simply needs help managing money received from Social Security, appointment of a representative payee might solve the problem without going through a court proceeding.

The text of this booklet refers to specific sections of the Alaska Statutes [i.e.: AS 13.26.150(e)] which should be consulted if there are questions. An attorney experienced in guardianship should be sought for advice or representation where necessary.

HOW TO USE THIS BOOKLET

- Read through the first section which explains guardianship.
- Decide whether guardianship is appropriate for the person you wish to protect.
- If you have access to a computer, go to: www.state.ak.us/courts/forms.htm#ps
Select the form(s) you need for either guardianship or conservatorship.
- If you do not have access to a computer, contact the nearest courthouse for information.
- Fill out the forms, file with the court and send copies to the appropriate people.

WHAT KIND OF PERSON NEEDS A GUARDIAN?

Jim is a former resident of an institution for people with mental illness, but he now lives alone in a large city. He has no family or friends who are able to help him manage his money and no one who could assist him with getting the services needed to live on his own. He was regularly evicted from apartments because the rent would not be paid. He also needed someone to help him get mental health treatment. The court appointed a public guardian from the Office of Public Advocacy. Now Jim's bills are paid on time and he no longer gets evicted. He also has received the treatment he needed.

Jane will turn 18 in a few months. On that day, even though she experiences a developmental disability, she can legally move out of her parents' home, quit her special education program, sign contracts and do all the other things that any adult may do. Her parents can speak for her only if they have been appointed her guardians by a court.

Mrs. Smith is 87 years old. She is in the hospital now and has been diagnosed as having Alzheimer's disease. The medical staff does not believe that she is capable of making medical decisions for herself. She did not appoint anyone to hold her power of attorney earlier when she was competent. Now someone must petition the court to appoint a guardian to make decisions for her.

All of these people have one thing in common: they are not able to make some decisions for themselves, and therefore can benefit from the appointment of a guardian.

The Alaska statutes make it clear that only a person who is incapacitated may have a guardian appointed for them by the Court. The cause of the incapacity may be any condition, including mental illness, mental retardation, senility, head injury, and other types of mental incapacity.

In Alaska:

Guardianship for an incapacitated person shall be used only as is necessary to promote and protect the well-being of the person, shall be designed to encourage the development of maximum self-reliance and independence of the person, and shall be ordered only to the extent necessitated by the person's actual mental and physical limitations. An incapacitated person for whom a guardian has been appointed is not presumed to be incompetent and retains all legal and civil rights except those that have been expressly limited by court order or have been specifically granted to the guardian by the court.

Alaska Statute 13.26.090.

DEGREES OF GUARDIANSHIP

The Alaska legislature has recognized that not every incapacitated person has the same need for supervision. Therefore, a person will only have taken from him or her the right to make decisions over those areas of their life in which they cannot make informed decisions. For example, a person may retain the right to decide where they will live but have a guardian to make medical decisions.

Full guardianship is ordered for people who need complete care and attention. Alaska Statute 13.26.150(c) states:

A full guardian of an incapacitated person has the same powers and duties respecting the ward that a parent has respecting an unemancipated minor child.

(However, there are some extra limitations which will be discussed later.)

Partial guardianship is ordered for people who need guardianship over some areas of their lives but not others. Alaska Statute 13.26.150(b) states:

A partial guardian of an incapacitated person has only the powers and duties respecting the ward enumerated in the court order.

DUTIES OF A GUARDIAN

A full guardian has the following duties found in AS 13.26.150(c):

- The guardian is entitled to custody of the ward, which means that the guardian can decide where the ward lives. The guardian should assure that the ward has a place to live in the least restrictive setting consistent with the essential requirements for the ward's physical health and safety.

- The guardian shall assure that the ward is cared for and maintained.
- The guardian is responsible for seeing that the ward receives necessary services for his or her physical health and safety and to develop his or her capacity for meeting his or her own needs. In other words, the guardian should make sure their ward gets such things as medical services and job or life skills training.
- The guardian shall assure that the ward enjoys all personal, civil, and human rights to which the ward is entitled. This means that the guardian must make sure that the ward is treated fairly.
- The guardian may give the consent or approval necessary to enable the ward to receive medical and other professional care. In other words, the guardian is legally allowed to consent to medical treatment.
- If there is no separate conservator, the guardian may apply money and property of the ward for support and care of the ward exercising care to conserve the ward's property for the ward's needs. This means that most full guardians have control of their ward's money and must use it for the ward's needs.
- If there is a separate conservator, the guardian will pay for care and support and turn the balance over to the conservator.
- A guardian does not personally assume financial responsibility for the ward or liability for actions taken by the ward.

ARE THERE THINGS A GUARDIAN CANNOT DO?

A guardian's powers are not complete. The law restricts what a guardian, even a full guardian, may do. AS 13.26.150(e) states that a guardian may not do the following things:

- A guardian may not place the ward in a facility or institution for the mentally ill except through a formal commitment proceeding in which a ward has a separate guardian ad litem.
- A guardian may not consent on behalf of the ward to an abortion, sterilization, psychosurgery, or removal of bodily organs except when necessary to preserve the life or prevent serious impairment of the physical health of the ward.
- A guardian may not consent on behalf of the ward to the withholding of lifesaving medical procedures. However, a guardian is not required to oppose the withholding of lifesaving medical procedures under certain circumstances where the procedures would only serve to prolong the dying process, unless the ward has clearly stated that life saving medical procedures not be withheld.

- A guardian may not consent on behalf of the ward to the performance of experimental medical procedures not intended to preserve the life or prevent serious impairment of the physical health of the ward.
- A guardian may not consent on behalf of the ward to termination of the ward's parental rights. In other words, the ward is the only one who can give up his/her children unless termination of parental rights is ordered by a court.
- A guardian may not prohibit the ward from registering to vote or from casting a ballot at public election.
- A guardian may not prohibit the ward from applying for and obtaining a driver's license.
- A guardian may not prohibit the marriage or divorce of the ward.

CAN A GUARDIAN BE PAID FOR THEIR SERVICES?

A guardian can only be paid by the ward if the court finds, before payment, that the ward is able to pay and that the charge is reasonable. AS 13.26.150(c)(6). A public guardian can charge a fee for their services. The fee is based on a sliding scale determined by the ability of the ward to pay for the guardian services. AS 13.26.410. The actual fee schedules are found at 2 AAC 60.80 – 120.

WHO MAY BE A GUARDIAN?

The court may appoint a competent person, the public guardian or a private association or nonprofit corporation as guardian of an incapacitated person. The guardian may not be a provider of services or work for a provider of services to the ward. The guardian also may not have conflicting interests with the ward. AS 13.26.145.

The statutes list an order of preference for who may become a guardian:

1. someone nominated by the incapacitated person (if at the time of the nomination, the incapacitated person has sufficient mental capacity to make an informed choice);
2. the spouse of the incapacitated person;
3. an adult child or parent of the person;
4. a relative with whom the person has resided for more than six months within the past year;
5. a relative or friend with a sincere, long-standing interest in the welfare of the person;

6. a private association or nonprofit corporation with a guardianship program for incapacitated persons;
7. a public guardian.

DOES THE PETITIONER HAVE TO BE THE GUARDIAN?

No, the petitioner does not have to be the guardian. The petitioner is simply the person bringing the issue of incapacity before the court. The petition for guardianship may name the petitioner or anyone else, including the public guardian, to be guardian. AS 13.26.105.

WHAT IS THE PETITIONER'S LIABILITY IN FILING A GUARDIANSHIP PETITION?

If the petition for guardianship is filed "maliciously, frivolously" or "without just cause" the petitioner can be ordered by the court to pay all or part of the costs of the proceeding. See AS 13.26.131(d). This can be a substantial amount. This means that if someone files a guardianship petition with the court just to create problems they can be required to pay a lot of money to the court. This is another reason for carefully considering whether a guardianship is actually needed.

HOW IS THE PETITION FILED?

The petitioner fills out the forms which require personal knowledge of the facts about the incapacity and files them with the superior court in the place where the incapacitated person lives. There is a \$75.00 filing fee. Fees may be waived if the petitioner cannot afford the cost. In some places in Alaska the court may have a special "probate division" which handles guardianship matters. A list of the superior courts is found on page 15 at the back of this section.

WHAT HAPPENS AFTER THE PETITION IS FILED?

The statutes require that the court schedule a hearing on the issue of incapacity within 120 days of the filing of the petition. AS 13.26.106(a)

If the respondent (the allegedly incapacitated person) is not able to afford to hire an attorney, the court will appoint an attorney from the Office of Public Advocacy to represent him or her in the proceeding. AS 13.26.106(b)

The court will also appoint a visitor. The visitor arranges for evaluations and prepares a written report which is filed with the court. The visitor prepares this report by interviewing the respondent and the petitioner as well as other people who have knowledge of the respondent's capacity. AS 13.26.106(c)

Another duty of the visitor is to serve a copy of the petition on the respondent and to explain and provide a written statement of the respondent's rights, including how to contact the attorney who has been appointed for the respondent. The visitor may not interview anyone until the respondent's rights have been explained to them. AS 13.26.107.

An expert is also appointed. This is usually a physician who has expertise in the respondent's condition. The expert's report is attached to the visitor's report for the court to consider. Appointment of the visitor and expert shall be made through the Office of Public Advocacy. AS 13.26.106(c)

Notice of the hearing must be given to certain people under AS 13.26.135. The notice must set out the date, time, place, purpose and possible consequences of the hearing and the rights of the ward or respondent and any other parties to the proceeding. The respondent will be given notice by the visitor. In addition, the petitioner must serve notice of the proceedings on the following people:

1. any person who is the guardian or conservator now or who has care and custody of the respondent;
2. the spouse, parents, and adult children of the respondent;
3. if the respondent does not have a spouse, parents or adult children, at least one of the closest adult relatives of the respondent, if any can be found;
4. any person who performed an evaluation of the respondent for the visitor within the previous two years;
5. the respondent's attorney;
6. the respondent's guardian ad litem (see Glossary) if one has been appointed.

WHAT DOES THE VISITOR'S EVALUATION REPORT CONTAIN?

AS 13.26.108 requires the visitor to address several matters in the report:

1. The results and analyses of medical and other tests and examinations that describe the respondent's mental, emotional, physical, and educational condition, adaptive behavior and social skills, and that specify the data on which the description is based;
2. Recommendations regarding the types and extent of assistance, if any, necessary to meet the essential requirements for the physical health and safety of the respondent;
3. An evaluation of the respondent's need for mental health treatment and whether there is a substantial probability that available treatment will significantly improve the respondent's mental condition;

4. An evaluation of the respondent's need for educational or vocational assistance or personal care and whether these can be made available to the respondent;
5. An evaluation of the probability that the incapacity may significantly lessen, and the type of services or treatment that will facilitate improvement in the respondent's condition or skills;
6. A list of the names and addresses of all individuals who examined, interviewed, or investigated the respondent and of the names and addresses of all persons contacted in preparation of the report;
7. A summary of the information contained in reports supplied to the visitor which supports the conclusions found in the visitor's report;
8. A description of the alternatives to guardianship which were considered and rejected by the visitor and the reasons why they were not feasible;
9. A description of the present living arrangements of the respondent and of any other proposed placement and a recommendation of a living arrangement which provides the least restrictive setting necessary to protect the respondent from serious illness, injury, or disease;
10. A specification of the financial resources of the respondent, their entitlement to insurance benefits and public benefits which might be used to serve them; and
11. Alternatives to guardianship that would safeguard the respondent's essential requirements for physical health and safety.

If the visitor recommends guardianship, the visitor's report must also contain a guardianship outline that identifies:

1. potential guardians;
2. the specific services necessary and available to protect the respondent from serious injury, illness, or disease and, to the extent possible, to return the respondent to full capacity in handling the respondents own affairs;
3. the means by which the services may be financed;
4. the specific, least restrictive authority needed by the guardian to provide the services.

This section provides the court with guidance for writing a guardianship order.

Every three years after a guardian is appointed, the visitor must submit a new report to the court. AS 13.26.118. Additional reports may be submitted as needed.

CAN THE PETITIONER & RESPONDENT RESPOND TO THE REPORTS?

Yes. They may give a written response to the court within 10 days of receiving the visitor's report. This response will also be considered by the court.

CAN THE RESPONDENT'S ATTORNEY ASSIST THE PETITIONER?

No. The respondent's attorney's job is to assist the respondent in asserting the respondent's rights. While the petitioner may feel that he/she is protecting the interests of the respondent, it would be a legal conflict of interest for the respondent's attorney to assist the petitioner in taking away the respondent's civil rights.

WHAT IS A GUARDIAN AD LITEM?

A "guardian ad litem" is a special temporary guardian who makes some recommendations and decisions during the guardianship process. (Ad litem means "for the purposes of the suit"). In Alaska, (AS 13.26.025), a guardian ad litem (or GAL) can be appointed by the court at the request of a ward or respondent or the attorney of the ward or respondent if:

the court is satisfied, that because of impaired ability effectively to receive and evaluate information regarding the proceedings or because of impaired ability to communicate decisions regarding the proceedings, the ward, protected person or respondent is incapable of determining the ward's, protected person's, or respondent's position regarding the issues involves in the pending proceedings, and,

1. a guardian has not been appointed;
2. the interests of the ward, protected person, or respondent conflict with those of the ward's, protected person's or respondent's guardian or conservator;

or

3. the appointment is otherwise in the interests of justice.

The job of the GAL is to assist the respondent in determining the respondent's own interests if at all possible. They should not merely substitute their own judgment.

WHAT WILL HAPPEN IN COURT?

A petitioner should tell the judge (or master) why the respondent agrees or disagrees with the visitor's report and provide any additional information which would be helpful for the judge to know about the respondent. The respondent's attorney will assist the respondent in presenting

the respondent's views. The visitor and experts may be present and also asked to testify. The petitioner and respondent may ask questions of any of the witnesses. The judge will listen to all the evidence and make a decision.

In many cases there may be no disagreement. In such cases the hearing will be very short and the judge will likely grant the petition for guardianship. In disputed cases there will usually be more testimony and it may be unclear what the outcome will be. Keep in mind that the respondent has the right to a jury trial on the issue of incapacity which would make the proceedings more complicated. AS 13.26.113.

WHAT IF A GUARDIANSHIP IS NEEDED IN A HURRY?

If a person needs immediate services to protect themselves against serious injury, illness, or disease, the petitioner may ask for the appointment of a temporary guardian. In that case the court should conduct a hearing within 72 hours after the filing. AS 13.26.140.

HOW DOES A GUARDIANSHIP END?

In some cases, the guardianship may expire under the terms of the guardianship plan. However, usually the guardianship is set to be reviewed by the court after a certain length of time. At that time, there may be new evidence that a less restrictive guardianship is needed or that no guardianship is needed at all. Then the court can end the guardianship.

At any time during the guardianship, anyone may ask the court to review the terms of the guardianship. The guardian has a duty to inform the court if their ward indicates that they would like a change in their guardianship. AS 13.26.125

DOES THE GUARDIAN NEED TO REPORT TO THE COURT?

Yes. It is required that a guardian file a yearly report with the court. Also, within 90 days of the guardianship order the guardian must file a report with the court. In addition, the guardian must report to the court when there are significant changes in the ward's situation. Other reports may be required by the court if the ward requests it. AS 13.26.118.

WHAT IS A CONSERVATOR?

A conservator is similar to a type of limited guardianship. A separate section of the Alaska Statutes (AS 13.26.165) provides that a conservator can be appointed for the estate of a person if that person is unable to effectively manage property and affairs for reasons such as mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs or alcohol, confinement or other reasons listed in the statute, and the person has property that requires proper management or the person (or people dependent upon him or her) will not receive proper support, care and welfare if the funds are not managed by someone else.

The procedures are very similar but are not identical. As in guardian cases, a person who is the “protected person” in a conservatorship case will have a court appointed attorney unless they have a lawyer of their own choosing. AS 13.26.195(b). Some differences are:

- A conservator is appointed only to handle the person’s estate. They may not make decisions regarding such matters as housing, medical care, etc. They do not have “custody” of the person. AS 13.26.165 and AS 13.26.200(5). The appointment of a conservator has no effect on the capacity of a protected person.
- A conservator may be required to furnish a bond to the court. AS 13.26.215
- A visitor’s report is not always required for the conservatorship proceeding in court. AS 13.26.195(b)
- A special conservator may be appointed for one single transaction if that’s all that is needed. AS 13.26.205

WHEN WOULD A PETITIONER CHOOSE TO PETITION FOR CONSERVATORSHIP INSTEAD OF GUARDIANSHIP?

Since the procedures for the two forms of intervention in a person’s life are very similar, it may be somewhat difficult to decide which is more appropriate. Generally, the guardianship statute is more flexible because it provides for the guardianship to be tailored to whatever the person’s needs may be. The conservatorship statute, on the other hand, deals only with money and property. The decision to seek either a guardianship or a conservatorship should be made considering all of the circumstances and the needs of a person. An attorney may be able to assist you in making this decision.

FORMS

Forms are available from the Court System at: <http://www.state.ak.us/courts/forms.htm#pg>

If you do not have access to a computer, contact the nearest courthouse. Addresses and phone numbers for Superior Courts are listed on page 15.

- You will not need to use every form for every proceeding. Pick those that are appropriate for your situation.
- **Remember to keep a copy of each form for yourself.** It is a good idea to have a special folder for copies of all your forms, and for documents you receive from the court.
- Forms submitted to the court should be printed on one side only.
- If you believe that your case will be complicated or contested, you may want to consult with an attorney rather than proceeding on your own.
- **Note: Rules and requirements change.** Check with your local Court about what documents are required in your area.
- **Remember:** Fill out every blank line unless instructions specifically tell you to leave it blank.

FILING THE PETITION

If possible, take the completed forms to the nearest superior court and file them with the clerk's office. The court will require you to pay a \$75.00 filing fee. This can be done by filling out a form provided by the court which documents your financial status. This is the only fee you will have to pay. If you cannot deliver the forms and fee personally, you may mail them to the clerk of the court with a note requesting that the petition, motions and notice be accepted for filing. The court will assign a file number to the case.

If you cannot afford to pay the fee you may request that the court waive the filing fee.

You should ask about the procedure for scheduling (or "calendaring") the hearing. Most likely the court will send you back the notice form with date and time filled in after the visitor has completed his or her report.

NOTICE

The requirement to give notice to participants in a legal proceeding is an important and complicated one. It is basically a way of insuring that the constitutional right to "due process" is given to the respondent.

The law requires that certain people be given notice of hearing in any proceeding under the guardianship statute. See list on page 7 and follow the instructions in the section below.

HOW TO GIVE NOTICE OF THE HEARING

After you receive a hearing date, notice should be given in the manner described below. Make enough copies of the notice to send one to each of the required people, and keep one for yourself.

- The ward or respondent will be given notice by the visitor when the visitor explains the proceedings to the respondent.
- The following people should be given their notice by "personal service": (In other words, they may be given their notices by a process server or by registered or certified mail).
 - the spouse of the respondent if he or she is available within the state of Alaska;
 - the parents of the respondent if they are available within the state of Alaska.
- All of the others (listed below) should be served by any of the following methods:
 - by mailing a copy of the notice at least 14 days before the time set for the hearing by certified, registered or ordinary first class mail addressed to the person being notified at a post office address, residence or office:

- by delivering a copy personally at least 14 days before the time set for the hearing; or,
- if the address or identity is not known and cannot be ascertained with reasonable diligence, by publishing at least once a week for three consecutive weeks in a newspaper of general circulation. The last publication must be at least 10 days before the time set for the hearing.
- Since you will have to provide proof to the court that you have served the proper people, the best method is to send the notices by certified or registered mail, return receipt requested. That way you have proof that the person received the notice.

The following people must be served this way:

- the spouse and parents of the respondent if they were not serve personally;
- the adult children of the respondent;
- any person who is the guardian or conservator now or anyone who has care and custody of the respondent (such as a residential program or a hospital);
- at least one of the closest adult relatives of the respondent, if any can be found (if the person does not have spouse, parents or children);
- any person who performed an evaluation for the visitor's report within the previous two years;
- the respondent's attorney;
- the respondent's guardian ad litem, if one has been appointed.

Fill out an affidavit of service listing to whom you sent the notices, have your signature notarized by a notary public (or a postmaster) and then file the affidavit with the court. (You will not have to pay for filing this document. You will only have to pay at the initial filing of the petition.)

Remember to keep a copy for yourself.

SUPERIOR COURTS OF THE STATE OF ALASKA

FIRST JUDICIAL DISTRICT

Juneau	Box 114100; Juneau, AK 99811	907-463-4700
Ketchikan	415 Main Street, Room 400; Ketchikan, AK 99901	907-225-3195
Petersburg	Box 1009; Petersburg, AK 99833	907-772-3824
Sitka	304 Lake Street, Room 203; Sitka, AK 99835	907-747-3291
Wrangell	Box 869; Wrangell, AK 99929	907-874-2311

SECOND JUDICIAL DISTRICT

Barrow	Box 270; Barrow, AK 99723	907-852-4800
Kotzebue	Box 317; Kotzebue, AK 99752	907-442-3208
Nome	Box 1110; Nome, AK 99762	907-443-5216

THIRD JUDICIAL DISTRICT

Anchorage	825 W. 4th Ave.; Anchorage, AK 99501	907-264-0433
Dillingham	Box 909; Dillingham, AK 99576	907-842-5215
Kenai	125 Trading Bay Drive, Suite 100; Kenai, AK 99611	907-283-3110
Kodiak	204 Mission Road, Room 10; Kodiak, AK 99615	907-486-1600
Palmer	435 S. Denali Street; Palmer, AK 99645	907-746-8109
Valdez	Box 127; Valdez, AK 99686	907-835-2266

FOURTH JUDICIAL DISTRICT

Bethel	Box 130; Bethel, AK 99559	907-543-2196
Fairbanks	604 Barnette Street, Room 342; Fairbanks, AK 99701	907-452-9263

MEDIATION

The Alaska Court System recognizes methods outside of the formal court system to resolve disagreements. Mediation is one of those methods.

WHAT IS MEDIATION?

Mediation is a process in which a neutral third party facilitates discussion of issues and disagreements with the involved parties, with the goal of reaching a voluntary and mutually acceptable settlement. The mediator is independent of the parties involved. S/he is not a judge, and does not decide who is right or wrong. The process is voluntary and confidential.

WHY WOULD WE USE MEDIATION?

Mediation is voluntary, informal and confidential. When making decisions about personal or financial needs, the parties involved are usually under a great deal of stress. This is especially so when a loved one is no longer able to care of himself or herself. At the same time, the respondent or ward may feel betrayed. For example, a parent who is losing independence, and the right to make adult decisions, may resist, and understandably so. The decision is emotional, and often fraught with frustration. Children may be overwhelmed, and think they have no other options but guardianship or conservatorship.

Mediation offers everyone an opportunity to express concerns and needs, and to explore different options to find solutions acceptable to everyone. Mediation is particularly effective when the parties have a relationship that will continue after the disputes and disagreements are settled. Further, mediation that involves all parties on a voluntary basis gives each person a sense of greater control over their lives. The agreement reached through mediation may not be the same as a court's decision would have been. Since the process is informal, a deeper discussion of issues is possible. The parties will recognize underlying concerns. The resulting agreement may be less intrusive than a full guardianship: the parties can pick and choose which decisions can still be made safely by the respondent or ward, and the respondent retains his or her dignity and independence in many areas.

Mediation can be less expensive and faster than court proceedings.

WHAT ISSUES CAN BE MEDIATED?

Any concerns that are involved in caring for an individual subject to guardianship or conservatorship can be mediated. These include.

- Health, medical and care decisions.
- Financial decisions.
- Independence: balance between safety and self-determination.

- Living arrangements.
- Decision-making: Who should be involved? Who has authority?
- Respite and support for caregivers.
- Safety concerns.
- Who should be guardian, if needed?
- Least restrictive alternatives.

WHEN WOULD WE USE MEDIATION?

Mediation should be entered into when the decision is made to petition the court for guardianship or conservatorship for the respondent, and there are disagreements between or among concerned parties as to the form the guardianship or conservatorship will take. If you want to use the mediation services offered by the Court System, the petition for guardianship or conservatorship must be filed, or a guardian or conservator already appointed. If you use independent mediation services, the mediation can be conducted at any time. In the latter case, you should advise the court that you are engaged in mediation so the court can schedule hearings accordingly.

WHAT HAPPENS IN MEDIATION?

Preparation: The mediator will begin by laying the ground rules and explaining the process. After making sure everyone understands the process, and is there voluntarily, the mediator will have everyone sign a confidentiality agreement.

Negotiation: The mediator will then go from person to person, giving each participant an opportunity to tell his or her story and explain his or her point of view. The mediator will assist the parties in deciding the topics to discuss and may suggest a negotiation process. After the agenda is set, the mediator will use various techniques, including active listening, conflict management, and teamwork to brainstorm options that may help in finding a solution. Discussion of these options and possible solutions leads to an agreement that works for all involved.

Closing: The mediator will assist the parties in putting the agreement in writing. Everyone gets a copy of the agreement. A copy may also be given to the court to be incorporated into the court order. Some mediators will require participants to sign an agreement stating that the mediator will not be called to testify in court, and that what occurs in mediation will not be used as evidence in court.

DO I NEED AN ATTORNEY FOR MEDIATION?

Lawyers are not necessary for mediation. The parties decide for themselves what the agreement should be. However, each party may want to consult an attorney in advance to make sure they understand what his or her legal rights are, whether mediation is advisable, and the merits of any agreement reached in mediation.

WHAT IF NO AGREEMENT IS REACHED IN MEDIATION?

If mediation is unsuccessful, the parties can still take the matter to court.

HOW DO I FIND A MEDIATOR?

Court sponsored mediation services: The Alaska Court System offers mediation services in Anchorage, Homer, Kenai and Palmer courts, with plans to make the services available in other courts. Contact the nearest court for additional information.

In order to use the Court System services, the petition for guardianship or conservatorship must have been filed, or already appointed. Request the mediation through the court that has the case. If you have an attorney, s/he can request it for you.

You can find the Request for Court Sponsored Guardianship Mediation form at the court website: <http://www.state.ak.us/courts/mediation.htm#b> or you can contact the court.

Independent mediation services: Mediators are generally listed in the Yellow Pages under “Mediation” or “Mediation Services”.

The Alaska Judicial Council has produced two publications that provide mediation information. “Mediation, Alternative Dispute Resolution (ADR) and the Alaska Court System” and “A consumer Guide to Selecting a Mediator” are both available upon request from:

The Alaska Judicial Council
1029 West Third Avenue, Suite 201
Anchorage, Alaska 99501

Phone: 907-279-2526

WHO PAYS FOR MEDIATION?

Alaska Court System: No fee.

Independent services: The parties are responsible for payment, and must decide how to handle the costs.

NOTE: Anyone in Alaska can act as a mediator. There are no standards, tests to pass, or license needed to act as a mediator. Education, training, and experience vary. It is up to the parties involved to be sure the selected mediator has the necessary skills for a successful session. To help parties find a qualified mediator, the Alaska Judicial Council also published a free guide: “Consumer Guide to Selecting a Mediator”.

GLOSSARY

ALTERNATIVE DISPUTE RESOLUTION (“ADR”) – A way of resolving conflict outside of the formal court process. Methods of ADR include mediation, arbitration, mediation-arbitration, early neutral evaluation, and settlement conferences.

CONSERVATOR – A person appointed by the court to handle the estate of a person who cannot effectively manage it him/herself.

ESTATE – The property of a person.

EXPERT – Someone with expertise regarding the type of incapacity of the respondent.

GUARDIAN – Someone appointed by the court to make various kinds of life decisions for an incapacitated person.

GUARDIAN AD LITEM – A special guardian appointed by the court to prosecute or defend, on behalf of Respondent, a suit to which Respondent is a party. (see page 9)

INCAPACITATED PERSON – A person whose ability to receive and evaluate information or to communicate decisions is impaired to the extent that the person lacks the ability to provide the essential requirements for the person’s physical health or safety without court-ordered assistance.

LEAST RESTRICTIVE SETTING – A requirement that an incapacitated person not be placed into a setting that is inappropriately confining.

MEDIATION – An informal, voluntary and confidential method to resolve conflicts or disagreements without giving the power to make decisions to a judge through the court system. Present at mediation are the mediator who is an objective and impartial party, and the parties to the dispute or disagreement. The mediator has no binding authority, and does not decide whether one party is right or wrong. Decisions are made by the parties involved.

OFFICE OF PUBLIC ADVOCACY – The state agency which provides the following services: respondent’s attorneys, visitor, expert, public guardian, and guardian ad litem.

PETITIONER – The person who files a petition with the court alleging incapacity.

POWER OF ATTORNEY – An instrument authorizing another to act as one’s agent or attorney.

PROBATE MASTER – In some areas of the state a probate master acts on behalf of the judge in hearing the petition for guardianship or conservatorship.

PROTECTED PERSON – A person who has had a conservator appointed.

PUBLIC GUARDIAN – A state agency which acts as guardian; used as a last resort when no private person is available to act as guardian for the incapacitated person.

REPRESENTATIVE PAYEE – One appointed to act for another with special agency authority for the purpose of managing the principal's financial affairs; includes payments of bills, debts, and allocating spending money.

RESPONDENT – The allegedly incapacitated person who has had a petition filed against them.

RESPONDENT'S ATTORNEY – Represents the allegedly incapacitated person in a guardianship proceeding.

VISITOR – A person trained or experienced in law, medical care, mental health care, pastoral care, education, rehabilitation, or social work, who is an officer, employee, or special appointee of the court with no personal interest in the proceedings.

WARD – The incapacitated person who has had a guardian appointed by the court.



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