

IN THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 1198

Amending Probate Rule 15 and adding new Probate Rule 15.1 concerning testamentary guardianships.

IT IS ORDERED:

1. Probate Rule 15 is amended to read as follows:

. . .

(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.

2. The Probate Rules are amended to add Probate Rule 15.1 to read as follows:

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.

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-.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. §§

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1901-1923, 1951.

DATED: April 7, 1995

EFFECTIVE DATE: July 15, 1995

Chief Justice Moore

Justice Rabinowitz

Justice Matthews

Justice Compton

Justice Eastaugh