

Sectional Analysis for SB 190

Guardianships; Conservatorships

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

Released: February 19, 2002
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- Section 1:** Deletes “and that would tend to further the interests of the ward or respondent.” The protection of a ward’s best interest is the primary role of a guardian ad litem and not the role of the counsel representing a ward or respondent. The attorney’s responsibilities is to follow the client’s wishes and protect the ward’s or respondent’s rights irrespective of whether the attorney believes the desired course of action will ultimately protect the best interests of the client.
- Section 2-5:** Establishes an interim guardianship Current practice allows the appointment of a “temporary” guardian to protect a respondent from serious injury, illness or disease, with hearings held within 72 hours. A temporary guardian is to be restricted to those cases involving an emergency, but the practice has been expanded to include cases in which action is necessary on an expedited, but not urgent, basis. The interim guardianship will allow those cases to handled within three week if failure to do so “would likely result in substantial harm to the respondent’s health, safety, or welfare.”
- Section 6-7:** Adds “a for-profit corporation” to the list of qualified persons that have priority for an appointment as a guardian This section clarifies that “a for-profit corporation” is to be considered for an appointment as a guardian.
- Section 8:** Clarifies that a guardian has the powers and duties of a conservator if a conservator for the estate of the ward has not been appointed Some financial institutions are hesitant to recognize a guardian who has powers and duties of a conservator as this relationship is not specifically defined in state law. This section, which is true under current law although not specifically stated, will clarify any confusion.

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Section 9: Clarifies that a lawyer appointed to represent a ward or respondent may not also serve as a guardian ad litem and deletes the following: “The visitor may be a guardian ad litem or an officer or employee of the court.” Under the Rules of Professional Conduct, an attorney may not perform both the duties of counsel and a guardian ad litem. The deletion of the confusing language in Section 9 removes any confusion.

Current statute places few restrictions on who may be appointed as a court visitor. It is not necessary to identify specifically who may be appointed. A person who acts as a guardian ad litem in one situation, as in Child in Need of Aid cases, may serve as a court visitor in another circumstance. The deleted language neither adds nor subtracts from this practice.

Officers or employees of the court do not currently serve as visitors, but the deletion of this language does not preclude such appointments.

Section 10: Requires the report on the availability of a private guardian or conservator be on an annual basis instead of every six months. Currently state law requires a public guardian to report to the court every six months on the efforts to find a private guardian or conservator; however, this statute is routinely violated. Section 10 still requires a report on the availability of private guardians or conservators, but the report will be on an annual basis instead of every six months.

Section 11: Clarifies that the Office of Public Advocacy may not use improper pressure to influence recommendations.

Section 12: Makes it permissive for the court to appoint a visitor to investigate the issue of whether a patient has the capacity to give informed consent to the administration of psychotropic medication. The current state law requires the Office of Public Advocacy to provide a visitor in every case involving the administration of psychotropic medication within 48 hours – a practical impossibility. The statutory change in Section 12 allows the court full discretion to appoint a visitor whenever appropriate under the circumstances of a particular case.

Section 13: Repeals AS 13.26.112(c) The following subsection is repealed: “The attorney for the ward or respondent may also be the guardian ad litem for the ward or respondent if there no other party readily available and able to serve as a guardian ad litem and whose interests would not conflict with those of the ward or respondent.”

Section 14: Changes to Rule 77, Alaska Rules of Civil Procedure Section 5 has the effect of changing Rule 77, Alaska Rules of Civil Procedure, by requiring that a court conduct a hearing on the appointment of an interim guardian, by establishing when the hearing must be conducted, and by requiring that reasonable notice be given to the respondent and certain other persons.

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Section 15: Clarifies applicability of Senate Bill 190. This Act applies to all proceedings and actions in a guardianship or conservatorship begun on or after the effective date of this Act.

Section 16: Highlights a conditional effect regarding the approval of Sec. 14. AS 13.26.140(h), added by Section 5 may only take effect if the required two-thirds majority approves Section 14 of this Act.

Section 17: **Immediate effective date**