

To: Adam Keller, Court Rules Analyst
From: Undersigned Anchorage Superior Court Judges
Re: Proposed Changes to Probate Rules 22 and 23

We are writing in response to your request for comments on the proposed changes to Probate Rules 22 and 23. These rules deal with Involuntary Mental Health Commitments and the Involuntary Administration of Psychotropic Medication. The undersigned are nine of the Civil Judges on the Anchorage Superior Court.

At the outset we wish to note that the impact of the proposed changes will fall primarily on the Anchorage Probate Masters who twice a week conduct hearings in these matters and on the Anchorage Superior Court civil bench. Virtually all of the petitions for involuntary mental health commitments and/or the involuntary administration of psychotropic medication filed in Alaska are heard in Anchorage. In the first six months of 2010 there were 76 petitions for 30 day involuntary commitments filed in Anchorage and 10 petitions for 90 day commitments. There were 58 petitions for the involuntary administration of psychotropic drugs.¹ The Superior Court Judges most affected by these proposed changes have the heaviest civil caseloads in the state.

¹ The next highest jurisdiction, Fairbanks, had only 9 petitions for 30 day commitments and 3 petitions for the involuntary administration of psychotropic drugs. (Statistics provided by Area Court Administrator)

The goal of the proposed rules seems to be to shorten the time frames for holding hearings in involuntary commitment proceedings, issuing written findings, making objections to these findings, and resolving such objections. These goals are laudable and we support them. However, we strongly oppose the requirement, contained in both proposed rules, that if an objection to the Master's written findings is filed the superior court "shall schedule a hearing to be held within 48 hours where the parties shall make oral argument based upon the existing record." *Requiring* such a mandatory oral argument within 48 hours is extremely disruptive to the crowded docket already facing Anchorage Superior Court Judges and appears to serve no useful purpose.

Currently, if an objection is filed to a Master's written findings and recommendation concerning a petition for involuntary commitment and/or involuntary administration of psychotropic medication the superior court judge assigned to the matter will review the Master's findings and recommendation, the objections thereto, the reply to the objections, and the transcript or electronic recording of the proceedings. See Civil Rule 53; Probate Rule 2:² Wayne B. v. Alaska Psychiatric Institute, 192 P.3d 989 (Alaska 2008) As currently written Probate Rule 2(f)(1) provides the

² No changes are being proposed to Probate Rule 2 or Civil Rule 53 and the proposed rule changes are inconsistent with these rules. We assume that these inconsistencies will somehow be corrected. We also note that only Civil Rule 53(d)(1)(B) requires the court to review a transcript or electronic recording of the portions of the proceedings before the Master that relate to the objections.

“superior court may permit oral argument, order additional briefing or the taking of further evidence or grant a hearing de novo.” This is consistent with other proceedings where the superior court must review on an expedited basis a Master’s findings and recommendation affecting personal liberty. Cf Delinquency Rule 4(f)(1) and (3) (providing for a “next business day” review of a Master’s order for detention or placement outside the home and allowing for oral argument at the court’s discretion) The need for oral argument is generally left to the trial judge’s discretion. Where oral argument is mandatory, see Civil Rule 77(e)(2), the calendaring of such argument is at the judge’s discretion.

A fundamental problem with the rule is it requires only the objections to be filed. Written briefing explaining the objections and citing relevant legal authority is optional. (“If either party wishes to submit written briefing, it shall be filed by the time of the hearing.”) (Emphasis added). It is probable that many respondents will generally note their objections to the Master’s findings and recommendation and provide only a cursory written explanation as to the basis for the objection. Nor is there a requirement that any response be filed to the objections. The drafters of the proposed rule may have structured the rule in this way, expecting the explanations of objections and citation of legal authority could occur at oral argument, rather than burdening the attorneys with the need to file briefs. If this was the intent of

the drafters of the proposed rule, the burden has been shifted to the court and the consequence is that the judges are being asked to make an important and often difficult decision without briefing, based primarily on oral argument. Such a process is not conducive to good judicial decision making, particularly where the decision itself must be made on shortened time.

Given that the superior court judge reviewing the case is required to review the entire file, including the transcript or electronic recording of the hearing before the Master, as well as the written objections themselves, there would appear to be little justification for making briefs discretionary but requiring oral argument rather than requiring briefs to be filed and allowing such argument at the discretion of the judge. Indeed, requiring objections to be completely stated in writing, rather than at oral argument, gives the other side a fairer chance to respond to the objections and allows the court to issue a more considered ruling. If the court believes there are issues that have not been adequately addressed in the briefing then the court, in its discretion, can hold argument within the timeframe set forth in the proposed rule.

We suggest that the proposed rule be modified to provide for the following:

1. If objections are filed, they shall be filed within 48 hours after distribution of the Master's written findings and recommendations or within such additional time as the court may allow. A written brief explaining the

objections and citing relevant law shall be filed with the objections. A request for oral argument may be filed with the objections and the brief. The court may grant oral argument at its discretion.

2. If oral argument is granted or requested by the court it shall be scheduled within 48 hours. (Same as the proposed rule)


3. A response to the objections may be filed by the time of the argument if one is scheduled or within 48 hours of service of the objections, whichever is shorter. (This will keep the timeframe the same as the proposed rule)

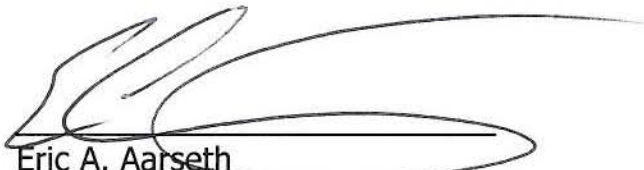
4. Service of pleadings shall be made by fax, email or personal delivery. Service by mail should not be allowed.

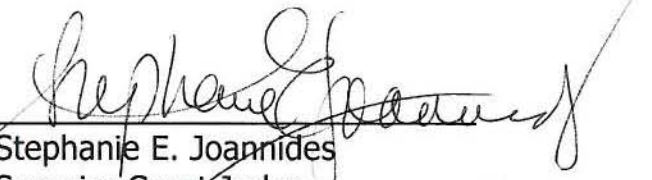
5. The court will rule on the objections within 48 hours of the argument or, if there is no argument, of the filing of the final brief. (Same as proposed rule)

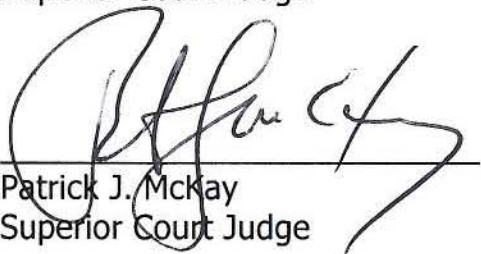
The result of these suggested changes would be to keep the same schedule for prompt resolution of these matters as in the proposed rule, provide for more complete briefing of the issues, and avoid unnecessary disruption of the crowded civil docket under which the court now operates.

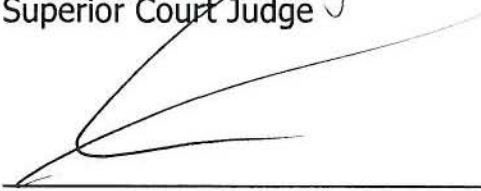
We thank you for the opportunity to comment on these proposed rule changes.


Sharon L. Gleason
Presiding Judge


Eric A. Aarseth
Superior Court Judge

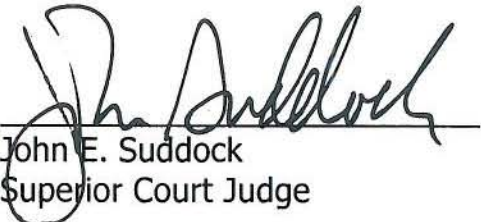

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