

# **UPDATE ON NEW PROBATE RULES**

EAST VALLEY BAR ASSOCIATION

NOVEMBER 15, 2019

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## Attachments:

1. Order Amending the Arizona Rules of Probate Procedure; Continuing Proposed Rule 45 (No. R-18-0044)
2. Petition to Amend the Arizona Rules of Probate Procedure (No. R-18-0044) filed January 30, 2019.
3. Petition to Adopt Rule [28.1] Arizona Rules of Probate Procedure (No. R-18-0037), filed December 3, 2018.
4. Order Adopting on an Emergency Basis New Rule 28.1, Arizona Rules of Probate Procedure (No. R-18-0039), filed December 13, 2018.
5. Supplemental Petition re: Rule 45, filed Sept. 25, 2019.
6. Polk, Hon. Jay, Significant Changes to the Rules of Probate Procedure (Undated, 2019).

1. Order Amending the Arizona Rules of Probate Procedure; Continuing Proposed Rule 45 (No. R-18-0044)

SUPREME COURT OF ARIZONA

In the Matter of	)	Arizona Supreme Court
	)	No. R-18-0044
ARIZONA RULES OF PROBATE	)	
PROCEDURE	)	
_____	)	<b>FILED 08/29/2019</b>
	)	

**ORDER  
AMENDING THE ARIZONA RULES OF PROBATE PROCEDURE;  
CONTINUING PROPOSED RULE 45**

A petition having been filed proposing to amend the Arizona Rules of Probate Procedure in their entirety, upon consideration,

**IT IS ORDERED** that the current Arizona Rules of Probate Procedure be abrogated and replaced with the rules set forth in Attachment A hereto, except for Rule 45, which is continued to the Court’s December 2019 Rules Agenda.

**IT IS FURTHER ORDERED** that the editorial workgroup of the Court’s Task Force on the Arizona Rules of Probate Procedure file a supplemental rule petition on or before October 1, 2019, modifying proposed Rule 45 to provide for a mandatory budget and appropriate timeframes.

**IT IS FURTHER ORDERED** that the supplemental petition be opened for a comment period ending November 1, 2019. Petitioner may file a reply on or before November 15, 2019.

**IT IS FURTHER ORDERED** approving for posting on the Arizona Judicial Branch self-service website Form 2-S (“Supplemental

Order to Guardian with Inpatient Psychiatric Treatment Authority and Acknowledgement"), Form 10 ("Proof of Restricted Account from Financial Institution"), Form 11 ("Probate Information Form for Decedent's Estate"), Form 12 ("Probate Information Form for Guardianship/Conservatorship"), Form 13 ("Notice of Change of Fiduciary's Contact Information"), Form 14 ("Notice of Change of Ward's Contact Information"), and Form 15 ("Authorization to Obtain Certified Copy of a Sealed Document"), all as set forth in Attachment B hereto.

**IT IS FURTHER ORDERED** abrogating current Form 10 ("Proof of Restricted Account from Financial Institution").

**IT IS FURTHER ORDERED** that the new and amended rules and forms will apply to all actions filed on or after January 1, 2020. The new and amended rules and forms also will apply to all actions pending on that date, except to the extent that the court in an affected action determines that applying the amended rule or form would be infeasible or work an injustice, in which event the former rule or form applies.

DATED this 29th day of August, 2019.

\_\_\_\_\_/s/\_\_\_\_\_  
ANN A. SCOTT TIMMER  
Vice Chief Justice

TO:

Rule 28 Distribution

Hon Rebecca White Berch

Kay Radwanski

James E McDougall

Robert Beckett

Bridget O'Brien Swartz

ATTACHMENT A<sup>1</sup>

Arizona Rules of Probate Procedure

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## Correlation Table

<b><u>New</u> probate rule number</b>	<b>Title of the New 2020 Rule</b>	<b><u>Former</u> probate rule number</b>
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20	Conference	new
21	Alternative Dispute Resolution	29
22	Settlement Conference	new
23	Evidentiary Hearing	28(C)
24	Enforcement of Court Orders	35
25	Compliance and Order to Show Cause Hearings	new
26	Proposed Orders, Decrees, and Judgments	15

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28	Disclosure and Discovery	28(B)
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31	Duties of a Fiduciary's Attorney	10(D)
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### **Deleted Rules**

The following pre-2020 rules were deleted and not incorporated within another rule:

<b>Rule #</b>	<b>Rule Title</b>
20	Affidavit of Proposed Appointee
21	Background Check Requirements
26.1	Written Findings on Appointment
30.1	Financial Order

### **Forms**

The Probate Rules refer to the following forms:

<b>Form #</b>	<b>Form Title</b>	<b>In Rule #</b>
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2	Order to Guardian and Acknowledgement	37
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## **Prefatory Comment to the 2020 Amendments**

In Administrative Order 2017-133, the Court ordered a comprehensive review of the Probate Rules, which led to the adoption of these rules. Like the former Probate Rules, the 2020 rules must be construed with the Civil Rules and applicable statutes.

Although these rules are based on an earlier set of Probate Rules, there are significant changes, both stylistic and substantive.

The most obvious change is a reorganization of the rules. The 55 rules are organized by subject matter and presented in the order in which events occur in a probate proceeding. Some provisions have been added, and some former provisions have been abrogated, relocated, consolidated, or bifurcated. The new rules incorporate any important substantive provisions that were contained in the former comments, and therefore most comments have been deleted. The former comments and case law continue to be authoritative unless rendered inapplicable by changes in the 2020 rules. Except for several new rules that have no corollary in the earlier Probate Rules, the correlation table accompanying the 2020 rules identifies the source of each new rule by reference to the former rules.

The other noticeable change is restyling. The new Probate Rules add informative titles and subheadings to make rules and sections easier to locate, and they use clearer language, uniform formatting, and consistent terminology. The wording of an amended rule may vary slightly or substantially from the rule it replaces. The purpose of these differences is to make the new probate rules easier to understand and use.

## **PART I. GENERAL INFORMATION**

### **Rule 1. Scope, Applicability, and Construction**

**Scope.** These rules govern procedures in all probate proceedings in the superior court.

**Applicability.** These rules apply to all persons in a probate proceeding, whether self-represented or represented by an attorney.

**Construction.** The court must enforce and construe these rules in a manner that ensures a consistent, predictable, prompt, efficient, and just resolution of probate proceedings.

### **Rule 2. Definitions**

(a) **“A.C.J.A.”** is the Arizona Code of Judicial Administration.

(b) **“Application”** has the meaning described in Rule 14.

(c) **“A.R.S.”** is the Arizona Revised Statutes.

(d) **“Attend”** means to be present, either personally or by counsel, at a court event.

(e) **“Civil Rules”** means the Arizona Rules of Civil Procedure. A **“Civil Rule”** is a rule in the Arizona Rules of Civil Procedure.

(f) **“Court”** includes a superior court judicial officer, clerk, or court administrator.

(g) **“Court day”** is a day that is not a Saturday, Sunday, or legal holiday.

(h) **“Demand for notice”** means a written request filed with the court by an interested person to be notified of any filings in the probate proceeding.

(i) **“Evidence”** means testimony, documents, objects, or other things offered to prove the existence or nonexistence of a fact.

(j) **“Financial institution”** is defined in A.R.S. § 14-5651.

(k) **“Incapacitated person”** is defined in A.R.S. § 14-5101.

(l) **“Interested person”** is defined by A.R.S. § 14-1201 and includes a party.

(m) **“Judicial officer”** includes a superior court judge, commissioner, or judge pro tempore.

(n) **“Licensed fiduciary”** means a person or entity licensed by the Arizona Supreme Court under A.R.S. § 14-5651.

- (o) **“Medical professional”** means a physician, psychologist, and registered nurse for guardianship and conservatorship proceedings under A.R.S. §§ 14-5303(C) and 14-5407(B), and a psychiatrist or psychologist in a proceeding requesting inpatient treatment authority under A.R.S. § 14-5312.01.
- (p) **“Motion”** is defined in Rule 19.
- (q) **“Oral argument”** is defined in Rule 19.
- (r) **“Party”** is a person who has filed a notice of appearance, an application, a petition, a response, or a joinder in a probate proceeding. An interested person who has filed a demand for notice or a statement of no position—but who has not filed a notice of appearance, a petition, response, or a joinder—is not a party.
- (s) **“Petition”** is described in Rule 15.
- (t) **“Pleading”** means an application, a petition, or a response to a petition.
- (u) **“Protected person”** is defined in A.R.S. § 14-5101.
- (v) **“Protective proceeding”** is defined in A.R.S. § 14-5101.
- (w) **“Statutory representative”** is defined in Rule 32.
- (x) **“Subject person”** is the decedent, alleged incapacitated person, ward, person allegedly in need of protection, or protected person, whose estate or interest is the focus of the proceeding.
- (y) **“Ward”** is defined in A.R.S. § 14-5101.

### **Rule 3. Probate Case and Proceedings**

- (a) **Generally.** These rules distinguish between a probate case and the various proceedings that may occur within the case.
- (b) **Probate Case.** A probate case is a court case initiated by filing a probate proceeding. Each probate case is assigned a unique number by the court clerk. A probate case includes one or more probate proceedings and, subject to the requirements of Rule 6, may include one or more non-probate proceedings. The termination of the initial probate proceeding does not necessarily terminate the probate case.
- (c) **Probate Proceeding.** A probate proceeding is a court proceeding arising under

(1) A.R.S. Title 14, including cases concerning decedents' estates, trusts, guardianships, conservatorships, and related matters, and any associated proceeding for declaratory relief under A.R.S. Title 12, Chapter 10, Article 2; or

(2) A.R.S. Title 36, Chapter 32, regarding living wills and health care directives.

**(d) Non-Probate Proceeding.** A non-probate proceeding is one that may be filed as a separate case but may be appropriately filed within or consolidated with a probate case under Rule 6, such as a civil action, a juvenile proceeding under A.R.S. Title 8, or a family law proceeding under A.R.S. Title 25.

#### **Rule 4. Applicability of Other Rules**

##### **(a) Probate Proceedings.**

(1) **Civil Rules.** The Civil Rules apply to probate proceedings unless they are inconsistent with these probate rules or A.R.S. Title 14.

##### **(2) Rules of Evidence.**

(A) **Contested Hearings.** The Arizona Rules of Evidence apply in contested hearings unless all parties and the court agree those rules will not apply.

(B) **Uncontested Hearings.** The Arizona Rules of Evidence do not apply in uncontested hearings.

(C) **Admissibility of Evidence When the Arizona Rules of Evidence Do Not Apply.** When the Arizona Rules of Evidence do not apply, all relevant evidence is admissible, except the court may exclude any relevant evidence if its probative value is outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, needlessly presenting cumulative evidence, or lack of reliability.

**(b) Non-Probate Proceedings.** In non-probate proceedings, the same procedure and evidence rules apply as if the matter had been litigated as a separate case.

#### **Rule 5. Contested and Uncontested Hearings**

**(a) When a Hearing Becomes Contested.** A hearing becomes contested as described in Rule 15(e).

- (b) **Precluding Evidence at an Uncontested Hearing.** A hearing that is not contested under section (a) is uncontested. At an uncontested hearing, the court may preclude non-moving or non-petitioning parties from presenting evidence in opposition to the motion or petition.
- (c) **Joinder or Statement of No Position.** For purposes of this rule, joinders and statements of no position are not considered written objections.

#### **Rule 6. Non-Probate Proceedings Filed Within or Consolidated with a Probate Case**

- (a) **Requirements.** A non-probate proceeding may be filed within or consolidated with a probate case, under the case number assigned to the probate case, only under one of the following conditions:
- (1) if the probate case involves a decedent's estate, the personal representative must be a party to the non-probate proceeding;
  - (2) if the probate case involves a guardianship or protective proceeding, the subject person's guardian or conservator must be a party to the non-probate proceeding; or
  - (3) if the probate case involves the internal affairs of a trust, the trustee must be a party to the non-probate proceeding.
- (b) **Separate Hearings and Severance.** If a non-probate proceeding has been filed in or consolidated with a probate case, the court may order a separate hearing on one or more issues, or it may sever the non-probate proceeding from the probate case. When ordering a separate hearing, the court must preserve any right to a jury trial.
- (c) **Definition of Party.** As used in this rule, the word "party" means plaintiff, petitioner, defendant, respondent, counterclaimant, counter-defendant, cross-claimant, cross-defendant, third-party plaintiff, third-party defendant, or intervenor in the case filed within or consolidated with a probate case.

#### **Rule 7. Document Captions**

- (a) **Generally.** The first page of every document filed with the court must contain a caption that complies with Civil Rule 5.2(a).
- (b) **Title of the Probate Case.** The title of a probate case must include the following information:
- (1) the name of the subject person or trust; and



(2) if a person, immediately below the subject person's name, the subject person's status as an adult, a minor, or deceased.

**(c) Title of a Non-Probate Proceeding Filed Within or Consolidated with a Probate Case.**

The caption of a document that pertains to a non-probate proceeding filed within or consolidated with a probate case must contain both the title of the probate case and, immediately below that title, the title of the non-probate proceeding.

**(d) Continuation of a Conservatorship or Other Protective Order.** A petition to continue the conservatorship of a minor or other protective order beyond the minor's eighteenth birthday under A.R.S. § 14-5401(B) must be filed in the existing case. If the court grants the petition, the court may order the Clerk to amend the caption to reflect that the conservatorship or protective order is for an adult.

**Rule 8. Confidential Documents and Information**

**(a) Definitions.**

(1) ***"Confidential document"*** means

(A) the Probate Information Form filed under Rule 13;

(B) medical reports and records that are filed in connection with proceedings, including reports and records filed in connection with proceedings under A.R.S. §§ 14-5303, 14-5310, 14-5401.01, or 14-5407, or A.R.S. § 36-3206, or as required by A.R.S. §§ 14-5312.01, 14-5312.02, and 14-5315;

(C) budgets filed under Rule 45;

(D) inventories and appraisements filed under A.R.S. § 14-5418(A);

(E) accountings filed under A.R.S. Title 14;

(F) a credit report; or

(G) any other document that the court orders filed as a confidential document under this rule.

(2) ***"Confidential information"*** means

(A) a social security number of a living person;

(B) any financial account number, unless limited to the last four digits only; or

(C) any other information the court determines is confidential.

- (3) **“Financial account”** includes bank, credit card, debit card, and brokerage accounts; pensions, profit-sharing, or retirement and similar benefit plans; and an insurance policy or an annuity contract.
- (4) **“Redact”** means to edit or obscure text in a document in a manner that prevents it from being read. Redaction must be accomplished so that the redacted information cannot be identified in either paper or electronic formats.

**(b) Access to Confidential Documents.**

- (1) **Generally.** Confidential documents are not part of the public record of a probate case.
- (2) **Probate Information Form.** Only the following persons may access the Rule 13 Probate Information Form:
  - (A) an attorney or a statutory representative appointed by the court to represent the subject person of a guardianship or protective proceeding in which the document has been filed;
  - (B) a court investigator appointed for the probate case in which the Probate Information Form has been filed;
  - (C) judicial officers, court administrative staff, and other court personnel whose official duties require access to confidential information for processing and managing probate cases;
  - (D) the public fiduciary;
  - (E) staff from the Administrative Office of the Courts who are conducting a compliance audit of a fiduciary, or an investigation into alleged misconduct by a licensed fiduciary, under Arizona Code of Judicial Administration § 7-201; and
  - (F) any person authorized by the court, on a showing of good cause, to view or obtain a copy of the confidential document;
- (3) **Other Confidential Documents.** Only the following persons may access other confidential documents:
  - (A) the persons described in subparts (b)(2)(A) through (F);

(B) a party to the probate case in which the document has been filed and that party's attorney or other legal representative; and

(C) a person appointed as a medical professional or accountant for the probate case in which the document has been filed.

**(c) Filing Paper Confidential Documents.** A party filing a paper confidential document must place it in an envelope marked with the case name, the case number, the name of the document being filed, the name of the party filing the document, and the words "Confidential Document." A confidential document referenced in a pleading or motion as an exhibit must state on the envelope the title of that pleading or motion and identify the exhibit number. A party must use a separate envelope for each confidential document. The clerk is not required to review a document to determine whether it is a confidential document.

**(d) Prohibition on Filing Confidential Information.**

(1) **Generally.** Other than in a confidential document, a person must not include confidential information in any document the person files with the court, whether filed electronically or in paper, unless the court orders otherwise or as prescribed by law.

(2) **Responsibility with Filer.** The responsibility for not including or redacting confidential information rests solely with the person filing a document. The clerk and the court are not required to review documents for compliance with this rule, or to seal or redact documents that contain confidential information.

**(e) Motions Concerning Confidential Documents and Information.**

(1) **Available Orders.** On its own or on a party's motion, the court may order that

(A) a document be filed as a confidential document;

(B) a document not be filed as a confidential document;

(C) confidential information contained in a non-confidential document be redacted and, in instances where the document has not yet been filed, the filing party perform the redaction; or

(D) a filed document be destroyed or returned to the filing party and replaced with an identical document with confidential information redacted or removed.

(2) **Motion's Requirements.** A party filing a motion to determine confidentiality must include in the motion:

(A) the title of the document to which the motion pertains;

(B) the date the document was filed; and

(C) why information should be redacted, or the document should be filed as a confidential document.

**(f) Confidential Documents as Hearing Exhibits.** A confidential document may be used as an exhibit, or a part of an exhibit, at any hearing in the probate case in which the confidential document was filed. The party submitting the exhibit for the clerk to mark must identify the document as being, or including, a confidential document, and the clerk must mark it as such. Any exhibit that is, or includes, a confidential document and that is offered into evidence is governed by section (b).

**(g) Sanctions.** The court may impose appropriate sanctions on a person who violates this rule.

### **Rule 9. Sealing and Unsealing Court Documents**

**(a) Procedure.** The procedure for sealing and unsealing documents in a probate case is governed by Civil Rule 5.4.

**(b) Access to Sealed Documents.** Court documents that are sealed in a probate case may be examined only by judicial officers or those persons identified in Rule 8(b)(2)(E). Access to sealed documents by court staff or clerk staff may be determined by local administrative order. Parties and the public may access sealed documents only by court order, except that certified copies of any sealed order appointing the fiduciary, sealed acceptance of appointment, sealed proof of completion of training, and sealed letters of the fiduciary's appointment may be obtained without a court order by the following persons:

(1) the court appointed fiduciary,

(2) that fiduciary's attorney, or

(3) a person authorized by the fiduciary or the fiduciary's attorney upon presentation of a completed Form 15, Authorization to Obtain Certified Copy of a Sealed Document.

### **Rule 10. Acknowledgment of a Consent, Waiver, Renunciation, or Nomination**

**(a) Acknowledgment Required.** The following documents must be signed by the interested person and acknowledged by a notary public or a judicial officer, or other person who is legally authorized to verify the identity of the signer:

- (1) the waiver of any right, including a waiver of notice, waiver of priority for appointment, or waiver of bond;
- (2) a renunciation of the right to appointment as a guardian, conservator, personal representative, or trustee;
- (3) the nomination of a person to serve as a guardian, conservator, personal representative, or trustee; and
- (4) if the signer is self-represented, in addition to the documents listed in (1), (2), and (3), a consent to, joinder in, or statement of no position regarding a petition or application.

**(b) Disclaimers.** The requirements of this rule do not apply to a disclaimer of property executed under A.R.S. §§ 14-10001 to 14-10018.

### **COMMENT TO 2020 AMENDMENTS**

A.R.S. § 33-511 lists those who may take acknowledgments within the State of Arizona.

#### **Rule 11. Personal Service of Documents**

**(a) Personal Service on the Subject Person of a Guardianship or Protective Proceeding;**

**Waiver.** Whenever A.R.S. Title 14 requires personal service of a document on the subject person of a guardianship or protective proceeding, service must be made by a person authorized in Civil Rule 4(d), and the subject person may waive service only in accordance with A.R.S. §§ 14-5309(B) or 14-5405(B).

**(b) Personal Service on Other Persons.** Whenever A.R.S. Title 14 requires personal service of a document on any other person, service must be made under Civil Rules 4, 4.1, and 4.2.

**(c) Personal Service When a Money Judgment Is Requested.** If a petition requests that the court enter a money judgment against a person, service of a copy of the petition and a copy of the notice of the initial hearing on that petition must be made on that person under Civil Rules 4, 4.1, and 4.2.

#### **Rule 12. Telephonic and Video Attendance and Testimony**

**(a) Definitions.**

- (1) **“Proceeding.”** When used in this rule, “proceeding” means a court event that interested persons or their attorneys have an opportunity to attend. These events include, but are not limited to, a trial, hearing, oral argument, and conference.

(2) **“Telephonic.”** When used in this rule, “telephonic” means by telephone, video conferencing, or other available audio or audiovisual technology.

**(b) When Permitted.** Parties and their attorneys are expected to appear in open court for court proceedings unless the court, in its discretion, permits telephonic attendance under this rule. The court may allow a person to telephonically attend, or testify at, a proceeding if both of the following are true:

(1) the person can be heard by every other person participating in the proceeding, including the judicial officer and, if applicable, the court reporter or an electronic recording system; and

(2) no party will be unfairly prejudiced by the telephonic attendance or testimony.

**(c) How Requested.** Unless otherwise ordered by the court, a person who wishes to telephonically attend or testify at a proceeding must either file a written motion or make an oral motion in open court. The request may be for a particular proceeding or for multiple proceedings. A written motion made under this rule must be served on all parties and any person who has filed a demand for written notice and must be accompanied by a proposed order.

**(d) Time for Making Request.** Unless otherwise provided by local rule, a written or oral motion to allow telephonic attendance or testimony must be made in a timely manner considering the circumstances at the time the request was made. Circumstances may include but are not limited to (1) the promptness of the party in making the request; (2) the nature of the proceeding, including whether it is contested or evidentiary; (3) whether all other parties agree to the telephonic attendance or testimony; (4) the reason why telephonic attendance or testimony is being requested; and (5) logistical factors.

**(e) Objection to Request.** A party opposing a written motion made under this rule must file a response no later than 5 court days after the motion is served. The court may modify or waive this time limit.

**(f) Ruling.** The court may rule on a written motion made under this rule before a response is filed, and without a reply or oral argument.

**(g) Use of Exhibits During Telephonic Testimony.** Unless otherwise ordered by the court, before a party may question a person testifying telephonically about an exhibit, that party must:

- (1) have provided that person and all parties, in advance, with a copy of that exhibit, marked so that it can be easily identified by that person, all parties, and the court; and
- (2) confirm to the court that the exhibit provided to the court is identical to the exhibit provided to the person who is testifying telephonically.

**(h) Costs of Telephonic Attendance or Testimony.** The person requesting telephonic attendance or testimony must arrange it, and, unless the court orders otherwise, pay the related costs.

### **COMMENT TO THE 2020 AMENDMENTS**

A party should carefully consider a request to present telephonic testimony in a contested matter. Demeanor while testifying is an important factor used by the court to assess a witness's credibility. A party who offers a witness by telephone may be at a disadvantage if the testimony is contradicted by a witness who testifies in person.

## **PART II. INITIATION OF PROBATE PROCEEDINGS**

### **Rule 13. Probate Information Form and Notice of Change of Contact Information Form**

**(a) Definitions.** For purposes of this rule,

- (1) ***“Contact information”*** means the information designated on the Probate Information Form as contact information; and
- (2) ***“Fiduciary”*** means a personal representative, guardian, or conservator, whether temporary or permanent.

**(b) Probate Information Form.**

- (1) ***Generally.*** A party who requests the appointment of a personal representative must file Form 11, Probate Information Form for Decedent's Estate. A party who requests the appointment of a guardian or conservator, whether temporary or permanent, must file Form 12, Probate Information Form for Guardianship/Conservatorship.
- (2) ***Confidentiality.*** The court must maintain a Probate Information Form filed under this rule as a confidential document under Rule 8.
- (3) ***No Service.*** Except as required by the court, a party who files a Probate Information Form is not required to provide other parties or interested persons with a copy of the form.

- (4) ***Non-Compliance.*** The clerk may not reject a petition or application because the filing party failed to provide all the information required in the Probate Information Form.
- (5) ***Duty to Correct.*** A party who has filed a Probate Information Form and who subsequently discovers that the date of birth or social security number contained in that Probate Information Form is incorrect must file an amended Probate Information Form with the correct information within 10 court days after discovery.

**(c) Notice of Change of Contact Information.**

**(1) *Generally.***

- (A) *Change in Contact Information for Fiduciary.*** If a fiduciary's contact information changes during the fiduciary's appointment in a probate case, the fiduciary must file Form 13, Notice of Change of Fiduciary's Contact Information, within 10 court days after such change occurs.
- (B) *Change in Contact Information for Ward.*** If a ward's contact information changes, the ward's guardian must file Form 14, Notice of Change of Ward's Contact Information, within 3 court days of learning of such change.

- (2) ***No Confidentiality.*** Unless the court orders otherwise, a Notice of Change of Contact Information filed under this rule must be maintained as part of the public record.
- (3) ***Service.*** Unless the court orders otherwise, a person who files the Notice of Change of Contact Information Form must mail or deliver a copy to the subject person's court-appointed attorney, the subject person's statutory representative, and all parties to the probate case in which the form has been filed.
- (4) ***Non-Compliance.*** Absent good cause, the fiduciary must pay all costs of the court or the estate that result from a failure to timely provide a Notice of Change of Contact Information.

**Rule 14. Applications**

**(a) Meaning of "Application."** An "application" is a written request authorized by statute made to a registrar in a probate proceeding, usually without advance notice to interested persons, to

- (1) informally admit a will to probate or informally appoint a personal representative under A.R.S. §§ 14-3301 to 14-3311;



- (2) informally appoint a special administrator under A.R.S. § 14-3614(1);
- (3) issue a certificate of discharge under A.R.S. § 14-3937;
- (4) informally appoint a personal representative to administer a later discovered asset under A.R.S. § 14-3938;
- (5) grant a conservator the authority to exercise the powers and duties of a personal representative and endorse the conservator's letters under A.R.S. § 14-5425(D); or
- (6) take any other action authorized by statute.

**(b) Form of Application.** An application must contain statements required by statute and must comply with Civil Rules 5.2(a), 5.2(b), 8(a), 8(e), 10(b), and 11.

**(c) Action upon Application.**

- (1) *By the Clerk.* The clerk must file and retain the application, including any original will submitted with the application. Any amended application or subsequent petition relating to the same decedent must be filed under the same case number as that assigned to the prior application.
- (2) *By the Registrar.* The probate registrar must promptly approve or deny the application. When the registrar denies an application, the registrar must file a statement with reasons for the denial and provide a copy of the statement to the applicant.

**(d) Notice.** The applicant must provide timely notice as required by statute and must file proof of having given notice with the court.

**(e) Objection to Application.** Any interested person who opposes the relief requested in an application must file a petition.

## **Rule 15. Petitions**

**(a) Meaning of "Petition."** A "petition" is a written request to a judicial officer for substantive relief in a probate proceeding, usually requiring advance notice to interested persons and a hearing. "Petition" includes a counter-petition, cross-petition, and third-party petition.

**(b) Form of Petition.** A petition must contain statements required by statute and must comply with Civil Rules 5.2(a), 5.2(b), 8(a), 8(e), 9, 10(b), and 11.

- (c) **Initial Hearing Date.** The petitioner must obtain from the court a date, time, and location for an initial hearing on the petition. Failure to obtain an initial hearing date may result in dismissal of the petition, as provided in Rule 18.
- (d) **Notice of Hearing on the Petition.** The petitioner must provide notice of the initial hearing as required by A.R.S. Title 14 and Rule 16 and must file proof of having given notice.
- (e) **Contested Proceeding; Response.** A probate proceeding becomes contested when an interested person opposes a petition as follows:
- (1) **Written Response.** An interested person who opposes the relief requested in a petition should file a response that objects to the petition, or a motion under Civil Rule 12, no later than 7 calendar days before the initial hearing on the petition.
  - (2) **Oral Response.** If an interested person does not timely file a written response before the initial hearing on the petition, that person must attend the hearing, orally respond to the petition at the hearing, and file a written response that objects to the petition, or a motion under Civil Rule 12, within 14 calendar days after the initial hearing or as the court orders.
  - (3) **Form of Written Response.** A written response must comply with Civil Rules 5.2(a), 5.2(b), 8(c), 8(d), 8(e), 9, 10, and 11.
  - (4) **Notice of Response.** Unless the court orders otherwise, a person who files a written response to a petition must serve a copy of the response on all other parties as provided by Civil Rule 5.
- (f) **Joinder or Statement of No Position.** An interested person who agrees that the court should grant the relief requested in a petition or response may file a notice of joinder. Any person who takes no position concerning the requested relief may file a statement of no position. Alternatively, a notice of joinder or statement of no position may be made in open court and filed within the times and in the manner provided by section (e).
- (g) **Reply.** Unless the court directs otherwise, a party may not file a reply to a response, joinder, or statement of no position.
- (h) **Copy to the Assigned Judicial Officer.** When filing a petition, response, reply, or other document under this rule, the filing party must provide a copy of the filed document to the assigned judicial officer.

- (i) **Request for Accelerated Hearing.** A party requesting an accelerated hearing on a petition must file a separate motion that states the legal authority and factual circumstances supporting the request. The motion may incorporate by reference relevant allegations in the petition. The petitioner must provide the assigned judicial officer a copy of the motion, a copy of the petition, and a proposed order accelerating the hearing. The court may rule on the motion requesting an accelerated hearing without awaiting a response or setting oral argument. Section (h) does not apply to a petition under Rule 44 that requests the appointment of a temporary guardian or conservator.
- (j) **Ex Parte Petitions.** Any petition that seeks relief without prior notice to interested persons must contain the words “ex parte” in its title. The petitioner must state in the petition the legal authority and factual circumstances that authorize the court to rule on the request without prior notice to interested persons.

#### **Rule 16. Notice of Initial Hearing on Petition**

(a) **Required Content.** The notice of an initial hearing on a petition required by Rule 15(d) must state:

- (1) the title of the petition to be heard;
- (2) the date, time, and place of the initial hearing; and
- (3) the name of the judicial officer before whom the petition is set for hearing.

(b) **Required Warning.** The notice must include the following warning:

This is a legal notice; your rights may be affected. [Éste es un aviso legal. Sus derechos podrían ser afectados.]

You are not required to attend this hearing. However, if you oppose any of the relief requested in the petition that accompanies this notice, you must file with the court a written response at least 7 calendar days before the hearing date or you or your attorney must attend the hearing. Any written response must comply with Rule 15(e) of the Arizona Rules of Probate Procedure. If you do not file a timely response or attend the hearing:

- (1) the court may grant the relief requested in the petition without further proceedings, and
- (2) you will not receive additional notices of court proceedings relating to the

petition unless you file a demand for notice pursuant to Title 14, Arizona Revised Statutes.

**(c) Required Copy of the Petition.** Except for notices that are published, the notice must be accompanied by a copy of the petition that is the subject of the initial hearing, unless the court orders otherwise or the person being served waives this requirement.

**(d) Petition for the Confirmation of a Sale of Real Estate.**

**(1) Notice of Hearing.** In addition to the information required by sections (a) and (b), a notice of an initial hearing on a petition for the confirmation of a sale of real estate must contain the following information:

**(A)** the name and telephone number of the petitioner or the petitioner's attorney;

**(B)** the proposed sales price; and

**(C)** a statement that the court may consider other bids at the hearing.

**(2) Providing, Posting, and Publishing the Notice.**

**(A) Providing the Notice to Interested Persons.** The notice of the hearing must be provided to all interested persons as required by A.R.S. § 14-1401(A), unless the court orders otherwise.

**(B) Posting and Publication.** The court also may require either or both of the following to be done at least 14 calendar days before the hearing:

**(i)** that the notice of hearing be posted on the property to be sold, and

**(ii)** that the notice of hearing be published in a newspaper of general circulation in the county in which the property is located.

**(C) Placement of Posted Notice.** If the court orders that notice of the hearing be posted on the property, the notice must be posted in a place that is visible from the front of the property and, if the property is a structure, in a place that is visible from outside the structure.

**(e) Inapplicability of Civil Rule 6(c).** The provisions of Civil Rule 6(c) do not apply to a notice of hearing in a probate proceeding.

## **Rule 17. Initial Hearing on a Petition**

### **(a) Attendance at the Initial Hearing.**

- (1) ***Petitioner.*** The petitioner must attend the initial hearing on a petition unless the court has specified otherwise.
- (2) ***Other Interested Persons and Their Attorneys.***
  - (A) ***No Opposition to Relief Requested in Petition.*** Unless the court has specified otherwise, an interested person who does not oppose the relief requested in the petition is not required to attend the initial hearing.
  - (B) ***Opposition to Relief Requested in Petition.*** An interested person who opposes the relief requested in the petition must attend the initial hearing unless the interested person has filed a written response to the petition at least 7 calendar days before the hearing. If the interested person attends the initial hearing, the interested person must notify the court of such person's presence and opposition to the petition.

### **(b) Procedure at Initial Hearing.**

- (1) ***No Opposition.*** If no interested person has opposed the relief requested in the petition as provided in Rule 15, the court may decide the issues raised in the petition at the initial hearing without setting additional court events.
  - (2) ***Opposition.*** If an interested person has opposed the requested relief as provided in Rule 15, the clerk must note the opposition in the court's minutes and the court must follow the procedures set forth in Rules 27-29 relating to contested matters.
- (c) **Evidence.** Evidence may not be presented at the initial hearing if the court has specified that the petitioner is not required to attend the hearing. However, if the petitioner attends the initial hearing, evidence may be presented upon agreement of the parties.

## **Rule 18. Dismissal for Failure to Obtain a Hearing Date**

- (a) **Administrative Dismissal of Petition.** If the petitioner has not, within 60 days after filing a petition, obtained an initial hearing date, the court must notify petitioner, and anyone filing a demand for notice, that the petition may be administratively dismissed 30 days from the date of the court's notice, unless within that 30 days the petitioner has obtained a hearing date or an extension of the dismissal date. This provision does not apply to a petition subject to court accountant review.

**(b) Effect of Dismissal.**

- (1) ***Only Petition Filed in the Case.*** An order administratively dismissing the only petition filed in a probate case is a dismissal without prejudice of the entire case.
- (2) ***Other Petitions Filed in the Case.*** When more than one petition has been filed in a probate case, an order administratively dismissing one petition dismisses only that petition without prejudice.

(c) **Dismissal Authority.** The court's authority to issue notices and to dismiss petitions and cases under this rule may be performed by court administration or by an appropriate electronic process under the court's supervision.

### **PART III. SUBSEQUENT EVENTS AND ACTIONS**

#### **Rule 19. Motions and Oral Argument**

**(a) Definition.**

- (1) ***"Motion"*** is a request made by a party to a judicial officer that seeks procedural rather than substantive relief.
- (2) ***"Oral argument"*** is an event at which the parties argue their positions in support of, or in opposition to, a motion.

(b) **Copy to the Assigned Judicial Officer.** When filing a motion, response, or reply, the filing party must provide a copy of the filed document to the assigned judicial officer.

(c) **Rulings on Motions.** Unless required by the Civil Rules, a judicial officer may rule on a motion without a hearing or oral argument.

(d) **Setting Oral Argument.** The court may set oral argument if requested by a party, or on the court's own motion.

(e) **Notice of Oral Argument.** The court must notify the parties of the date, time, and place of an oral argument, but it is not required to provide notice to an interested person unless the interested person has filed a demand for notice.

(f) **Attendance at Oral Argument.** Parties must attend the oral argument unless the court orders otherwise.

- (g) **Evidence.** Evidence that was not submitted with a motion, response, or reply, or live testimony of witnesses, may not be presented at an oral argument.
- (h) **Accelerated Ruling on Motion.** If a party requests an accelerated ruling on a motion, the motion must contain the words “Accelerated Ruling Requested” below its title. The motion must describe the legal authority and factual circumstances supporting the request for an accelerated ruling. The court may summarily grant or deny the request.
- (i) **Ex Parte Motion.** Any motion that seeks relief without prior notice to interested persons must contain the words “ex parte” in its title. The moving party must state in the motion the legal authority and factual circumstances supporting the ex parte request.

## **Rule 20. Conference**

- (a) **Definition.** A “conference” is an event at which the court and the parties discuss the status and scheduling of a court proceeding or any other matter as determined by the court and the parties. “Conference” includes a pretrial conference, a scheduling conference, and a status conference, but not a settlement conference under Rule 22.
- (b) **Setting a Conference.** The court may set a conference if requested by a party or on the court’s own motion.
- (c) **Notice of a Conference.** The court must notify the parties of the date, time, and place of a conference, but it is not required to provide notice of the conference to an interested person unless the interested person has filed a demand for notice.
- (d) **Attendance at a Conference.** Parties must attend a conference unless the court orders otherwise.
- (e) **Evidence.** Although the parties may state their positions at a conference, they may not present evidence.

## **Rule 21. Alternative Dispute Resolution**

- (a) **Generally.** On a party’s motion or on its own, the court may order the parties to participate in one or more alternative dispute resolution processes, such as a settlement conference or, if the parties agree, private mediation or a form of arbitration.
- (b) **Duty to Confer and Participate.** The parties must make a good faith effort to agree on an alternative dispute resolution process. If they participate in an alternative dispute resolution process, they must do so in good faith.

(c) **Compulsory Arbitration Not Required.** Unless the parties agree otherwise, they are not subject to compulsory arbitration under Civil Rules 72 through 77.

## **Rule 22. Settlement Conference**

(a) **Definition.** A “settlement conference” is a court event at which a judicial officer attempts to facilitate a voluntary settlement between the parties.

(b) **Setting a Settlement Conference.** The court may set a settlement conference on request of any party or on the court’s own motion.

(c) **Notice of a Settlement Conference.** The court must notify the parties of the date, time, and place of a settlement conference, but it is not required to provide notice to an interested person, even when the interested person has filed a demand for notice.

(d) **Attendance at a Settlement Conference.** All parties and their attorneys must attend a settlement conference unless the court orders otherwise.

(e) **Record.** Settlement discussions are not recorded by a court reporter or an electronic recording system. If the parties reach a settlement, the terms of the settlement must either be placed on the record and entered in the minutes or be included in a writing signed by the parties.

(f) **Communication with Parties.** The judicial officer may communicate with each party during the conference outside the presence of the other parties.

(g) **Evidence.** Documents or other things may be presented to the judicial officer who is conducting the settlement conference, but those items are not admitted into evidence. Testimony may be taken only in support of, or to make a record of, the parties’ agreement.

## **Rule 23. Evidentiary Hearing**

(a) **Definition.** An “evidentiary hearing” is a court event held after an initial hearing at which the parties present evidence for a determination of factual issues. An evidentiary hearing includes a trial.

(b) **Setting of an Evidentiary Hearing.** If the court does not decide at the initial hearing all the issues raised in a petition, the court may set an evidentiary hearing on the remaining issues.

(c) **Notice of an Evidentiary Hearing.** Unless the court orders otherwise, the court must notify the parties of the date, time, and place of an evidentiary hearing, but it is not required to



provide notice to an interested person unless the interested person has filed a demand for notice.

**(d) Procedure at an Evidentiary Hearing.** To the extent not inconsistent with these rules or A.R.S. Title 14, the Civil Rules governing trial procedures apply to evidentiary hearings in probate proceedings.

#### **Rule 24. Enforcement of Court Orders**

**(a) Generally.** In addition to the court's inherent powers to enforce compliance with court orders and to impose sanctions provided in statutes and in Civil Rule 37, the court may issue arrest warrants and orders to show cause.

**(b) Civil Arrest Warrants.** Pursuant to Civil Rule 64.1, the court may issue a civil arrest warrant to obtain the appearance of a person when that person has failed to appear after receiving actual notice of an order or subpoena to appear at a specific time and location that included a warning that the failure to appear might result in the issuance of a civil arrest warrant.

**(c) Fiduciary Arrest Warrants.** Pursuant to A.R.S. § 14-5701, the court may issue a fiduciary arrest warrant to obtain the fiduciary's appearance when that fiduciary has failed to appear in court after receiving actual notice of an order to appear at a specific time and location that included a warning that the failure to appear might result in the issuance of a fiduciary arrest warrant.

**(d) Orders to Show Cause.** The court may issue an order to show cause to address problems arising from a party's failure to discharge duties or obligations required by court order, court rule, or statute. The procedure for the hearing is governed by Rule 25(b).

**(e) Criminal Contempt.** This rule does not govern criminal contempt sanctions.

#### **Rule 25. Compliance and Order to Show Cause Hearings**

**(a) Compliance Hearing.**

**(1) Definition.** A "compliance hearing" is a court event to determine whether a party has complied with a court order.

**(2) Setting of Compliance Hearing.** The court may set a compliance hearing whenever the court determines such a hearing is appropriate.

- (3) ***Notice of Compliance Hearing.*** The court must notify the parties of the date, time, and place of the compliance hearing, but it is not required to provide notice to an interested person unless the interested person has filed a demand for notice.
- (4) ***Attendance at Compliance Hearing.*** Unless the court orders otherwise, only the person who was ordered to perform the task that is the subject of the compliance hearing, and that person's attorney, must appear at the compliance hearing.
- (5) ***Evidence.*** The court may receive evidence to determine whether a person has complied with the court's order.

**(b) Order to Show Cause Hearing.**

- (1) ***Definition.*** An "order to show cause hearing" is a court event to address a party's or a fiduciary's failure to discharge duties or obligations required by court order, court rule, or statute.
- (2) ***Setting of Order to Show Cause Hearing.*** The court may set an order to show cause hearing on the filing of an application and affidavit that comply with Civil Rule 7.3, or on the court's initiative. The court must set a specific date, time, and place for the order to show cause hearing.
- (3) ***Notice of Order to Show Cause Hearing.*** Notice of an order to show cause hearing must be served in accordance with Civil Rule 7.3.
- (4) ***Evidence.*** The court may receive evidence at an order to show cause hearing.

**Rule 26. Proposed Orders, Decrees, and Judgments**

- (a) **Definitions.** A "proposed order" means any order, decree, or judgment that has not been signed by a judicial officer.
- (b) **Generally.** This rule rather than Civil Rule 5.1(d) applies to the submission of proposed orders.
- (c) **Form of Proposed Order.** A proposed order must comply with the requirements of Civil Rule 5.2. On the signature page, there must be at least two lines of text above the signature line. A proposed order ruling on a petition must state the hearing date on that petition immediately below the order's title.

**(d) Time to Submit.** A proposed order must be submitted to the assigned judicial officer at least 5 court days before the hearing.

**(e) Service and Filing.**

(1) A proposed order must be served on all parties when it is submitted to the court.

(2) A party must lodge a proposed order when directed by the court or required by rule and may file it under subpart (e)(3) only to preserve the record on appeal.

(3) A party may file a proposed order only as an attachment or exhibit to a filing. The clerk may not file a proposed order unless it is an attachment or an exhibit.

**(f) Duty to Provide Copies and Envelopes.** Unless the court orders otherwise, the party submitting the proposed order must include with it copies to be conformed and postage-paid envelopes addressed to each party who has entered an appearance in the case.

**(g) Stipulations and Motions; Proposed Forms of Order.**

(1) *Stipulations.* All written stipulations must be accompanied by a proposed order. If the proposed order is signed and entered, no minute entry need issue.

(2) *Motions.* If a motion is accompanied by a proposed order, no minute entry need issue if the order is signed and entered.

## **PART IV. CONTESTED PROCEEDINGS**

### **Rule 27. Management of Contested Probate Proceedings**

**(a) Generally.** If a petition is contested, the court must either

(1) enter an order setting litigation deadlines; or

(2) order the parties to confer and set a deadline for the parties to file a joint report and proposed scheduling order as described in this rule.

**(b) Duty to Confer.** If the court orders the parties to confer, the parties must discuss the following:

(1) agreements that could aid in the just, speedy, and inexpensive resolution of the case, including resolution by means other than litigation;

- (2) anticipated disclosures concerning witnesses, including the number of fact witnesses, whether the parties intend to use expert witnesses, and how much deposition testimony will be necessary;
- (3) anticipated disclosures of documents, including any issues already known to them concerning electronically stored information; and
- (4) motions they expect to file, and whether any of the motions can be avoided by stipulations, amendments, or other cooperative activity.

**(c) Contents of the Joint Report.** The joint report must state, to the extent practicable, the parties' positions on the subjects set forth in sections (b) and (d) of this rule. In addition, the joint report must state whether any party has demanded a jury trial under Rule 29, and if so, whether any other party disputes the right to a jury trial. The joint report may include any other matters a party deems appropriate. However, in the joint report, the parties must not discuss details of settlement negotiations, criticize the rejection of proposed agreements, or argue that another party has taken unreasonable positions. A party's signature, or authorized signature, on the joint report is the party's certification that the party conferred in good faith regarding the subjects set forth in this rule.

**(d) Contents of the Proposed Scheduling Order.** The parties must submit a proposed scheduling order with their joint report. The proposed scheduling order must specify deadlines for the following by month, day, and year:

- (1) serving initial disclosures under Civil Rule 26.1, if disclosure statements have not already been served or waived;
- (2) identifying areas of expert testimony;
- (3) identifying and disclosing expert witnesses and their opinions under Civil Rule 26.1(d);
- (4) propounding written discovery;
- (5) disclosing nonexpert witnesses;
- (6) completing depositions;
- (7) completing all discovery other than depositions;
- (8) final supplementation of Civil Rule 26.1 disclosures;
- (9) a settlement conference or private mediation, if ordered by the court;

- (10) filing dispositive motions;
- (11) filing a joint pre-trial statement, if ordered by the court; and
- (12) the earliest date the parties will be ready for trial, including the anticipated number of days for trial.

(e) **Contents of Scheduling Order.** In addition to the items listed in section (d), the scheduling order must include either a trial date or a date for a trial-setting conference under Civil Rule 16(e). The parties may modify the dates established in a scheduling order only by court order for good cause.

## **Rule 28. Disclosure and Discovery**

### **(a) Generally.**

- (1) Unless inconsistent with these rules, Civil Rules 26 through 37 apply to disclosure and discovery in contested probate proceedings, except that Civil Rule 26(f)(1) is replaced by subpart (a)(2) of this rule, and Civil Rule 26.2 is replaced by section (b) of this rule.
- (2) A party may not seek discovery from any source, including nonparties, unless
  - (A) a petition is pending before the court;
  - (B) authorized by section (e) of this rule;
  - (C) authorized by statute; or
  - (D) the court orders otherwise.

(b) **Presumptive Limits.** Unless the court orders otherwise, each side in a probate proceeding is presumptively limited to the following discovery:

- (1) **Interrogatories.** 20 interrogatories, with each subpart of a nonuniform interrogatory counted as a separate interrogatory.
- (2) **Request for Admissions.** 10 requests.
- (3) **Requests for Production.** 10 requests.
- (4) **Depositions of Fact Witnesses.** 10 hours total.
- (5) **Depositions of Expert Witnesses.** 4 hours for each expert. For purposes of this rule, a treating physician is an expert witness.

- (c) **Limits by Court Order.** The court on its own or on a party's motion may modify the presumptive limits in section (b).
- (d) **Attorney Fees Claim.** For purposes of a claim for attorney fees, discovery taken by a party within the limits of this rule does not establish that the discovery was necessary or that the time expended on that discovery was reasonable.
- (e) **Fiduciary Subpoena Authority.** Even when no contested matter is pending, any of the following persons, in furtherance of that person's duties, may request the clerk to issue a subpoena to produce materials or permit inspections:
- (1) a public fiduciary ordered by the court to conduct an investigation;
  - (2) a licensed fiduciary appointed by the court as a guardian, conservator, or personal representative;
  - (3) an unlicensed fiduciary expressly authorized by the court to request the subpoena; or
  - (4) the attorney representing a guardian, conservator, or personal representative, regardless of whether that fiduciary is licensed.

A person who requests the issuance of a subpoena under this rule must comply with the applicable requirements of Civil Rule 45.

### **Rule 29. Demand for Jury Trial**

- (a) **Demand.** On any issue triable of right by a jury, a party may obtain a jury trial by filing a written demand at any time after the proceeding is commenced, but no later than 30 days after the initial hearing on the petition. The demand may not be combined with any other motion or pleading.
- (b) **Specifying Issues.** In its demand, a party must specify the issues for which it requests a jury. The party is deemed to have waived a jury trial on all issues not specified in the demand. If a party has demanded a jury trial on only some issues, any other party, within 10 court days after the demand is served or within a shorter time ordered by the court, may file a demand for jury trial on any other issues triable of right by a jury.
- (c) **Waiver; Withdrawal.** A party waives a jury trial unless its demand is properly filed. A proper demand may be withdrawn only if all parties consent.

- (d) If a Demand Is Made.** If a jury trial is properly demanded on an issue, the issue must be tried by jury unless
- (1) all parties file a stipulation to a nonjury trial or so stipulate on the record; or
  - (2) the court finds that the issue is not triable by jury as a matter of right.
- (e) If No Demand Is Made.** The court must try all issues on which a jury trial is not properly demanded.
- (f) Advisory Jury; Jury Trial by Consent.** Even if an issue is not triable of right by a jury, the court may order the issue tried by a jury. The jury's decision on the issue will be advisory only, unless the parties agree that the jury's decision will be binding.

## **PART V. GENERAL ROLES AND DUTIES OF PARTICIPANTS**

### **Rule 30. Representation of Parties**

- (a) Self-Represented Parties.** A person may represent himself or herself. A self-represented party must provide the court with a current mailing address, email address, and telephone number, and notify the court of any change in that information.
- (b) Limitation.** Unless a person is an active member of the State Bar of Arizona or an attorney who has been admitted *pro hac vice* under the Rules of the Arizona Supreme Court, that person may not represent someone else.
- (c) Fiduciaries.** A non-lawyer serving as a fiduciary may represent himself or herself in that capacity.

### **Rule 31. Duties of a Fiduciary's Attorney**

- (a) Duty to Minimize Legal Expenses.** To minimize legal expenses, a fiduciary's attorney must encourage the fiduciary to take actions the fiduciary is authorized to perform rather than have the attorney perform them.
- (b) Duty upon Withdrawal.** A fiduciary's attorney who moves to withdraw must comply with Civil Rule 5.3 and must inform the court of any issues pending in the probate case and whether all required reports, inventories, accounts, and documents have been filed.

## **Rule 32. Statutory Representative**

- (a) **Definition.** “Statutory representative” means a person appointed under A.R.S. § 14-1408 and includes the role traditionally described as a guardian ad litem.
- (b) **Generally.** The court may appoint a statutory representative as authorized by A.R.S. § 14-1408.
- (c) **How Requested.** If a party requests the appointment of a statutory representative, the party must file a verified petition that states with specificity the following:
- (1) whether the person for whom the statutory representative is requested is a minor, an incapacitated person, an unborn child, or a person whose identity or location is unknown; and
  - (2) why that person’s interest is not represented under A.R.S. §§ 14-1404 through 14-1407, or why otherwise available representation is inadequate.
- (d) **Notice of Hearing.** The petitioner must give notice of the hearing to all interested persons as set forth in A.R.S. § 14-1401. In addition:
- (1) **Minor.** If the petitioner requests appointment of a statutory representative for a minor, the petitioner must give notice as set forth in A.R.S. § 14-5207(A).
  - (2) **Incapacitated Person.** If the petitioner requests appointment of a statutory representative for an alleged incapacitated person, the petitioner must give notice as set forth in A.R.S. § 14-5309.
  - (3) **Person Whose Identity or Location is Unknown.** If the petitioner requests appointment of a statutory representative for a person whose identity or location is unknown, the petitioner must give notice as set forth in A.R.S. § 14-1401(A)(3).
- (e) **Appointment of Statutory Representative for Subject Person of Adult Guardianship or Protective Proceeding.** The court must not appoint a statutory representative for the subject person of an adult guardianship or protective proceeding unless the court, after notice and hearing, has found that the subject person is an incapacitated person as defined in A.R.S. § 14-5101 or is a person in need of protection under § 14-5401(A)(2).
- (f) **Order.**
- (1) **Required Provisions.** An order appointing a statutory representative must state:
    - (A) the basis for the appointment;



(B) the appointment's scope and duration;

(C) whether the representative will represent the person or the best interests of the person; and

(D) any applicable terms of compensation.

(2) ***Additional Provisions.*** An order appointing a statutory representative may grant immediate access to the person for whom the statutory representative has been appointed and to medical and financial records pertaining to such person, including records and information that are otherwise privileged or confidential.

(g) **Participation in Court Proceedings.** A statutory representative is a party to the probate case in which the statutory representative was appointed and has the same rights and responsibilities of any other party.

### COMMENT TO THE 2020 AMENDMENTS

The position formerly known as “guardian ad litem” was replaced in probate proceedings by that of a statutory “representative.” See A.R.S. § 14-1408(A) (eff. 2009); *Unif. Trust Code* § 305 cmt. The official Comment to Uniform Trust Code section 305, from which A.R.S. § 14-1408 is derived, explains that the powers of a representative may be broader than the powers of a guardian ad litem.

### Rule 33. Compensation for Fiduciaries, Attorneys, and Statutory Representatives

(a) **Generally.**

(1) ***Guardianships and Conservatorships.*** A request for approval of fees for a guardian, a conservator, an attorney, or a statutory representative to be paid from an estate of a ward or protected person, or a trust that the ward or protected person established, must be made in a petition filed under section (c) or section (d) of this rule.

(2) ***Decedents' Estates and Trusts.*** A personal representative, a trustee, a statutory representative, or an attorney for any of them, is not required to request court approval of fees to be paid from the estate or trust, unless the court orders otherwise. If approval is requested, the request must be made in a petition filed under section (c) or section (d).

(b) **Content of Request for Approval.** Any request for approval of compensation must be accompanied by statements that include the following information:

- (1) If requested fees are based on hourly rates, the statements must specify the services provided and explain the tasks performed, the date each task was performed, the time expended in performing each task, the name and position of the person who performed each task, and the hourly rate charged for such services. Block billing is not permitted.
  - (2) If requested fees are not based on hourly rates, the statement must include an explanation of the fee arrangement and a computation of the fee for which approval is sought.
  - (3) If the request includes reimbursement of costs, the statement must specify each cost, the date the cost was incurred, the purpose of the cost, and the amount of reimbursement requested or, if reimbursement of costs is based on some other method, an explanation of the method being used.
- (c) **Approval in an Account.** If a petition requests approval of a fiduciary's account and the account lists fees paid to a fiduciary, an attorney, or a statutory representative, the petition must request the court's approval of those fees paid during the accounting period. Statements that document the fees paid and conform with section (b) must be submitted with the petition.
- (d) **Approval by Separate Petition.** If a request for approval of fees is not included in a petition for approval of the fiduciary's account, a fiduciary, an attorney, or a statutory representative may file a separate petition for approval of compensation.
- (e) **Waiver.** An attorney or statutory representative waives compensation from the estate of a ward or protected person if a request is not timely submitted under A.R.S. § 14-5110.
- (f) **Objections.** A person who opposes a request for approval of compensation must file a response as prescribed in Rule 15(e). The response must provide a specific basis for each objection.
- (g) **Fee Guidelines.** When determining whether compensation is reasonable, the court must follow statewide fee guidelines contained in A.C.J.A. § 3-303.

### **Rule 34. Prudent Management of Costs**

The following are in addition to the duties imposed by A.R.S. § 14-1104 and A.C.J.A. § 3-303.

- (a) **Disclosure When Cost Exceeds Benefits.** A statutory representative, guardian, conservator, personal representative, attorney for a fiduciary, or an attorney for a ward or protected person must timely disclose to the court and the other parties any reasonable belief that the projected

cost of complying with a court order may exceed the likely benefit to the ward, protected person, decedent's estate, or trust.

- (b) **Orders.** If appropriate and if consistent with due process, the court may enter or modify orders to protect or further the best interests of the ward, protected person, decedent's estate, or trust.
- (c) **Market Rates.** In appointing a fiduciary, attorney, or statutory representative, in ruling on or considering a budget objection, and in ruling on a request to substitute a court-appointed fiduciary, attorney, or statutory representative, the court and the fiduciary should not pay more than market rates for a good or service.
- (d) **Competitive Bids.** At any stage of the proceedings, the court may require competitive bids for goods or services.

### **Rule 35. Repetitive Filings; Vexatious Conduct; Remedies**

(a) **Definitions.** For purposes of this rule,

- (1) ***“Repetitive filing”*** means a petition, motion, or other document that
  - (A) requests relief that is the same or substantially similar to the relief requested in an earlier petition, motion, or document filed within the preceding 12 months by the same person; and
  - (B) the later-filed motion or petition does not describe in detail a change in fact or law that supports the requested relief.
- (2) ***“Vexatious conduct”*** means habitual, repetitive conduct undertaken solely or primarily to harass or injure another party or that party's representative, cause unreasonable delay in proceedings, cause undue harm to the ward or protected person, or cause unnecessary expense. It does not include conduct undertaken in good faith.

(b) **Notice of Repetitive Filings.**

- (1) ***Grounds.*** A party may file a notice of repetitive filings if the party has a good faith belief that a person has filed a repetitive filing.
- (2) ***Timing and Identification of the Earlier Filing.*** A party must file a notice of repetitive filing no later than the response or objection deadline for the allegedly repetitive filing. A notice of repetitive filing must include the title and date of the alleged repetitive

filing, the title and date of the earlier filing, and the date of any court ruling on the earlier filing.

(3) ***Effect of a Notice.*** A notice of repetitive filing stays the deadline to respond or object to the alleged repetitive filing until further court order.

(4) ***Court's Authority.*** The court may summarily strike a repetitive filing on its own motion or after receiving a notice of repetitive filing.

(c) **Remedies.** If the court finds that a person has engaged in repetitive filings or vexatious conduct, the court may do any combination of the following:

(1) require the person to obtain the court's permission to file future pleadings and other papers in the probate case or in other cases, and, if the court enters such an order, no party is required to respond to the person's future filings until ordered to do so;

(2) order that no response to the person's future requests for information is required, unless a later order requires it; or

(3) order any other remedy provided by law.

## **PART VI. RULES THAT APPLY TO GUARDIANSHIPS, CONSERVATORSHIPS, AND DECEDENT'S ESTATES**

### **Rule 36. Order Appointing Guardian, Conservator, Personal Representative, or Special Administrator**

#### **(a) Orders.**

(1) ***Required Warning.*** Every order appointing a guardian, conservator, personal representative, or special administrator must include the following language: "Warning: This appointment is not effective until the clerk of the superior court issues the letters of appointment."

(2) ***Guardianship Finding.*** Every order appointing a guardian must include a specific finding as to whether the guardian's appointment is due solely to the ward's physical incapacity.

(3) ***Bond Amount.*** Any order requiring a bond must state the bond amount. Letters of appointment will not issue until the bond has been filed.

- (4) ***Conservatorship Budget.*** An order appointing a conservator must specify whether the conservator is required to file an initial budget under Rule 45(d).

**(b) Restrictions on Authority.**

- (1) ***Generally.*** Every order appointing a guardian, conservator, personal representative, or special administrator, or that authorizes a single transaction or other protective arrangement, must state any restrictions on the fiduciary's powers.
- (2) ***Proof of Restricted Account.*** Unless the court orders otherwise, the fiduciary is responsible for ensuring that Form 10, proof of any restricted account, is filed not later than 30 days after the court enters an order restricting the account.
- (3) ***Attorney Responsibilities.*** Unless the court orders otherwise, an attorney who receives any proceeds to be restricted for the benefit of a minor, incapacitated person, or protected person must ensure that the restricted account is established and properly titled, and that the funds are deposited into the restricted account. The court also may order that other parties or attorneys ensure that the restrictions are properly implemented and that a proof of restricted account is filed.

**COMMENT TO THE 2020 AMENDMENTS**

The following examples provide sample language for restrictions of authority in an appointment order:

“No real property may be leased for more than one year, sold, encumbered, or conveyed except as authorized by court order.”

“No withdrawals of principal or interest may be made except as authorized by court order. Unless the court orders otherwise, reinvestment may be made without further court order so long as funds remain restricted in this institution at this branch.”

“The guardian has no authority over placement or movement of the ward's residence, absent an emergency, except as authorized by court order.” Or, “The guardian's authority is limited to the power to make medical decisions.”

**Rule 37. Order to Fiduciary**

- (a) ***Generally.*** The clerk must not issue letters to a personal representative, a guardian, or a conservator until the appointed fiduciary has signed an acknowledgment and the court has entered an order as described in this rule.

- (b) **Order to a Personal Representative.** The order to a personal representative is Form 1, Order to Personal Representative. This requirement does not apply to the appointment of a special administrator.
- (c) **Order to a Guardian.** The order to a guardian is Form 2, Order to Guardian.
- (d) **Order to a Conservator.** The order to a conservator for an adult is Form 3, Order to Conservator. The order to a conservator for a minor is Form 3M, Order to Conservator of a Minor.
- (e) **Order to a Guardian and Conservator.** If the same person is being appointed as both guardian and conservator, the requirements of sections (c) and (d) may be satisfied by Form 4, Order to Guardian and Conservator.

### **Rule 38. Training for Non-Licensed Fiduciaries**

- (a) **Generally.** Unless the court orders otherwise, a guardian, a conservator, or a personal representative must complete prescribed training programs approved by the Supreme Court and file a Certificate of Completion before the clerk issues letters of appointment.
- (b) **Temporary Appointment.** Unless the court orders otherwise, a person who is subject to the training requirements of section (a) and whose appointment is temporary must complete the training within 30 days after the temporary appointment or before the appointment is made permanent, whichever is earlier
- (c) **Exemptions from Training.** The training requirements in this rule do not apply to licensed fiduciaries or financial institutions.

### **Rule 39. Issuing and Recording Letters of Appointment**

- (a) **Definition.** “Letters of appointment” is a document the clerk issues, pursuant to a court order, that authorizes a personal representative, guardian, or conservator to act for the estate or subject person.
- (b) **Power to Act.** A personal representative, guardian, or conservator may not act on behalf of the estate or the subject person until the clerk has issued letters of appointment.
- (c) **Duration of Appointment.** If the duration of the appointment of a personal representative, guardian, or conservator is limited by statute or court order, the letters of appointment must state the appointment’s termination date.

- (d) Limitation of Authority.** If the court restricts the authority of a personal representative, guardian, or conservator, the letters of appointment must include the language of the court's order restricting that authority.
- (e) Certified Copies.** Before issuing certified copies of letters of appointment, the clerk must verify that the appointment of the personal representative, guardian, or conservator is in effect.
- (f) Recording Personal Representative's Letters of Appointment.** No later than 10 court days after issuance of the letters of appointment, a personal representative must record a certified copy of the letters of appointment with the county recorder in any county of this state where the decedent owned real property that is subject to court-ordered restrictions. No later than 45 calendar days after a county recorder has recorded the letters of appointment, the personal representative must file a copy of the recorded letters with the court.
- (g) Recording Conservator's Letters of Appointment.** No later than 10 court days after issuance of the letters of appointment, a conservator must record a certified copy of the letters of appointment with the county recorder in every county of any state where the protected person owns real property. No later than 45 calendar days after a county recorder has recorded the letters of appointment, the conservator must file a copy of the recorded letters with the court.

#### **Rule 40. Duties of Court-Appointed Fiduciaries**

- (a) Generally.** A court-appointed fiduciary must

  - (1) review all court filings prepared on the fiduciary's behalf; and
  - (2) if the fiduciary is a licensed fiduciary who is not also an active member of the State Bar of Arizona, place the fiduciary's license number on all documents signed by the fiduciary and filed with the court.
- (b) Before Resignation or Termination.** Before resigning or having the court terminate the responsibilities of a court-appointed fiduciary, the fiduciary must comply with statutory requirements for withdrawal, including the filing of final reports and accounts.
- (c) Notice Following Death of a Ward or Protected Person.** No later than 14 calendar days after learning that the subject person has died, the guardian or conservator must file a notice of the subject person's death.

**(d) Upon a Minor's Death, Adoption, Marriage or Emancipation.** Upon a minor's death, adoption, marriage, or emancipation, a court-appointed guardian must file a notice no later than 14 calendar days after the event. If a minor does not have a conservator when a guardianship terminates, the guardian must provide the court and former minor ward with a written list of any known assets or monies, other than personal effects, the guardian believes are owned by the former minor ward.

## **PART VII. RULES THAT APPLY ONLY TO GUARDIANSHIPS AND CONSERVATORSHIPS**

### **Rule 41. Appointment of an Attorney, Medical Professional, or Investigator in a Guardianship or Protective Proceeding**

- (a) Time and Method.** A person seeking the appointment of a guardian or the entry of a protective order must request the court to appoint an attorney, investigator, or medical professional, as required by A.R.S. Title 14, when the petition is filed. The request may be included in the petition or filed as a separate motion. The court may, on its own motion, appoint an attorney, investigator, or medical professional other than the one nominated by the petitioner.
- (b) Nomination of Attorney.** Absent good cause, a petitioner must not nominate an attorney to represent the subject person unless the attorney has an existing attorney-client relationship with the subject person, and the petition describes the attorney's relationship with the subject person and any relationship with the petitioner.
- (c) Prohibited Attorney Appointments.** The court may not appoint an attorney for the subject person, nor may the attorney accept an appointment, if
- (1)** the attorney has an existing attorney-client relationship with the proposed guardian or conservator, or
  - (2)** the attorney has a prior attorney-client relationship with the proposed guardian or conservator, unless after disclosure of the prior relationship to the court and parties, the court approves the appointment.
- (d) Nomination of Physician, Psychologist, Psychiatrist, or Registered Nurse.** If a petitioner nominates a physician, psychologist, psychiatrist, or registered nurse to evaluate the subject person, the petition must describe the nominee's prior relationship, if any, with the petitioner and the subject person.



- (e) **Proposed Order.** When the petition is filed, the petitioner must provide to the assigned or authorized judicial officer a blank form of order appointing the attorney, investigator, and medical professional.
- (f) **Notice to Appointees.** The petitioner must promptly provide each individual appointed under this rule with a copy of the order appointing that individual, the petition requesting the appointment of a guardian or the entry of a protective order, and the notice of hearing.

#### **Rule 42. Training, Role, and Termination of an Attorney for a Subject Person**

- (a) **Training.** A court-appointed attorney for the subject person of an adult guardianship or protective proceeding must complete training prescribed by the Supreme Court.
- (b) **The Attorney's Role.** The attorney for the subject person must advocate for the subject person's wishes to the extent the attorney is able to ascertain those wishes. The attorney must, as far as possible, maintain a normal client-lawyer relationship with the subject person. In addition, the attorney must act to protect the subject person's substantive and procedural due process rights.

#### **(c) Subject Person's Death.**

- (1) **Generally.** The participation of an attorney representing the subject person in a guardianship or protective proceeding terminates upon the subject person's death.
- (2) **Exception.** In extraordinary situations and for good cause, the court may authorize the limited participation of the subject person's attorney after the subject person's death. The court's order authorizing the attorney's continued participation must state the basis and scope of the attorney's continued participation.

#### **Rule 43. Duties of Investigators**

- (a) **Initial Training.** Before being appointed as an investigator under A.R.S. §§ 14-5303(C), 14-5407(B), or 36-540(G), the person must first complete a training course prescribed by the Supreme Court. The Supreme Court will issue a certificate of completion. Unless the investigator is a full-time court employee, the investigator must file a copy of the certificate in each probate case in which the investigator is appointed.
- (b) **Later Required Training.** Any person who continues to serve as a court-appointed investigator must complete an additional training course prescribed by the Supreme Court every 5 years and, unless the investigator is a full-time court employee, the investigator must

file a copy of the certificate of completion in each probate case in which the investigator is appointed.

#### **Rule 44. Appointment of a Temporary Guardian or Temporary Conservator**

**(a) Petition.** A petition requesting the appointment of a temporary guardian, temporary conservator, or both, must include either of the following:

- (1)** a request for the appointment of a permanent guardian, permanent conservator, or both; or
- (2)** a statement explaining why the appointment of a permanent guardian or permanent conservator is unnecessary.

**(b) Emergency Appointment of a Guardian or Conservator.** A petition that requests the emergency appointment of a temporary guardian, a temporary conservator, or other relief authorized by A.R.S. §§ 14-5310 or 14-5401.01 must contain the word “Emergency” in its title. The petitioner must state in the body of the petition the legal authority and factual circumstances supporting the request for emergency relief.

**(c) Ex Parte Request.** A petition requesting the appointment of a temporary guardian or conservator without notice must comply with Rule 15(i).

**(d) Copies for the Assigned Judicial Officer.** The petitioner must provide conformed copies of the filed petition and any required affidavits to the assigned judicial officer, or if a judicial officer has not been assigned, to the presiding probate judge or other designated judicial officer.

#### **Rule 45. [Reserved]**

#### **Rule 46. Annual Guardian Reports**

**(a) Timing.** A guardian must file an annual report on the date established by the court, but in no event later than 60 days after the anniversary date of the issuance of the guardian’s letters of permanent appointment.

**(b) Content.** The guardian’s annual report must contain the information specified in A.R.S. § 14-5315(C).

**(c) Motion for Additional Time.** If the guardian is unable to file an annual report within the time provided by this rule, the guardian must file a motion requesting additional time to file

the report. The guardian must file the motion before the deadline for filing the annual report and state why the guardian needs additional time and how much additional time is needed to file the report.

- (d) Confidentiality.** The guardian must file the required medical professional's report or summary as a confidential document under Rule 8.

#### **Rule 47. Guardian's Inpatient Psychiatric Treatment Authority**

- (a) Initial Request for Inpatient Psychiatric Treatment Authority.** An initial request for inpatient psychiatric treatment authority must be made in a petition that complies with A.R.S. § 14-5312.01 and must be accompanied by a psychiatrist's or psychologist's evaluation report required under A.R.S. § 14-5312.01(P). After making the required findings, the court may authorize the guardian to consent to the placement, care, and treatment of the ward in an inpatient psychiatric treatment facility.
- (1) Orders and Letters.** The order authorizing a guardian to place the ward in an inpatient psychiatric treatment facility and the letters of appointment must describe the authority granted to the guardian and include a specific date that the guardian's authority terminates. The order granting the guardian inpatient psychiatric treatment authority may include other provisions that the court determines are necessary to protect the ward's best interests. The court must limit the guardian's authority to that reasonably necessary to obtain the ward's care in the least restrictive treatment alternative.
- (2) Early Termination.** For good cause, the court may terminate the authority before the date specified in the order.
- (3) Acknowledgement.** The court will not issue letters that include the guardian's inpatient psychiatric treatment authority until the guardian has signed an acknowledgment of the guardian's power and the court has entered the Supplemental Order to Guardian with Inpatient Psychiatric Treatment Authority and Acknowledgement shown in Form 2-S.
- (4) Order Without Notice.** If a party requests an order without notice to the subject person, the court may grant the guardian inpatient psychiatric treatment authority only if all the conditions in A.R.S. § 14-5310(B) have been met and the court has determined that an adequate basis exists under A.R.S. § 14-5312.01(B) and (C). If the court grants the request without notice, the party and the court must follow procedures that are substantially similar to those set forth in A.R.S. § 14-5310 for the appointment of a temporary guardian without notice.

(5) **Annual Reports.** The guardian must file an annual report as required by A.R.S. § 14-5315. In addition, a guardian who requests to continue the guardian's inpatient psychiatric treatment authority also must file an evaluation report by a psychiatrist or psychologist as required by A.R.S. § 14-5312.01(P). The guardian must file the evaluation report no later than 30 days before the termination date of the inpatient psychiatric authority.

**(b) Renewal of a Guardian's Inpatient Psychiatric Treatment Authority.**

- (1) **Renewal of Authority.** The court may renew the guardian's authority to consent to inpatient psychiatric treatment as provided by A.R.S. § 14-5312.01 and this rule.
- (2) **Timing.** The guardian must file a motion and the other documents required by subpart (b)(3) no later than 30 days before expiration of the order that grants the guardian inpatient psychiatric treatment authority. If the guardian does not file a motion for renewal before the expiration of the order, the guardian must file a new petition requesting inpatient psychiatric treatment authority under section (a).
- (3) **Required Filings.** A guardian authorized to place a ward in an inpatient psychiatric facility pursuant to A.R.S. § 14-5312.01 may request renewal of that authority before it expires by complying with the time requirement of subpart (b)(2) and by filing
  - (A) a motion that states grounds for renewal and requests the court to renew the guardian's authority;
  - (B) a psychiatrist's or psychologist's evaluation report required under A.R.S. § 14-5312.01(P); and
  - (C) the guardian's annual report, if due within 30 days of the renewal of inpatient psychiatric treatment authority, or otherwise, a reference to the guardian's last annual report and an update on the information contained in the last annual report.
- (4) **Proposed Order.** When filing the renewal motion, the guardian must submit a proposed order granting the motion and renewing the guardian's authority. Renewal orders are subject to the requirements of section (a).
- (5) **Service.** Promptly after filing the renewal motion, the guardian must mail, deliver, or otherwise provide to both the ward and the ward's court-appointed attorney copies of the motion, the psychiatrist's or psychologist's evaluation report, the guardian's annual report or updates, and the proposed order.

(6) ***Objection to Motion for Renewal or Request for Hearing.*** The ward may file an objection to a renewal motion or may file a request for a hearing under A.R.S. § 14-5312.01(P). The guardian's authority to consent to inpatient psychiatric treatment continues pending the court's determination of the motion. If the motion proceeds to a hearing, the guardian has the burden of providing by clear and convincing evidence that the ward is likely to need inpatient psychiatric care and treatment during the renewal period.

(c) **Confidentiality.** The court must maintain the evaluation reports as confidential documents under Rule 8.

#### **Rule 48. Remedies for Non-Compliance by a Guardian or Conservator**

If a guardian or conservator fails to comply with requirements of A.R.S. Title 14, court rules, or a court order, the court may enter any order, including

- (a) an order directing the guardian or conservator to comply by a specified deadline;
- (b) an order requiring the guardian or conservator to show cause why the court should not take appropriate action;
- (c) an order appointing a person to investigate the reasons for the guardian's or conservator's non-compliance and to report to the court regarding the investigator's findings and proposed recommendations;
- (d) an order immediately suspending or terminating the guardian's or conservator's authority to take any further action on behalf of the subject person and appointing a successor or temporary guardian or conservator;
- (e) an order terminating the guardianship or conservatorship proceeding if the court determines that dismissal is appropriate, but the court must not terminate a guardianship or conservatorship if the subject person resides in Arizona and remains incapacitated or in need of protection;
- (f) an order initiating proceedings that may result in issuance of a fiduciary arrest warrant under A.R.S. § 14-5701;
- (g) an order under Civil Rule 70; or
- (h) other appropriate orders.

**Rule 49. Administrative Closure of a Minor Guardianship or Minor Conservatorship Case**

(a) **Administrative Closure of a Minor Guardianship Case.** Consistent with A.R.S. § 14-5210, the clerk or court administrator, as designated by the presiding judge, must administratively close a minor guardianship case filed under A.R.S. §§ 14-5201 to 14-5212 when the minor reaches the age of majority, or upon the minor's adoption, marriage, emancipation, or death.

(b) **Administrative Closure of a Minor Conservatorship Case.** The court must administratively close the conservatorship and terminate the conservator's appointment if no order terminating a conservatorship for a minor has been entered within two years after the minor's eighteenth birthday. The court must notify the conservator and the former minor that the conservatorship will be administratively closed unless, within 90 days after the notice, the conservator or the former minor files a petition to terminate the conservatorship and obtains an initial hearing date. An order under this rule that administratively closes a conservatorship and terminates the conservator's appointment does not

- (1) discharge the conservator from liability,
- (2) authorize the release of any restricted conservatorship assets,
- (3) release any financial institution holding restricted conservatorship assets from liability,  
or
- (4) exonerate the conservator's bond.

**PART VIII. RULES THAT APPLY ONLY TO DECEDENTS' ESTATES AND TRUSTS**

**Rule 50. Personal Representative's Inventory and Account**

(a) **Inventory.**

(1) **Timing.** Unless the court orders otherwise, no later than 90 days after the date the personal representative's letters of appointment are first issued, the personal representative must do one of the following with respect to the inventory required by A.R.S. § 14-3706:

- (A) file the inventory with the court, and send a copy only to interested persons who request it; or

(B) mail or deliver a copy of the inventory to each heir in an intestate estate, or to each devisee if a will has been probated, and to any other interested person who requests it.

- (2) **Contents.** The inventory must contain the information specified in A.R.S. § 14-3706(A).
- (3) **Proof of Mailing or Delivery.** If the personal representative mails or delivers the inventory, the personal representative must file a proof of notice that identifies each person to whom the inventory was provided, and how and when it was provided.
- (4) **Supplementary Inventory.** If the personal representative discovers an additional asset or discovers the value of an asset is erroneous or misleading, the personal representative must prepare a supplementary inventory showing the market value as of the date of death of the decedent. The supplementary inventory must be filed with the court if the original inventory was filed, or it must be mailed or delivered to the same parties as the original inventory if it was mailed or delivered. The personal representative must file a notice of mailing or delivery in accordance subpart (a)(3).
- (5) **Motion for Additional Time.** If the personal representative is unable to comply with the deadline established by this rule or court order, the personal representative must file a motion for additional time before the deadline. The motion must state why the personal representative needs additional time and how much additional time is needed.

**(b) Account.**

- (1) **Generally.** Unless the personal representative's administration is supervised or the court orders otherwise, the personal representative is not statutorily required to file annual accounts.
- (2) **Supervised Administration.** A personal representative in a supervised administration under A.R.S. § 14-3505 must file an account with the court not less than annually, and upon closing of the estate.
- (3) **County with a Court Accountant.** Unless the court orders otherwise, if a petition for approval of a personal representative's account is filed in a county with a court accountant, the petitioner is not required to submit the account to the court accountant for review or to pay the court accountant's fee.

(c) **Forms.** Unless the court orders otherwise, a personal representative's account need not be presented on the standard forms for conservator accounts.

(d) **Confidentiality.** The court must maintain any account that is filed as a confidential document under Rule 8.

### **Rule 51. Administrative Closure of a Decedent's Estate and Termination of Appointment**

(a) **Notice of Impending Administrative Closure.** Two years after a decedent's estate is commenced, the court may issue a notice of impending administrative closure of the estate unless at least one of the following has occurred:

- (1) one year has elapsed since the filing of a closing statement under A.R.S. § 14-3933 and no proceedings involving the personal representative or special administrator remain pending;
- (2) a petition to settle the estate under A.R.S. §§ 14-3931 and 14-3932 has been filed and an initial hearing on that petition has been set;
- (3) a petition to terminate the appointment of the special administrator under A.R.S. § 14-3618 has been filed and an initial hearing on that petition has been set; or
- (4) the court has entered an order setting a future hearing or conference or extending the administration of the estate beyond two years.

(b) **Contents of Notice.** The notice must inform the parties and all persons who have filed a demand for notice that the estate will be administratively closed and any fiduciary appointment will be terminated without a discharge and release from liability or exoneration of any bond unless:

- (1) one of the circumstances in section (a) has occurred;
- (2) a request for hearing or conference has been filed;
- (3) a petition to terminate the appointment of the personal representative or the special administrator has been filed; or
- (4) a status report describing the matters to be resolved has been filed.

(c) **Distribution of the Notice.** The clerk or court administrator, as designated by the presiding judge, must distribute the notice to the following:



- (1) the parties;
- (2) in an intestate estate, every heir whose address is contained in the court's file;
- (3) in a testate estate, every devisee whose address is contained in the file; and
- (4) any person who has filed a demand for notice.

**(d) Administrative Closure and Termination of Appointment.** The court, without a hearing, may issue an order closing the estate administratively and terminating the appointment of the personal representative or special administrator if none of the events described in section (b) has occurred within 60 days after distribution of the notice.

**(e) Effect of Administrative Closure.** An order closing an estate administratively and terminating the appointment of a personal representative or special administrator under this rule does not discharge or release the fiduciary from liability or exonerate any bond.

**(f) Authority.** The court's authority to issue notices, administratively close an estate, and terminate appointments under this rule may be performed by court administration or by an appropriate electronic process under the court's supervision.

## **Rule 52. Trustee's Account**

**(a) Generally.** A trustee is not required to submit an account to the court unless the court orders otherwise.

**(b) County with a Court Accountant.** Unless the court orders otherwise, if a petition for approval of a trustee's account is filed in a county with a court accountant, the petitioner is not required to submit the account to the court accountant for review or to pay the court accountant's fee.

**(c) Confidentiality.** The court must maintain any account that is filed as a confidential document under Rule 8.

## **PART IX. RECOVERIES FOR, AND DISTRIBUTIONS TO, MINORS AND PROTECTED ADULTS**

### **Rule 53. Settlements of Claims for Minors and Adults in Need of Protection**

**(a) Court Approval.**

- (1) **When Required.** Except as provided in subpart (a)(2), no settlement of a claim brought on behalf of a minor or an adult in need of protection is binding on the minor or the adult in need of protection unless it is approved by a judicial officer. If the court approves the settlement, it may authorize the execution of appropriate releases of liability.
- (2) **When Not Required.** Under A.R.S. § 14-5424(C)(19), a conservator may enter into a binding settlement of claims not involving personal injury or wrongful death without court approval.

**(b) Who May Approve.**

- (1) **Claims of Minors.** Any superior court judge or judge *pro tem* may approve the settlement of a minor's claim if the settlement does not exceed \$10,000. If the settlement exceeds \$10,000, it must be approved by a superior court judge or judge *pro tem* in a probate proceeding under A.R.S. Title 14.
- (2) **Claims of Adults in Need of Protection.** Any superior court judge or judge *pro tem* in a probate proceeding under A.R.S. Title 14 may approve the settlement of a claim brought on behalf of an adult in need of protection.

**(c) Appointment of a Statutory Representative or Master.** The court may appoint a statutory representative pursuant to A.R.S. § 14-1408 or a master pursuant to Civil Rule 53, with instructions to address specific items, including any of the following:

- (1) the reasonableness of the settlement proposal,
- (2) the attorney fees to be paid from the minor's or adult's settlement proceeds,
- (3) the costs of litigation and apportionment of those costs,
- (4) the effect of the settlement on eligibility for public benefits or other resources that might be available, and
- (5) the proper apportionment of settlement proceeds among the various litigants.

**(d) Permissible Orders.** After considering the amount and nature of the settlement proceeds, the age and sophistication of the minor or adult in need of protection, and that person's living arrangements and ongoing needs, the court may do one or more of the following:

- (1) appoint a conservator;

- (2) order establishment of an appropriate trust, including a special needs trust, with or without continuing court supervision, as authorized by ARS §14-5409(B);
- (3) authorize all or a portion of the proceeds to be placed in an account pursuant to
  - (A) 26 U.S.C. § 529 (“qualified tuition programs”),
  - (B) 26 U.S.C. § 529A (“qualified ABLE programs”),
  - (C) 42 U.S.C. § 1396p(d)(4)(C) (a pooled special needs trust),
  - (D) A.R.S § 14-5408(C) (a “dignity account”);
- (4) in the case of a minor claimant, order distribution of the proceeds to a custodian under A.R.S. § 14-7656(B) (the Uniform Transfers to Minors Act);
- (5) order distribution of the proceeds to an appropriate person under A.R.S. § 14-5103 (“facility of payment or delivery”) or to a guardian under A.R.S. § 14-5312(A)(4)(b);
- (6) approve a structured settlement; or
- (7) enter any other order authorized by statute.

### **COMMENT TO THE 2020 AMENDMENTS**

This rule clarifies that any settlement on behalf of a minor or adult in need of protection must be approved by the court to be binding on the minor or adult in need of protection. The only exception is that a conservator may enter into a binding settlement of a claim other than a wrongful death or personal injury claim. See A.R.S. § 14-5424(C)(19). In comparison, A.R.S. § 14-5103 does not provide a parent the authority to compromise a minor child’s claim; it deals only with who may receive limited amounts of money or property on behalf of a minor.

#### **Rule 54. Distributions to Persons Under Disability**

If a person petitions the court to approve a distribution from a conservatorship estate, a decedent’s estate, or a trust, and if the person reasonably believes that a distributee is a minor, an incapacitated adult, or an adult in need of protection, the person must notify the court of the distributee’s status as a minor, an incapacitated adult, or an adult in need of protection. If a court has appointed a guardian or conservator for the proposed distributee, or if a court has approved other protective arrangements for the proposed distributee, the petitioner must provide the court with a copy of the order appointing the guardian or conservator or the order approving the protective arrangement.

## **PART X. FORMS**

### **Rule 55. Forms**

- (a) **Location.** Forms referred to in these rules are located on the self-service page of the Arizona Judicial Branch website, [www.azcourts.gov](http://www.azcourts.gov). These forms meet the requirements of these rules.
- (b) **Modification of Forms by the Superior Court or Parties.** A party may not modify Forms 5 through 10 without court approval, but a superior court judicial officer may authorize a party to modify those forms as provided in Rule 45(a). A party may adapt other forms by deleting content that does not apply to a particular proceeding or by adding other relevant content, provided the adapted form includes all the information that applies to that proceeding. Deleting information contained in a form, or failing to complete a portion of the form, constitutes the party's representation that any omitted or unanswered questions or items are not applicable to the proceeding.
- (c) **Supreme Court.** The Supreme Court may adopt, approve, or modify forms as provided by Arizona Code of Judicial Administration § 3-302.

### **COMMENT TO THE 2020 AMENDMENTS**

Additional probate forms may be available on superior court websites and in the State Bar of Arizona Probate Practice Manual.

**ATTACHMENT B<sup>2</sup>**  
**Forms**

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<sup>2</sup> These forms are not intended to be included with the rules in any Thomson Reuters publication. Rather, they will be posted on the Arizona Judicial Branch self-service website and may be modified from time-to-time as provided by Arizona Code of Judicial Administration § 3-302.

**PROBATE FORM 2-S:  
SUPPLEMENTAL ORDER TO GUARDIAN WITH INPATIENT PSYCHIATRIC  
TREATMENT AUTHORITY AND ACKNOWLEDGEMENT**

Name of Person Filing Document: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Representing [ ] Self or [ ] Attorney for: \_\_\_\_\_

Attorney Bar Number (if applicable): \_\_\_\_\_

Licensed Fiduciary Number (if applicable): \_\_\_\_\_

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF \_\_\_\_\_**

In the Matter of the Guardianship of:

Case Number: \_\_\_\_\_

\_\_\_\_\_  
Ward's Name, an Adult.

**SUPPLEMENTAL ORDER TO  
GUARDIAN WITH INPATIENT  
PSYCHIATRIC TREATMENT  
AUTHORITY AND  
ACKNOWLEDGEMENT**

\_\_\_\_\_  
(Assigned Judicial Officer)

<p><b>Warning:</b> This appointment is not effective until the <i>Letters of Appointment</i> have been issued by the Clerk of the Superior Court.</p>
---

The welfare and best interest of the person named above (“your ward”) are matters of great concern to this Court. This document addresses only your powers and duties relating to inpatient psychiatric treatment for your ward. Thus, the orders made in this document are in addition to, and supplement, the orders made in the *Order to Guardian and Acknowledgment and Information to Interested Persons* or the *Order to Guardian and Conservator and Acknowledgment and Information to Interested Persons* that you and the Court have signed.

Notwithstanding paragraph 6 of the *Order to Guardian and Acknowledgment and Information to Interested Persons* or the *Order to Guardian and Conservator and Acknowledgment and Information to Interested Persons*, you may place your ward in an inpatient psychiatric facility against your ward’s will. However, you must comply with A.R.S. § 14-5312.01, including but not limited to the following requirements:

- A. Within forty-eight hours after placing your ward in an inpatient psychiatric facility, you must notify your ward's attorney of the placement.
- B. When your ward is admitted to an inpatient psychiatric facility, you must provide that facility with the name, address, and telephone number of your ward's attorney.
- C. You must sign any documents necessary to allow your ward's attorney access to all of your ward's medical, psychiatric, psychological, and other treatment records.
- D. You must place your ward in the least restrictive treatment alternative within five calendar days after the medical director of the inpatient psychiatric facility notifies you that your ward no longer needs inpatient care.
- E. You must file with the annual report of the guardian required pursuant to A.R.S. [§ 14-5315](#) an evaluation report by a psychiatrist or a psychologist. The evaluation report must indicate whether your ward will likely need inpatient mental health care and treatment within the next 12 months. If you do not file the evaluation report, or if the report that is filed indicates that your ward will not likely need inpatient mental health care and treatment, your authority to consent to placement in an inpatient psychiatric facility will cease on the date specified in the prior court order. If the report supports the continuation of your authority to consent to inpatient treatment, the court may extend your authority to consent to this placement in an inpatient psychiatric facility. However, at least 30 days before that authority expires, you must file a motion requesting that the Court extend that authority.
- F. At any court hearing regarding the placement of your ward in an inpatient psychiatric facility, you will have the burden of proving by clear and convincing evidence that your ward is likely to be in need of inpatient mental health care and treatment within the period of the authority granted.

This order is only an outline of **some** of your duties as a guardian who has been granted the authority to place your ward in an inpatient psychiatric facility. It is **your** responsibility to obtain proper legal advice about your duties. Failure to do so may result in personal financial liability for any losses.

**WARNING:** Failure to obey the orders of this court and the statutory provisions relating to guardians may result in your removal from office and other penalties. In some circumstances, you may be held in contempt of court, and your contempt may be punished by confinement in jail, a fine, or both.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Judicial Officer's Signature

\_\_\_\_\_  
Judicial Officer's Name (Type or Print Name)

**ACKNOWLEDGEMENT**

I (We), the undersigned acknowledges receiving a copy of this Order and agree(s) to be bound by its provisions, whether or not read before signing, as long as serving as guardian.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Guardian's Signature

\_\_\_\_\_  
Guardian's Name (Type or Print Name)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Co-Guardian's Signature (if any)

\_\_\_\_\_  
Co-Guardian's Name (Type or Print Name)



**FORM 10. PROOF OF RESTRICTED ACCOUNT FROM FINANCIAL INSTITUTION**

Person Filing: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Representing [ ] Self or [ ] Attorney for: \_\_\_\_\_

Attorney Bar Number (if applicable): \_\_\_\_\_

Licensed Fiduciary Number (if applicable): \_\_\_\_\_

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF \_\_\_\_\_**

In the Matter of the Conservatorship  
for/Estate of:

Case Number: \_\_\_\_\_

\_\_\_\_\_

**PROOF OF RESTRICTED  
ACCOUNT FROM FINANCIAL  
INSTITUTION**

**Instructions:** This form must be signed by a representative of the financial institution who is authorized to act on behalf of, and bind, the financial institution.

Name of Financial Institution: \_\_\_\_\_

Branch Address: \_\_\_\_\_

Phone: \_\_\_\_\_

The undersigned states the following under oath:

We have received a copy of the above-referenced Court's order dated \_\_\_\_\_, which requires the establishment of restricted account(s), and we agree to comply with that order. Pursuant to that order, we have opened the following accounts:

**LAST 4 DIGITS OF ACCOUNT NO. ONLY** (Show other numbers as "X" as in "XXX1234")

<u>Account Number</u>	<u>Opening Balance</u>	<u>Type of Account</u>
_____	\$ _____	_____
_____	\$ _____	_____
_____	\$ _____	_____
_____	\$ _____	_____

Those accounts are titled as follows: \_\_\_\_\_.

*(If the account is for a conservatorship, the account should be titled, "The Estate of [name of protected person], by [name of conservator], Conservator." If the account is for a decedent's estate, the account should be titled, "The Estate of [name of decedent], by [name of personal representative], Personal Representative.")*

We will not allow any withdrawals of principal or income unless we are presented with a certified copy of a court order authorizing the withdrawal.

If the account holds stocks, mutual funds, or bonds, the account custodian may invest and reinvest dividends, capital gains, and interest, and withdraw reasonable and customary account management fees, without a court order.

**Check box, if applicable:** [  ] Pursuant to the above-referenced court's order, each account listed above is federally insured by the FDIC or NCUA.

**Check box, if the account has been established for a minor conservatorship:** [  ] We understand that the above-referenced account(s) has (have) been established for the benefit of a minor. The funds/asset will not be released to the minor after the minor's eighteenth birthday until we receive a certified court order authorizing release of the funds/assets.

**By signing below, you are binding yourself and your successors in interest.**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Financial Institution Representative

\_\_\_\_\_  
Name of Financial Institution Representative  
(Type or Print Name)

\_\_\_\_\_  
Title of Financial Institution Representative

**STATE OF** \_\_\_\_\_

**COUNTY OF** \_\_\_\_\_

**Subscribed and sworn to or affirmed before me this:** \_\_\_\_\_ (date)

**by** \_\_\_\_\_.

(notary seal)

---

**Deputy Clerk or Notary Public**

**PROBATE FORM 11:  
PROBATE INFORMATION FORM FOR DECEDENT'S ESTATE**

Name of Person Filing Document: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Representing  Self or  Attorney for: \_\_\_\_\_

Attorney Bar No. (if applicable): \_\_\_\_\_

Licensed Fiduciary No. (if applicable): \_\_\_\_\_

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF \_\_\_\_\_**

In the Matter of the Estate of:

Case Number: \_\_\_\_\_

\_\_\_\_\_,  
Deceased.

**PROBATE INFORMATION FORM**

**Updated** (Check this box if this is an updated form.)

**INSTRUCTIONS:**

1. Complete this form to the best of your knowledge and ability and then file it with your application or petition.
2. If you later learn of additional information that you omitted or if you later learn that any information in this form is incorrect, you must file an updated probate information form.
3. For purposes of this form, "Financial Institution" means a national banking association, a holder of a banking permit under Arizona law, a savings and loan association authorized to conduct trust business in Arizona, a title insurance company qualified to do business in Arizona, or a trust company holding a certificate to engage in trust business from the superintendent of financial institutions.
4. Items designated with an asterisk (\*) constitute "contact information" under Rule 13, Arizona Rules of Probate Procedure. If contact information changes, you must file a notice of change of contact information.
5. This form is filed as a confidential document, so it is *not* available to the general public. In addition, you are *not* required to provide anyone with this form, other than the court.

**A. INFORMATION ABOUT THE NOMINATED PERSONAL REPRESENTATIVE / SPECIAL ADMINISTRATOR:**

Name: \_\_\_\_\_

Is this person or entity an Arizona Licensed Fiduciary? [ ] Yes [ ] No

If Yes, write that person or entity's Licensed Fiduciary Number on the line below:

\_\_\_\_\_

Mailing Address:\* \_\_\_\_\_

Physical Address:\* \_\_\_\_\_

Work Telephone Number:\* \_\_\_\_\_

Email Address:\* \_\_\_\_\_

If the nominated personal representative/special administrator is an Arizona Licensed Fiduciary or a Financial Institution, proceed to section **B** below. Otherwise, complete the remainder of section **A**.

Home Telephone Number:\* \_\_\_\_\_

Cellular Phone Number:\* \_\_\_\_\_

Date of Birth: \_\_\_\_\_ Social Security Number: \_\_\_\_\_

Race: \_\_\_\_\_ Height: \_\_\_\_\_ Weight: \_\_\_\_\_

Eye Color: \_\_\_\_\_ Hair Color: \_\_\_\_\_ Sex: \_\_\_\_\_

**B. INFORMATION ABOUT THE DECEDENT:**

Name: \_\_\_\_\_

Date of Birth: \_\_\_\_\_ Date of Death: \_\_\_\_\_

Social Security Number: \_\_\_\_\_

I, \_\_\_\_\_ (your name), under the penalty of perjury, do hereby swear that the foregoing information is true and correct to the best of my knowledge and belief.

\_\_\_\_\_

Date

\_\_\_\_\_

Signature

**PROBATE FORM 12:  
PROBATE INFORMATION FORM FOR GUARDIANSHIP/CONSERVATORSHIP**

Name of Person Filing Document: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Representing  Self or  Attorney for: \_\_\_\_\_

Attorney Bar No. (if applicable): \_\_\_\_\_

Licensed Fiduciary No. (if applicable): \_\_\_\_\_

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF \_\_\_\_\_**

In the Matter of:

Case Number: \_\_\_\_\_

**PROBATE INFORMATION FORM**

\_\_\_\_\_  
Ward/Protected Person's Name, an Adult.

**Updated** (Check this box if this is an updated form.)

**INSTRUCTIONS:**

1. Complete this form to the best of your knowledge and ability and then file it with your application or petition.
2. If you later learn of additional information that you omitted or if you later learn that any information in this form is incorrect, you must file an updated probate information form.
3. For purposes of this form, "Financial Institution" means a national banking association, a holder of a banking permit under Arizona law, a savings and loan association authorized to conduct trust business in Arizona, a title insurance company qualified to do business in Arizona, or a trust company holding a certificate to engage in trust business from the superintendent of financial institutions.
4. Items designated with an asterisk (\*) constitute "contact information" under Rule 13, Arizona Rules of Probate Procedure. If contact information changes, you must file a notice of change of contact information.
5. This form is filed as a confidential document, so it is *not* available to the general public. In addition, you are *not* required to provide anyone with this form other than the court.

**A. INFORMATION ABOUT THE NOMINATED GUARDIAN (if applicable):**

Name: \_\_\_\_\_

Is this person or entity an Arizona Licensed Fiduciary? [ ] Yes [ ] No

If Yes, write that person or entity's Licensed Fiduciary Number on the line below:

\_\_\_\_\_

Mailing Address:\* \_\_\_\_\_

Physical Address:\* \_\_\_\_\_

Work Telephone Number:\* \_\_\_\_\_

Email Address:\* \_\_\_\_\_

If the nominated guardian is an Arizona Licensed Fiduciary or a Financial Institution, proceed to section **B** below. Otherwise, complete the remainder of section **A**.

Home Telephone Number:\* \_\_\_\_\_

Cellular Phone Number:\* \_\_\_\_\_

Date of Birth: \_\_\_\_\_ Social Security Number: \_\_\_\_\_

Race: \_\_\_\_\_ Height: \_\_\_\_\_ Weight: \_\_\_\_\_

Eye Color: \_\_\_\_\_ Hair Color: \_\_\_\_\_ Sex: \_\_\_\_\_

**B. INFORMATION ABOUT THE NOMINATED CONSERVATOR** (If applicable or if different from **A**):

Name: \_\_\_\_\_

Is this person or entity an Arizona Licensed Fiduciary? [ ] Yes [ ] No

If Yes, write that person or entity's Licensed Fiduciary Number on the line below:

\_\_\_\_\_

Mailing Address:\* \_\_\_\_\_

Physical Address:\* \_\_\_\_\_

Work Telephone Number:\* \_\_\_\_\_

Email Address:\* \_\_\_\_\_

If the nominated conservator is an Arizona Licensed Fiduciary or a Financial Institution, proceed to section **C** below. Otherwise, complete the remainder of section **B**.)

Home Telephone Number:\* \_\_\_\_\_

Cellular Phone Number:\* \_\_\_\_\_

Date of Birth: \_\_\_\_\_ Social Security Number: \_\_\_\_\_

Race: \_\_\_\_\_ Height: \_\_\_\_\_ Weight: \_\_\_\_\_

Eye Color: \_\_\_\_\_ Hair Color: \_\_\_\_\_ Sex: \_\_\_\_\_

**C. INFORMATION ABOUT THE PERSON WHO NEEDS A GUARDIAN OR CONSERVATOR:**

Name: \_\_\_\_\_

Mailing Address:\* \_\_\_\_\_

Physical Address:\* \_\_\_\_\_

Work Telephone Number:\* \_\_\_\_\_

Email Address:\* \_\_\_\_\_

Home Telephone Number:\* \_\_\_\_\_

Cellular Phone Number:\* \_\_\_\_\_

Date of Birth: \_\_\_\_\_ Social Security Number: \_\_\_\_\_

Race: \_\_\_\_\_ Height: \_\_\_\_\_ Weight: \_\_\_\_\_

Eye Color: \_\_\_\_\_ Hair Color: \_\_\_\_\_ Sex: \_\_\_\_\_

I, \_\_\_\_\_ (your name), under the penalty of perjury, do hereby swear that the foregoing information is true and correct to the best of my knowledge and belief.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature



**PROBATE FORM 13**  
**NOTICE OF CHANGE OF FIDUCIARY'S CONTACT INFORMATION**

Name of Person Filing Document: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Representing [ ] Self or [ ] Attorney for: \_\_\_\_\_

Attorney Bar No. (if applicable): \_\_\_\_\_

Licensed Fiduciary No. (if applicable): \_\_\_\_\_

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
**IN AND FOR THE COUNTY OF \_\_\_\_\_**

In the Matter of:

**Case Number:** \_\_\_\_\_

\_\_\_\_\_

**NOTICE OF CHANGE OF  
FIDUCIARY'S CONTACT  
INFORMATION**

**INSTRUCTIONS:**

1. Complete this form to the best of your knowledge and ability.
2. If any of the information in this form later changes, file a new "notice of change of fiduciary's contact information" form.
3. For purposes of this form, "Financial Institution" means a national banking association, a holder of a banking permit under Arizona law, a savings and loan association authorized to conduct trust business in Arizona, a title insurance company qualified to do business in Arizona, or a trust company holding a certificate to engage in trust business from the superintendent of financial institutions.
4. Unless the court orders otherwise, you must mail or a deliver a copy of this form to all the parties and interested persons in this case.

**NOTICE IS HEREBY GIVEN** that, effective \_\_\_\_\_ (date),  
the undersigned fiduciary's contact information is as follows:

Name: \_\_\_\_\_

Is this person or entity an Arizona Licensed Fiduciary?  Yes  No

If Yes, write that person or entity's Licensed Fiduciary Number on the line below:

\_\_\_\_\_

Mailing Address: \_\_\_\_\_

Physical Address: \_\_\_\_\_

Work Telephone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

If the fiduciary is an Arizona Licensed Fiduciary or a Financial Institution, skip the following items and proceed to the date and signature lines.
---

Home Telephone Number; \_\_\_\_\_

Cellular Phone Number: \_\_\_\_\_

I, \_\_\_\_\_ (your name), under the penalty  
of perjury, do hereby swear that the foregoing information is true and correct to the best of my  
knowledge and belief.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

**PROBATE FORM 14:  
NOTICE OF CHANGE OF WARD'S CONTACT INFORMATION**

Name of Person Filing Document: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Representing [ ] Self or [ ] Attorney for: \_\_\_\_\_

Attorney Bar No. (if applicable): \_\_\_\_\_

Licensed Fiduciary No. (if applicable): \_\_\_\_\_

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF \_\_\_\_\_**

In the Matter of:

Case Number: \_\_\_\_\_

**NOTICE OF CHANGE OF WARD'S  
CONTACT INFORMATION**

\_\_\_\_\_  
Ward's Name, an Adult.

**INSTRUCTIONS:**

1. Complete this form to the best of your knowledge and ability.
2. If any of the information in this form later changes, file a new "notice of change of ward's contact information" form.
3. Unless the court orders otherwise, you must mail or a deliver a copy of this form to all the parties and interested persons in this case.

**NOTICE IS HEREBY GIVEN** that, effective \_\_\_\_\_ (date), the ward's contact information is as follows:

Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Physical Address: \_\_\_\_\_

Work Telephone Number: \_\_\_\_\_

Home Telephone Number: \_\_\_\_\_

Cellular Phone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

I, \_\_\_\_\_ (your name), under the penalty of perjury, do hereby swear that the foregoing information is true and correct to the best of my knowledge and belief.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

**PROBATE FORM 15:  
AUTHORIZATION TO OBTAIN CERTIFIED COPY OF A SEALED DOCUMENT**

Name of Person Filing Document: \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State, Zip Code: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_  
Representing  Self or  Attorney for: \_\_\_\_\_  
Attorney Bar No. (if applicable): \_\_\_\_\_  
Licensed Fiduciary No. (if applicable): \_\_\_\_\_

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF \_\_\_\_\_**

In the Matter of:

Case Number: \_\_\_\_\_

**AUTHORIZATION TO OBTAIN  
CERTIFIED COPY OF LETTERS  
OF APPOINTMENT AND/OR  
ORDER OF APOINTMENT**

\_\_\_\_\_

Pursuant to Rule 9(b), Arizona Rules of Probate Procedure, I, \_\_\_\_\_  
\_\_\_\_\_ (your name), authorize \_\_\_\_\_  
\_\_\_\_\_ (authorized person's name) to obtain a certified copy of the following sealed  
document(s) in this case (Check one or more boxes.):

- Order of appointment of a fiduciary
- Letters of appointment of a fiduciary
- Acceptance of Appointment
- Proof of Completion of Training

Under the penalty of perjury, I certify that I am one of the following (Check only one of the boxes.):

- The fiduciary named in the requested document(s)
- The attorney of record for the fiduciary named in the requested document(s)

\_\_\_\_\_

Date

\_\_\_\_\_

Signature

**STATE OF** \_\_\_\_\_

**COUNTY OF** \_\_\_\_\_

**Subscribed and sworn to or affirmed before me this:** \_\_\_\_\_ (date)

**by** \_\_\_\_\_.

(notary seal)

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**Deputy Clerk or Notary Public**

2. Petition to Amend the Arizona Rules of Probate  
Procedure (No. R-18-0044) filed January 30, 2019.

Rebecca White Berch (Justice, ret.), Chair  
Task Force on the Arizona Rules of Probate Procedure, Petitioner  
1501 W. Washington St.  
Phoenix, AZ 85007

SUPREME COURT OF ARIZONA

PETITION TO AMEND THE ) Supreme Court No. R-18-0044  
ARIZONA RULES OF PROBATE )  
PROCEDURE )  
 )  
 )  
\_\_\_\_\_ )

Pursuant to Rule 28 of the Rules of the Arizona Supreme Court, the Task Force on the Arizona Rules of Probate Procedure (“Task Force”) petitions this Court to abrogate the current Arizona Rules of Probate Procedure and adopt proposed new rules. The proposed rules restyle the existing rules and make substantive changes that help ensure “a consistent, predictable, prompt, efficient, and just resolution of probate cases.” (Proposed Rule 1.)

Because the proposed amendments concern all current probate rules, this petition presents the revisions as a complete new set of rules, rather than as individual rule amendments. Appendix A to this petition contains a clean version of the proposed rules. A “redline” version is not included because the changes are so extensive that a redline would be more confusing than helpful. Appendix B is a



correlation table that the Task Force intends to incorporate within the final version of the probate rules. Appendix C contains new forms referenced in these rules.

**Section 1. Background.** Two Supreme Court committees preceded this Task Force's efforts. In 2006, the Court established a Probate Rules Committee (Admin. Order No. 2005-87), which proposed a set of probate rules that the Court adopted effective on January 1, 2009. One year later, the Court established the Committee on Improving Judicial Oversight and Processing of Probate Court Matters (Admin. Order No. 2010-52), which focused on fiduciary responsibilities and the protection of vulnerable persons. That Committee's recommendations resulted in modifications to certain Probate Rules and the adoption of Arizona Code of Judicial Administration §§ 3-302 and 3-303, which respectively concern probate forms and fee guidelines.

The Court established the current Task Force by Administrative Order No. 2017-133. Task Force members include Superior Court judges from Maricopa, Pima, Pinal, Yavapai, and Yuma Counties; several attorneys in private practice, including certified specialists in estate and trust law; a public fiduciary and a licensed private fiduciary; a representative of the Superior Court Clerks; and a retired Arizona Court of Appeals judge. The Chair is a retired Supreme Court Justice. A.O. No. 2017-133 directed the Task Force to review the current Probate Rules and "identify possible changes," and to clarify and simplify language.

**Section 2. Restyling.** The proposed probate rules, like other recently adopted rule sets, include stylistic revisions that make the rules more understandable and user-friendly. The proposed rules employ consistent formatting and nomenclature, and generally follow the conventions utilized in those previous restyling projects.

**Section 3: Probate is Different.** The probate rules differ from other court rules in important respects.

First, the probate process is largely driven by statutory requirements. (Almost half of the current probate rules include at least one reference to a specific statute.) The Task Force saw no rationale for repeating in a rule a substantive requirement that is already contained in a statute, and it agreed to abrogate current provisions that merely restated statutory requirements. The Task Force also noted that a rule that simply restates statutory language might need to be amended if the statutory language changes. Nevertheless, the Task Force agreed that for clarity, certain rules should reference the applicable or governing statute.

Second, the Task Force realized that many of the rules were either not consistent with current law or did not incorporate or allow for considerations directed by state law. Accordingly, some of the proposed rule changes are substantive and go beyond simple restyling.

Third, probate cases may involve related non-probate claims. For example, civil tort actions are routinely filed in cases concerning decedents' estates,

guardianships, and conservatorships. Similarly, an adult who is the subject of a guardianship or protective proceeding may be a party to a family law case. Accordingly, the probate rules specify which procedural rules apply in the related non-probate proceeding.

Fourth, probate involves liberty as well as property interests. Protective proceedings (including conservatorships), decedents' estates, and trusts involve property interests. Guardianships involve liberty interests. Probate rules need to provide due process to protect these interests.

Fifth, probate cases often involve self-represented litigants. Self-represented litigants many not be sophisticated, and some court-appointed fiduciaries may not be licensed, so the rules need to provide appropriate and clear guidance as well as protections.

**Section 4: Task Force Methodology.** There currently are 46 probate rules. (The last is Rule 38, but some rule numbers include a number to the right of a decimal point, which accounts for the other eight rules.) Task Force members were divided into three workgroups, and the workgroups were assigned roughly equivalent portions of the rules. A judicial officer led each workgroup. Workgroups met 40 times between April and December 2018. Outside of meetings, the workgroups reviewed drafts, researched law, and edited documents. The workgroups presented proposed revisions to the full Task Force at public meetings.

The Task Force met ten times during 2018, learning early in the process that most of the proposed probate rules were complex and that many were controversial. All the rules were the subject of exhaustive discussions at multiple meetings. The Task Force recommended abrogating current provisions that are no longer pertinent, combining associated provisions currently contained in more than one rule, and bifurcating rules and provisions when their content became too dense or multi-focused.

**Section 5: Comments.** The Task Force moved substantive matters from the comments to the rules. As a result, the proposed rules include only six comments, most of which are new and brief.

**Section 6: Preamble.** The current rules include a three-paragraph preamble, which the Task Force would abrogate and replace with the prefatory comment proposed in Appendix A.

**Section 7: Reorganization.** Whereas there are currently 46 probate rules, the new set contains 55 proposed rules. Although the Task Force eliminated some former provisions, it also included some new provisions. The rules have been renumbered so that none of the proposed rule numbers have a decimal point. Significantly, the Task Force re-organized the proposed rules by subject matter and presented them in the order in which events generally occur in a probate proceeding.

This reorganization should make it easier for users to find the provisions they are seeking.

**Section 8: The Proposed Rules.** This section summarizes many of the significant and substantive items in the proposed probate rules.

**Part I: Scope of Rules, Definitions, Applicability of Other Rules (Rules 1 - 12)**

*Rule 1 (“Scope, Applicability, and Construction”)* differs from the current rule in two respects. First, it expressly applies to “all persons in a probate proceeding, whether self-represented or represented by an attorney.” Second, it adds the words “consistent [and] predictable” before the phrase “prompt, efficient, and just resolution of probate proceedings.”

*Rule 3 (“Probate Case and Proceedings”)* clarifies that a “probate case” may include a “probate proceeding” and a “non-probate proceeding.” The rule explains these terms, which some stakeholders find confusing. The distinctions become important in Rule 4 and subsequent rules.

*Rule 4 (“Applicability of Other Rules”)* advises that “the Arizona Rules of Civil Procedure apply to probate proceedings unless they are inconsistent with these probate rules or A.R.S. Title 14.” The added reference to Title 14 differentiates this provision from the corresponding provision in current Rule 3(A). Rule 4 also adds that “in non-probate proceedings, the same procedure and evidence rules apply as if the matter had been litigated as a separate action.” The Task Force received

guidance from the Advisory Committee on Rules of Evidence on another Rule 4 provision that concerns the application of the Rules of Evidence in probate proceedings. New **Rule 5 (“Contested and Uncontested Hearings”)** explains when a hearing is deemed contested or uncontested, which is the governing factor in Rule 4 for determining whether the Rules of Evidence apply.

The requirements of **Rule 7 (“Document Captions”)** have been shortened by including a cross-reference to the requirements of Civil Rule 5.2(a) (“caption”) and by only specifying those items of the caption required for probate filings. **Rule 8 (“Confidential Documents and Information”)** omits the unnecessary statement in current Rule 7(B) that the clerk must comply with court rules and code sections. New **Rule 9 (“Sealing and Unsealing Court Documents”)** incorporates by reference recently adopted Civil Rule 5.4 (“sealing and unsealing court records”), but it allows a fiduciary to have access to an appointment order and letters of appointment in a sealed case without the need for a court order unsealing the file.

**Rule 10 (“Acknowledgment of a Consent, Waiver, Renunciation, or Nomination”)** includes introductory language that the rule requires a signature before a notary public, a judicial officer, or other person who is “legally authorized to verify the identity of the signer.” Unlike the current requirement, an acknowledgment of a consent to a petition or application is now compelled only for self-represented individuals.

*Rule 12 (“Telephonic and Video Attendance and Testimony”)*, unlike its current counterpart, permits oral as well as written requests to attend or testify by telephone. Members were divided on how far in advance of a hearing a party should make such a request. They compromised by adopting a provision that requires the request to be made “in a timely manner considering the circumstances at the time the request was made.” The provision then identifies five circumstances that may be relevant in making that determination. As part of their compromise, Task Force members added another provision allowing local rules to establish variations in this process.

#### **Part Two: Initiation of Probate Proceedings (Rules 13 - 18)**

*Rule 13 (“Probate Information Form and Notice of Change of Contact Information Form”)* provides new definitions of “contact information” and “fiduciary.” Rather than listing items of information the probate information form requires, as the current rule does, the proposed rule instructs parties to file a designated Probate Information Form. Similarly, a new provision in this rule requires fiduciaries to file a Notice of Change of Contact Information Form when a fiduciary’s or ward’s contact information has changed. (Appendix C includes these new forms.)

*Rule 14 (“Applications in Probate Proceedings”)* and *Rule 15 (“Petitions in Probate Proceedings”)* begin with new sections (a) that respectively describe the

meaning of “application” and “petition.” Under Rule 14, an application is submitted to the probate registrar, and the rule includes new duties for the registrar and the clerk. The proposed rule requires the clerk to file and retain the application, including an original will, which changes current practices. The proposed rule also requires the registrar to “promptly approve or deny” the application, and if it is denied, “to file a statement with the reasons for the denial and provide a copy to the applicant.” Rule 15 more clearly describes how a petition becomes contested. Rule 15 includes a new provision on filing a joinder to a petition or a statement of no position. It also includes requirements for filing a request for an accelerated hearing on a petition that are currently in Rule 13.

***Rule 16 (“Notice of Initial Hearing on Petition”)*** modifies the required warning in section (b), in part by advising readers that attendance at the initial hearing is not required unless they oppose the requested relief, and if they do oppose it, the warning instructs the readers on necessary action.

***Rule 17 (“Initial Hearing on a Petition”)*** describes who must attend, and the procedure to be followed at, the initial hearing on a petition. This rule replaces existing Rule 12, which was entitled “Non-Appearance Hearing,” a phrase that confuses litigants as well as judicial officers because parties and others occasionally come to court for “non-appearance” hearings. Rule 17 provides that the petitioner must attend the hearing unless the court specifies otherwise, and that other interested



persons are not required to attend the hearing if they do not oppose the requested relief.

*Rule 18 (“Dismissal for Failure to Obtain a Hearing Date”)* authorizes the administrative dismissal of a petition if the petitioner does not timely obtain an initial hearing date on the petition.

### **Part Three: Subsequent Events and Actions (Rules 19 - 26)**

Part Three collects rules that are dispersed throughout the current set, including current Rule 13 on oral argument, Rule 15 on proposed orders, Rule 18 on motions, Rule 28 on an evidentiary hearing, Rule 29 on alternative dispute resolution, and Rule 35 on enforcement of court orders. The Task Force included new rules titled “conference,” “settlement conference,” and “compliance and order to show cause hearings.” Many of these proposed rules have parallel provisions defining each event and describing how the event is set and noticed, who is required to attend, and whether evidence will be presented. Rules in Part Three should particularly benefit self-represented individuals and attorneys who practice infrequently in probate court.

*Rule 19 (“Motions and Oral Argument”)* has been truncated by moving to other rules a section of current Rule 18 (“motions”) that concerns the appointment of counsel and another section of current Rule 18 regarding repetitive filings.

*Rule 26 (“Proposed Orders, Decrees, and Judgments”)* replaces current Probate Rule 15, which cross-references Civil Rule 5.1(d). When the Probate Rules were first promulgated, the Civil Rules required a party to submit extra copies of a proposed order and pre-addressed, stamped envelopes. Following statewide adoption of electronic filing, the Civil Rules eliminated that requirement. Because electronic filing is not available in probate cases, Probate Rule 26 reinstates the requirement, although this section allows a court to “order otherwise.”

**Part Four: Contested Proceedings (Rules 27 - 29)**

*Rule 27 (“Management of Contested Probate Proceedings”)* recognizes that Civil Rules on case management have changed significantly since the 2009 adoption of the probate rules, and some Civil Rule provisions are now incompatible with probate case management. For example, in a simple probate case, the judicial officer might enter a scheduling order at the initial hearing, eliminating the need for a joint report in that case, while a more complex case might require counsel to prepare a joint report and proposed scheduling order. Proposed Rule 27 accommodates different case management practices, based on the circumstances of the case.

*Rule 28 (“Disclosure and Discovery”)* deviates from current Rule 28(B), which simply incorporates Civil Rules 26 through 37 by reference. Members agreed that the tiered discovery limits in the Civil Rules are not practical in probate cases. Thus, Rule 28 includes presumptive limits on discovery by specifying a single set of

limits applicable to all probate cases, but it allows the court to modify those limits. Rule 28 also contains a new provision permitting, under specified circumstances, a public, licensed private, or unlicensed fiduciary to obtain subpoenas for production or inspection even when no contested probate proceeding is pending.

*Rule 29 (“Demand for Jury Trial”)* was prompted by amendments to Civil Rule 38, effective on January 1, 2019, which replaced a jury trial on demand with an automatic jury trial on issues “of right,” unless waived. The predicament is that in probate proceedings involving alleged incapacitated individuals, the subject person may lack the capacity to knowingly waive a trial (or capacity is the matter at issue). Probate Rule 29 retains juries by demand. The Court adopted on an emergency basis rule petition No. R-18-0039 to forestall application of the new Civil Rule in guardianship and conservatorship proceedings. The Task Force believes that the probate rules should not include a process for obtaining a jury in guardianships and conservatorships that differs from the process in other probate proceedings. Rule 29 is therefore broader than the emergency version because it would require a timely demand for a jury in any probate proceeding in which the right to a jury exists.

#### **Part Five: General Roles and Duties of Participants (Rules 30 - 35)**

Current Rule 10 (“duties owed by counsel, fiduciaries, unrepresented parties, and investigators”) is lengthy and dense. The Task Force separated those provisions into separate rules, located at relevant places in this and other parts of the rules.

These rules do not include a section of current Rule 10 concerning the duties of counsel, which is adequately covered by Civil Rule 5.3.

**Rule 32 (“Appointment of a Statutory Representative (Formerly Known as Guardian Ad Litem)”)** supersedes current Rule 15.1 entitled “appointment of guardian ad litem.” The appointment of a guardian ad litem in a probate proceeding appears contrary to legislative changes that replaced the guardian ad litem with a “representative” under A.R.S. § 14-1408. Because the term “guardian ad litem” remains in the nomenclature, the definition of a statutory representative in proposed Rule 32 states that it “includes the role traditionally described as a guardian ad litem.”

Another provision of proposed Rule 32 precludes the court from appointing a statutory representative for the subject person of an adult guardianship or protective proceeding if the court has not made a finding, after a hearing, that the person is incapacitated or in need of protection, as those terms are defined in statute. The proposed rule includes a new comment that should help to distinguish “statutory representative” from “guardian ad litem.”

Part Five includes **Rule 33 (“Compensation for Fiduciaries, Attorneys, and Statutory Representatives”)**. The Task Force restyled Rule 33 by adding section and subpart headings, making the rule easier to navigate. Proposed Rule 33 also clarifies the two pathways for requesting court approval of fees: first, in section (c),

through an account that identifies fees; and second, in section (d), through a separate petition requesting fee approval. As detailed in section (b), a request under either pathway requires the same documentation. Section (b) also includes the warning, derived from A.C.J.A. § 3-303(D)(2)(c), that “[b]lock billing is not permitted.”

Part Five also includes *Rule 34 (“Prudent Management of Costs”)*, which corresponds to current Rule 10.1 with one notable exception. The proposed rule alerts readers that other authorities also address prudent management by referencing A.R.S. § 14-1104 and A.C.J.A. § 3-303.

#### **Part Six: Rules That Apply Only to Guardianships, Conservatorships, and Decedents’ Estates (Rules 36 - 40)**

Part Six includes Rule 38, which requires training for non-licensed fiduciaries, and a rule concerning the duties of court-appointed fiduciaries that is currently Rule 10(C). Part Six also includes the following rules:

*Rule 36 (“Order Appointing Guardian, Conservator, Personal Representative, or Special Administrator”)* changes the phrase “restricted accounts” to “restrictions on authority.” The rule accordingly requires that the court’s appointment order include restrictions on authority rather than restrictions on assets. A new comment provides examples of restrictions on authority.

*Rule 37 (“Order to Fiduciary”)* contains the substance of current Rule 25, including references to Forms 1 through 4. However, the current rule recites that

those forms are in the Arizona Code of Judicial Administration. That is incorrect, and the proposed rule removes those recitals.

*Rule 39 (“Issuing and Recording Letters of Appointment”)* differs from current Rule 26 by including a new section explaining that a fiduciary requires court authority before acting for an estate or a subject person. The proposed rule defines “letters of appointment.” It also includes a new provision, similar to the existing rule requiring recording of a conservator’s letters of appointment, which requires a personal representative to record its letters of appointment.

#### **Part Seven: Rules That Apply Only to Guardianships and Conservatorships (Rules 41 - 49)**

Some of the current rules covering subjects now found in Part Seven lacked section titles, which the proposed rules have added. The concluding words of the title of Rule 41 (*“Appointment of an Attorney, Medical Professional, or Investigator in a Guardianship or Protective Proceeding”*) signal that these provisions do not apply to other probate proceedings, such as decedents’ estates or trusts. Proposed Rule 41 also permits the court to appoint an attorney, investigator, or medical professional other than the one nominated by the petitioner. The Task Force eliminated language from current Rule 19(E) that allows the court to continue a hearing if there is non-compliance with the rule’s provisions, because the court has this inherent authority.

***Rule 42 (“Training, Role, and Termination of an Attorney for a Subject Person”)*** includes a new section (b) concerning the role of an attorney who represents the subject of a guardianship or protective proceeding. This section says,

The attorney for the subject person must advocate for the subject person’s wishes to the extent the attorney is able to ascertain those wishes. The attorney must, as far as possible, maintain a normal client-lawyer relationship with the subject person. In addition, the attorney must act to protect the subject person’s substantive and procedural due process rights.

This new provision, which is based on ER 1.14, should provide guidance to counsel when the client is incapacitated and unable to communicate, or when the client directs counsel to take a position that counsel believes is contrary to the client’s best interests.

***Rule 44 (“Appointment of a Temporary Guardian or Temporary Conservator”)*** concerns the appointment of a temporary guardian or temporary conservator and replaces current Rule 23. The proposed rule eliminates the provision in current Rule 23 that requires the court to decide whether to make a temporary appointment and whether the appointment may occur without notice, because these requirements are already contained in statute.

***Rule 45 (“Conservator’s Inventory, Budget, and Account”)*** consolidates provisions of current Rules 30, 30.1, and 30.3, with several notable changes.

Rule 45(a), like A.C.J.A. § 3-302(D)(3), now allows the court to vary this rule's requirements, including requirements concerning forms, "if the court finds the variation is consistent with prudent management and oversight of the case."

The proposed rule eliminates a provision in current Rule 30 requiring an amended inventory because the later-discovered asset will be addressed in the first account. Under current Rule 30.3, a budget is required "unless ordered by the court." Under the proposed rule, a budget is required only "if the conservator believes it prudent or if the court orders." If a budget is timely filed, it is "presumed reasonable unless there is an objection." The proposed rule states that "unless otherwise ordered, a conservator should submit simplified accounts using Form 9," so many conservators will not be required to use the complex account forms that are currently mandated.

The sustainability provisions of current Rule 30.2 are now in proposed Rule 45(e)(3). The sustainability calculation is included on the required account form, so the formula has been omitted from the text of the rule. The phrase "the duration of time the protected person needs care or fiduciary services" in the current rule is vague and has been replaced with the less vague phrase, "for the protected person's foreseeable needs." Rather than the "management plan," which the current rule requires for a non-sustainable conservatorship, the proposed rule requires "a discussion of the available options."



*Rule 46 (“Annual Guardian Reports”)* relocates the separate requirement of current Rule 30(C) for annual guardian reports.

*Rule 47 (“Guardian’s Inpatient Psychiatric Treatment Authority”)* consolidates two current rules that addressed the same subject. Rule 47(a) (“initial request for inpatient psychiatric treatment authority”) originated from current Rule 24 (“appointment of guardian with inpatient mental health authority”). Rule 47(b) (“renewal of a guardian’s inpatient psychiatric treatment authority”) is derived from current Rule 36 (“renewal of guardian’s inpatient mental health authority”). Section (a) of the new rule allows the entry of an order without notice, if certain conditions are met, which codifies existing practices. Section (a) also requires a guardian who is given inpatient psychiatric treatment authority to sign a supplemental acknowledgement of duties associated with that authority, and the court to enter a corresponding order.

*Rule 48 (“Remedies for Non-Compliance by a Guardian or Conservator”)* adds the option of entering an order under Civil Rule 70 (“enforcing a judgment for a specific act”).

**Part Eight: Rules That Apply Only to Decedents’ Estates and Trusts (Rules 50 - 52)**

Part Eight brings together the rules that apply only to decedents’ estates and trusts. It re-orders them and adds clarifying titles. Proposed *Rule 50 (“Personal Representative’s Inventory and Account”)* contains the general content from

current Rule 31 (“decedents’ estates—specific procedures”), and proposed **Rule 52** (“*Trustee’s Account*”) addresses the content of current Rule 32 (“trusts—specific procedures”). **Rule 51** (“*Administrative Closure of a Decedent’s Estate and Termination of Appointment*”) derives from current Rule 15.2(A) and uses the more accurate term “administrative closure” in lieu of “involuntary termination.”

### **Part Nine: Recoveries for, and Distributions to, Minors and Protected Adults (Rules 53 - 54)**

The Task Force’s extensive discussion of **Rule 53** (“*Settlement of Claims of Minors and Adults in Need of Protection*”) included consideration of *Gomez v. Maricopa County*, 175 Ariz. 469 (App.1993), and suggestions from the State Bar’s Civil Practice and Procedure Committee. The proposed rule clarifies the existing rule by explaining when court approval of a settlement is required for the settlement to be binding on a minor or an adult in need of protection, and who may approve the settlement. The proposed rule also expands the current rule by permitting the appointment of a statutory representative or master, and by clarifying the variety of permissible orders beyond simply establishing a conservatorship. For example, the new rule would allow court approval of a structured settlement or the establishment of a special needs trust, or an ABLE or 529 account.

### **Part Ten: Forms (Rule 55)**

Current Rule 38 refers to forms as “preferred” and “exclusive,” but proposed **Rule 55** (“*Forms*”) uses the terms “recommended” or “required,” which are more

understandable. Rule 55 does not contain references to the Arizona Code of Judicial Administration or to individual forms, but rather references the self-service page of the Arizona Judicial Branch website, where the forms are located. The rule permits the Court to adopt, approve, or modify probate forms by administrative order.

**Section 9: Conclusion.** After the comment period closes, the Task Force will meet to discuss the comments and to revise its proposed rules as appropriate. Subject to those revisions, the Task Force asks the Court to abrogate the current Probate Rules and, in their place, to adopt the proposed new Probate Rules shown in Appendix A.

RESPECTFULLY SUBMITTED this 30<sup>th</sup> day of January 2019.

By \_\_\_\_\_  
Rebecca White Berch (Justice, ret.), Chair,  
Probate Rules Committee

3. Petition to Adopt Rule [28.1] Arizona Rules of Probate Procedure (No. R-18-0037), filed December 3, 2018.

Rebecca White Berch (Justice, ret.), Chair  
Task Force on the Arizona Rules of Probate Procedure, Petitioner  
1501 W. Washington St.  
Phoenix, AZ 85007

SUPREME COURT OF ARIZONA

PETITION TO ADOPT RULE 28.2, ) Supreme Court No. R-18-0037  
ARIZONA RULES OF PROBATE )  
PROCEDURE )  
 ) Emergency Adoption Requested  
\_\_\_\_\_ )

Rule 28(h), Rules of the Supreme Court, permits expedited consideration of a rule petition and emergency adoption of a court rule. Petitioner requests the Court’s expedited consideration of this petition and emergency adoption of a new Rule 28.2, Arizona Rules of Probate Procedure. The proposed rule is appended to this petition.

**1. Background.** By the entry of Administrative Order No. 2017-133 on December 20, 2017, the Court established a Task Force on the Arizona Rules of Probate Procedure (“Task Force”). The undersigned was designated as the Task Force Chair.

The Arizona Rules of Probate Procedure (“Probate Rules”) govern procedures in all probate proceedings, including guardianships and conservatorships. The Order directed the Task Force to review the current Probate Rules, and then to propose

changes that simplify and clarify these rules and conform them to contemporary practices. The Order set January 10, 2019 as a goal for the Task Force to file a rule petition seeking those changes. The Task Force has met regularly throughout 2018 to meet this goal.

**2. Reason for the adoption of Rule 28.2.** Current Probate Rule 3(A) provides, “Unless otherwise provided in these rules or inconsistent with these rules, the Arizona Rules of Civil Procedure apply to probate proceedings...” (The Task Force’s proposed version of this rule similarly says, “The Arizona Rules of Civil Procedure apply to probate proceedings unless they are inconsistent with these probate rules....”) There is no Probate Rule equivalent of current Civil Rule 38(b), and that rule accordingly applies in probate proceedings. Current Civil Rule 38(b) permits a party to obtain a jury trial in a probate proceeding, to the extent that a right to a jury trial exists, by filing and serving a timely demand for a jury.

At its August 2018 Rules Agenda, the Court entered Rules Order No. R-18-0018 and modified Civil Rule 38(b). The modified rule becomes effective on January 1, 2019. The R-18-0018 Order replaces the current title of Rule 38(b), “demand,” with the new title of “waiver.” The Order strikes all the text of current Rule 38(b) and replaces it with new text. The text of new section (b) provides that parties are deemed to have waived a right to trial by jury “only if they affirmatively

waive that right.” Put simply, under current Rule 38(b), a party must demand a jury trial; under new Rule 38(b), a jury trial is automatic unless waived.

A.R.S. § 14-1306 states: “*If duly demanded*, a party is entitled to trial by jury in any proceeding in which any controverted question of fact arises as to which any party has a constitutional right to trial by jury.” (Emphasis added.) A.R.S. §§ 14-5310 and 14-5401.01, which concern petitions for temporary guardians and temporary conservators, respectively provide that a hearing on the petition “does not limit the parties to any rights they may have to trial by jury.” Under A.R.S. § 14-5303(C), “an alleged incapacitated person is entitled to...trial by jury” on a guardianship petition.

New Rule 38(b) is impractical in probate court proceedings concerning alleged incapacitated persons. Current Civil Rule 38(b) has not been problematic because alleged incapacitated persons and their counsel rarely filed demands for jury trials. They are almost always satisfied with a bench trial. Under new Rule 38(b), however, these individuals will automatically have a jury trial unless they waive that right. The dilemma is that the great majority of these individuals lack the capacity to knowingly and intelligently waive that right. In the absence of waivers under new Civil Rule 38(b), the trial court will need to provide jury trials in guardianship proceedings —and possibly in conservatorship proceedings — beginning January 1, 2019.

The Task Force’s rule petition, which it expects to file in January 2019, will include a new Probate Rule, numbered 28.2 concerning a demand for jury trial. Rule 28.2 includes sections (a) (“demand”), (b) (“specifying issues”), and (c) (“waiver; withdrawal”) modeled on current Civil Rule 38(b). Rule 28.2 also includes sections (d) (“if a demand is made), (e) (“if no demand is made”), and (f) (advisory jury; jury trial by consent”) that are based on current Civil Rule 39. (The R-18-0018 Order also abrogates the text of current Civil Rule 39(a)-(c).)

Rather than waive a jury trial, as new Civil Rule 38(b) would require, proposed emergency Probate Rule 28.2 would require a party to a guardianship petition — and a party to a conservatorship petition, to the extent the right to a jury exists — to affirmatively demand a jury trial. In the absence of a demand, the alleged incapacitated person would have a trial to the court.

**3. Reasons for expedited adoption of Rule 28.2.** [The data book prepared by the Administrative Office of the Courts for calendar year 2017](#) reported that statewide, there were 205 jury trials in civil cases and 795 trials in criminal cases, or 1000 jury trials throughout Arizona. The data book also reported that during the same year, 4,740 guardianship and conservatorship cases were filed statewide. (The data book did not differentiate between the number of guardianships and conservatorships.) However, Maricopa County data indicates that about 1800



guardianship petitions are filed annually. After adding in the other fourteen counties, there are probably more than 2000 guardianship petitions filed annually statewide.

A.R.S. § 14-5303(C) affords a right to jury trial to the alleged incapacitated person in a guardianship petition. If every guardianship petition resulted in an automatic jury trial, the number of jury trials statewide in 2019 would likely be triple the current number. If only half of the guardianship petitions resulted in an automatic jury trial, the number of jury trials statewide in 2019 would probably double. The increase would place a substantial strain on existing court resources. It would require the trial court to summon many more jurors to court and pay them for their service. It would increase the length of guardianship hearings and create tremendous backlogs in probate proceedings. It would probably have a ripple effect on other non-probate case types that require trials by jury.

**4. Request for expedited adoption.** To avoid the need for jury trials in guardianship and conservatorship proceedings beginning on January 1, 2019 — the effective date of new Rule 38 — petitioner requests that the Court adopt Probate Rule 28.2 on an emergency basis, with a concurrent effective date of January 1, 2019. The Court could thereafter

- open this emergency petition for comment, and

- consolidate the emergency petition with the global petition concerning the probate rules that the Task Force will file in January 2019, which will include Rule 28.2.

RESPECTFULLY SUBMITTED this 3rd day of December 2018.

By \_\_\_\_\_  
Rebecca White Berch (Justice, ret.), Chair,  
Probate Rules Committee

**Rule 28.2. Demand for Jury Trial in Guardianship and Conservatorship Proceedings.**

**(a) Demand.** On any issue triable of right by a jury in a guardianship or conservatorship proceeding, a party may obtain a jury trial by filing and serving a written demand at any time after the proceeding is commenced, but no later than 30 days after the initial hearing on the petition. The demand may not be combined with any other motion or pleading filed with the court.

**(b) Specifying Issues.** In its demand, a party may specify the issues for which it requests a jury; otherwise, the party is deemed to have demanded a jury trial on all issues triable by jury. If a party has demanded a jury trial on only some issues, any other party may — within 10 days after the demand is served or within a shorter time ordered by the court — serve a demand for jury trial on any other or all factual issues triable by jury.

**(c) Waiver; Withdrawal.** A party waives a jury trial unless its demand is properly filed and served. A proper demand may be withdrawn only if all parties consent.

**(d) If a Demand Is Made.** If a jury trial is demanded, the action must be tried by jury unless:

(1) all parties file a stipulation to a nonjury trial or so stipulate on the record; or

(2) the court, on motion or on its own, finds that there is no right to a jury trial on some or all of those issues.

**(e) If No Demand Is Made.** The court must try all issues on which a jury trial is not properly demanded. The court may, on motion, order a jury trial on any issue for which a jury might have been demanded.

**(f) Advisory Jury; Jury Trial by Consent.** In an action not triable of right by a jury, the court, on motion or on its own:

(1) may try any issue with an advisory jury; or

(2) may, with the parties' consent, order a jury trial on any issue, and the verdict will have the same effect as if a jury trial had been held as a matter of right.

4. Order Adopting on an Emergency Basis New Rule 28.1,  
Arizona Rules of Probate Procedure (No. R-18-0039),  
filed December 13, 2018.



Arizona Supreme Court No. R-18-0039

Page 2 of 4

June 1, 2019, in accordance with Rule 28(B)(2), Arizona Rules of  
the Supreme Court.

DATED this 13<sup>th</sup> day of December, 2018.

/s/

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SCOTT BALES  
Chief Justice

Arizona Supreme Court No. R-18-0039

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TO:

Rule 28 Distribution List

Hon. Rebecca White Berch

## ATTACHMENT

### ARIZONA RULES OF PROBATE PROCEDURE

#### **Rule 28.1. Demand for Jury Trial in Guardianship and Conservatorship Proceedings.**

**(a) Demand.** On any issue triable of right by a jury in a guardianship or conservatorship proceeding, a party may obtain a jury trial by filing and serving a written demand at any time after the proceeding is commenced, but no later than 30 days after the initial hearing on the petition. The demand may not be combined with any other motion or pleading filed with the court.

**(b) Specifying Issues.** In its demand, a party may specify the issues for which it requests a jury; otherwise, the party is deemed to have demanded a jury trial on all issues triable by jury. If a party has demanded a jury trial on only some issues, any other party may—within 10 days after the demand is served or within a shorter time ordered by the court—serve a demand for jury trial on any other or all factual issues triable by jury.

**(c) Waiver; Withdrawal.** A party waives a jury trial unless its demand is properly filed and served. A proper demand may be withdrawn only if all parties consent.

**(d) If a Demand Is Made.** If a jury trial is demanded, the action must be tried by jury unless:

- (1) all parties file a stipulation to a nonjury trial or so stipulate on the record; or
- (2) the court, on motion or on its own, finds that there is no right to a jury trial on some or all of those issues.

**(e) If No Demand Is Made.** The court must try all issues on which a jury trial is not properly demanded. The court may, on motion, order a jury trial on any issue for which a jury might have been demanded.

**(f) Advisory Jury; Jury Trial by Consent.** In an action not triable of right by a jury, the court, on motion or on its own:

- (1) may try any issue with an advisory jury; or
- (2) may, with the parties' consent, order a jury trial on any issue, and the verdict will have the same effect as if a jury trial had been held as a matter of right.



5. Supplemental Petition re: Rule 45, filed Sept. 25, 2019.

Rebecca White Berch (Justice, ret.), Chair  
Task Force on the Arizona Rules of Probate Procedure, Petitioner  
1501 W. Washington St.  
Phoenix, AZ 85007

SUPREME COURT OF ARIZONA

SUPPLEMENTAL PETITION ) Supreme Court No. R-18-0044  
REGARDING RULE 45, )  
ARIZONA RULES OF PROBATE ) **Supplemental Petition**  
PROCEDURE )  
 )  
 )  
\_\_\_\_\_ )

Petitioner through its Editorial Group and pursuant to this Court’s August 29, 2019 Order submits this Supplemental Petition concerning Rule 45 of the Arizona Rules of Probate Procedure. The version of Rule 45 that was appended to the Reply has been revised, as shown in the Appendix to this Supplemental Petition.

**1. Background.** The Court’s Task Force on the Arizona Rules of Probate Procedure filed its Petition in January 2019 and a Reply to public comments in June 2019. The Petition and Reply requested comprehensive revisions to the Probate Rules and revisions to, or adoption of, several probate forms.

On August 29, 2019, the Court entered an Order in R-18-0044 that adopted the new rules and forms, except for Rule 45 (“Conservator’s Inventory, Budget, and Account”). As to Rule 45, the Order directed “that the editorial workgroup of the

Court’s Task Force on the Arizona Rules of Probate Procedure file a supplemental rule petition on or before October 1, 2019, modifying proposed Rule 45 to provide for a mandatory budget and appropriate timeframes.”<sup>1</sup>

**2. Discussion.** The January Petition proposed the consolidation of current Rules 30 (“Guardianships/Conservatorships-Specific Procedures”), 30.1 (“Financial Order”), and 30.3 (“Conservatorship Estate Budget”) into a single new Rule 45, with several notable changes. However, because of the multiplicity of proposed revisions to the Probate Rules, the Petition’s discussion of Rule 45’s budget provisions was brief and simply said, “Under current Rule 30.3, a budget is required ‘unless ordered by the court.’ Under the proposed rule, a budget is required only ‘if the conservator believes it prudent or if the court orders.’ If a budget is timely filed, it is ‘presumed reasonable unless there is an objection.’”

The proposed provision on budgets drew considerable attention, and Task Force members had lengthy discussions concerning its initial proposal following the close of the public comment period. The Task Force then revised Rule 45 and

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<sup>1</sup> As explained at page 3 of the Reply, the Editorial Group was a subgroup the Task Force authorized to craft, harmonize or “fine tune” the wording of various rules consistent with the Task Force’s discussions. The Editorial Group was led by the Task Force Chair, Justice Rebecca White Berch (ret.), and included Task Force members Judge Patricia K. Norris (ret.), Judge Jay Polk, and Task Force staff Mark Meltzer.

submitted the revised version with its June Reply; however, it retained the budget as discretionary.

(A) The Court now having directed that budgets be presumptively mandatory, the Editorial Group proposes the deletion of Rule 45(d)(1) (“Necessity”) as that provision was shown in the Task Force’s June version of the rules. The Editorial Group further proposes that Rule 45(d)(2) of the June version be retitled as “Necessity and Timing” and modified. The Editorial Group’s proposed changes to the June version of Rule 45(d)(1) and (2) are accordingly as follows:

~~(1) **Necessity.** At the time of the conservator’s appointment, the court must determine whether to order the conservator to file a budget. The court must make a similar determination when reviewing each account under section (e). In deciding whether to order a budget, the court must consider the value and complexity of the estate and any other factors the court deems relevant. The conservator may file a budget in the absence of a court order.~~

**(2) (1) Necessity and Timing.** The conservator must file any initial budget no later than the date the conservator’s inventory is due, and **The conservator must** file **any a** subsequent budget with **the annual each** account.

The Editorial Group makes the following observation.

The proposed language concerning mandatory budgets would continue to be modified by the language of proposed Rule 45(a), which this Supplemental Petition proposes to retain without changes. Rule 45(a) says,

**(a) Court Authority.** The court may order a variation of this rule’s requirements for an inventory, budget, or account, or the form thereof, if the

court finds the variation is consistent with prudent management and oversight of the case.

This provision recognizes that there are exceptions to mandatory requirements for inventories, budgets, and accounts, and that judges should have discretion to determine whether the circumstances of an individual case warrant an exception. As an example of a case that might not require a budget, the Task Force's Reply cited a spouse serving as conservator for an incapacitated spouse when the marital community's recurring income was enough to pay for the incapacitated spouse's care. As another example, a case where the protected person has a life expectancy of less than a year might not require an annual budget.

Similar scenarios were undoubtedly contemplated by the drafters of current Rule 30.3, which requires a budget but is prefaced with the words, "unless otherwise ordered by the court...." Proposed Rule 45(a) is also consistent with the letter and spirit of Arizona Code of Judicial Administration § 3-302(D)(2)(b)(2), which concerns accounting and budget forms 5 through 9. This code section provides that "upon a showing of good cause, the superior court may, in a particular case, issue an order permitting variation of a form, schedule, or worksheet if the court finds that such variation is consistent with prudent management and oversight of the case." Current Rule 30.3 and § 3-302 acknowledge that there are individual and unusual situations in which ordinary requirements might be burdensome, unproductive, or unnecessary.

(B) The August 29, 2019 Order requiring changes to Rule 45 did not concurrently direct the Editorial Group to propose changes to Rule 36, which the Court’s Order approved and adopted. Rule 36 is titled, “Order Appointing Guardian, Conservator, Personal Representative, or Special Administrator.” Rule 36(a)(4) provides:

**(4) *Conservatorship Budget.*** An order appointing a conservator must specify whether the conservator is required to file an initial budget under Rule 45(d).

If the Court adopts the changes to Rule 45 proposed in this Supplemental Petition, which would presumptively make a budget mandatory, it might want to consider deleting Rule 36(a)(4).

(C) Finally, the Supplemental Petition proposes a new Rule 45(d)(4) titled “copies to interested persons.” This language of this new provision is taken almost verbatim from existing Rule 30.3(C). Although the Civil Rules require that a copy of the budget be provided to all *parties*, a party is only someone who has formally appeared in the case. A.R.S. § 14-5419(C) requires an account to be provided to certain people who might not necessarily be parties. Thus, new Rule 45(d)(4) adds and retains appropriate language contained in current Rule 30.3(C).

**3. Discussion of timeframes.** The text of proposed Rule 45(d)(2), as submitted with the Reply, provided:

**(2) Timing.** The conservator must file any initial budget no later than the date the conservator’s inventory is due and file any subsequent budget with the annual account.

At first, the Editorial Group did not perceive any issues with the time for filing the inventory or the initial budget (the initial budget is due concurrently with the inventory). However, after filing the Reply, the Editorial Group discussed changing the time for the initial account that was specified in Rule 45(e)(4) of the Reply – from 12 months, as proposed in the Reply, to 9 months, which is the time specified in current Rule 30(b)(1). The rationale is that the Task Force did not provide a comprehensive package that addressed the consequences of the proposed timing change, including modifications to Forms 5 through 9, or the schedules or instructions that accompany those forms, which are based on an initial 9-month account.

The requested reversion to 9 months would require modifications not only to Rule 45(e)(4) (“first account”), but – to align all account requirements in Rule 45(e) with current Rule 30(B) – also to proposed subpart (e)(1) (“timing”) and (e)(5) (“later accounts”). A change to subpart (e)(7) (“format of account”) conforms that provision with the requirement of a mandatory budget. The Appendix shows the newly proposed changes to the version of Rule 45 that was submitted with the Task Force’s Reply.

**4. Conclusion.** The undersigned requests the Court to open this Supplemental Petition for public comment, and that undersigned be allowed to file a reply to those comments, as specified in the Court's August 29, 2019 Order.

RESPECTFULLY SUBMITTED this 25th day of September 2019.

By /s/ \_\_\_\_\_  
Rebecca White Berch (Justice, ret.), Chair,  
Probate Rules Task Force



## Appendix

The Appendix shows changes to the version of Rule 45 proposed by the Reply in R-18-0044. Deletions are shown with ~~strikethrough~~; additions are shown with underline.

### **Rule 45. Conservator's Inventory, Budget, and Account**

(a) **Court Authority.** The court may order a variation of this rule's requirements for an inventory, budget, or account, or the form thereof, if the court finds the variation is consistent with prudent management and oversight of the case.

(b) **Date of Conservator's Appointment.** For purposes of this rule, the conservator's appointment is the date the court first issues letters of appointment.

#### **(c) Conservator's Inventory.**

(1) **Timing.** A conservator must file an inventory of a protected person's estate no later than 90 days after the date of the conservator's appointment.

(2) **Contents.** The inventory must contain the information specified in A.R.S. § 14-5418(A).

(3) **Consumer Credit Report.** The conservator must file the consumer credit report required by A.R.S. § 14-5418(A) with the inventory.

#### **(d) Conservator's Budget.**

~~(1) **Necessity.** At the time of the conservator's appointment, the court must determine whether to order the conservator to file a budget. The court must make a similar determination when reviewing each account under section (c). In deciding whether to order a budget, the court must consider the value and complexity of the estate and any other factors the court deems relevant. The conservator may file a budget in the absence of a court order.~~

(1) ~~(2)~~ **Necessity and Timing.** The conservator must file any initial budget no later than the date the conservator's inventory is due, and The conservator must file any a subsequent budget with ~~the annual~~ each account.

(2) ~~(3)~~ **Contents and Format.** The budget must include a reasonable estimate of all anticipated income and expenditures related to the protected person's estate. ~~The~~

~~budget must cover the same time frame as the conservator's annual account. The conservator must use Form 5, 6, or 7, as applicable for the initial budget.~~

**(3)** ~~(4)~~ *Amendments.* The conservator must file an amended budget no later than 30 days after reasonably projecting the expenditures for any specific category will exceed the budget by a threshold stated in the instructions to Form 5.

**(4)** *Copies to Interested Persons.* The conservator must provide a copy of the budget, including any amended budget, to all persons entitled to notice of the conservator's accounts under A.R.S. §14-5419(C).

**(5)** *Filing a Budget Presumptions, Objections, and Court Action.*

**(A)** *Presumption; Objection.* A timely filed budget is presumed reasonable unless there is an objection. An interested person may file an objection no later than 14 calendar days after the budget or amendment was filed.

**(B)** *Hearings and Resolving Objections.* The court may summarily overrule the objection, order the conservator to file a response, or set a hearing on the objection. The court may set a hearing even in the absence of an objection. The conservator has the burden of proving that a contested budget item is reasonable, necessary, and in the best interests of the protected person.

**(C)** *Court Action.* If the court reviews the budget, it may approve, disapprove, or modify the budget to further the protected person's best interests.

**(e) Conservator's Account.**

**(1)** *Timing.* The conservator must file an annual account ~~no later than 90 days after~~ on or before the anniversary date of the issuance of the conservator's permanent letters of appointment.

**(2)** *Required Attachments.* For each bank or securities account listed on the ending balance schedule, the conservator must attach the statement that corresponds to the ending balance of such account.

**(3)** *Sustainability.* The ~~annual~~ account must state whether the conservatorship's recurring ~~annual~~ expenses exceed its recurring ~~annual~~ income, and

**(A)** if so, whether the assets available to the conservator less the estate's liabilities are sufficient to sustain the conservatorship for the protected person's foreseeable needs; and

- (B) if the estate is not sustainable, the conservator must include a discussion of the available options.
- (4) **First Account.** The conservator's first account must reflect all activity relating to the conservatorship estate from the date of first appointment through and including ~~one year from the date of the issuance of~~ the last day of the 9<sup>th</sup> month after the date the conservator's letters of permanent appointment were issued, or other date set by the court.
- (5) **Later Accounts.** All later accounts must reflect all activity relating to the conservatorship estate from the ending date of the most recently filed account through, and including, the ~~anniversary date of the conservator's letters~~ last day of the 12<sup>th</sup> month thereafter, or other date set by the court.
- (6) **Final Account.** Except as provided in A.R.S. §14-5419(F) or as ordered by the court, the conservator must file a final account of the protected person's estate no later than 90 days after protected person's death or court order terminating the conservatorship. The final account must reflect all activity between the ending date of the most recently approved account and the date of termination of the conservatorship. The court may extend the date for filing the account or relieve the conservator from filing a final account.
- (7) **Format of Account.** ~~If the court orders a budget, the~~ The conservator must use Form 6, 7, or 8, as applicable, ~~– If the court has not ordered a budget, a~~ unless the court allows the conservator ~~may to~~ use Form 9. Nothing in this rule precludes the court from requiring an alternative form of account or, in appropriate circumstances, waiving an account.
- (f) **Motion for Additional Time.** If the conservator is unable to comply with a deadline established by this rule or court order, the conservator must file a motion for additional time before the deadline. The motion must state why the conservator needs additional time and how much additional time is needed.
- (g) **Confidentiality.** The court must maintain the inventory, the consumer credit report, the budget, and the account as confidential documents under Rule 8.

6. Polk, Hon. Jay, Significant Changes to the Rules of Probate Procedure (Undated, 2019).

# Significant Changes to the Rules of Probate Procedure

by

**Honorable Jay M. Polk<sup>1</sup>**

## Part I: General Information

- **New Probate Rule 6(a) for existing (Probate Rule 4(B)):** Expressly provides that when a non-probate proceeding has been filed in or consolidated with a probate case, the court may order a separate hearing on one or more issues or may sever the non-probate proceeding from the probate case.
- **New Probate Rule 9 (entirely new):** which deals with sealing and unsealing of court documents, is entirely new.
  - Section (a), which sets forth the procedure for sealing and unsealing documents filed in a probate case, incorporates by reference Rule 5.4, Arizona Rules of Civil Procedure (“Civil Rule”).
  - Section (b) describes who may access a sealed document, and it expressly authorizes a court-appointed fiduciary and the fiduciary’s attorney to obtain a certified copy of the following sealed documents: the order appointing the fiduciary, the acceptance of appointment, the proof of completion of training, and the letters of appointment. In addition, the fiduciary or the fiduciary’s attorney may use new Form 15 to authorize someone else (such as a paralegal or messenger) to obtain a certified copy of any of the sealed documents that the fiduciary or the fiduciary’s attorney could obtain.
- **New Probate Rule 10 for existing (Probate Rule 14):** Whereas the existing rule requires *all* consents to a petition or an application to be acknowledged, the new rule requires verification of the signer’s identity on consents, joinders, and statements of no position *only* if the signer is self-represented. Like the existing rule, the new rule still requires verification of the signer’s identity on every waiver of any right, renunciation of right to appointment as a court-appointed fiduciary, and nomination of a person to serve as a court-appointed fiduciary.

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<sup>1</sup>Jay M. Polk is the Associate Presiding Judge of the Probate and Mental Health Department of the Superior Court of Arizona for Maricopa County. He is a member of the Task Force on the Arizona Rules of Probate Procedure and was the leader of the Task Force’s Workgroup 1 and a member of the Task Force’s Editorial Workgroup. Judge Polk previously served on both the Probate Rules Committee, which proposed the first ever set of statewide probate rules in Arizona, and the Committee on Improving Judicial Oversight and Processing of Probate Court Matters, which proposed significant amendments to the Arizona Rules of Probate Procedure. The author thanks his bailiff, Alexa Amado (his bailiff), for her assistance in editing this article.

- **New Probate Rule 11 for existing (Probate Rule 8):** New Probate Rule 11(a) clarifies that when A.R.S. Title 14 requires that the subject person of a guardianship or protective proceeding be personally served, service must be made by a person authorized in Civil Rule 4(d) (i.e., a sheriff, a sheriff’s deputy, a constable, a constable’s deputy, a certified process server, or any other person specially appointed by the court) and that the subject person may waive service only in accordance with A.R.S. sections 14-5309(B) and - 5405(B).
  - Section (c) of new Probate Rule 11 is entirely new. It requires that any petition that requests a money judgment, along with the notice of an initial hearing on that petition, be personally served on the person against whom the judgment is sought in accordance with Civil Rules 4, 4.1., and 4.2. Thus, for example, if a trust beneficiary files a petition that requests the trustee be removed from office and surcharged, the beneficiary must have the trustee personally served with a copy of the petition and notice of the initial hearing on the petition. Providing notice of the initial hearing by First Class, United States Mail, in accordance with A.R.S. section 14-1401(A)(1), is *not* sufficient.
  
- **New Probate Rule 12 for existing (Probate Rule 11(B)):** Makes significant changes to requests for telephonic and video attendance and testimony at a court proceeding.
  - New Probate Rule 12(c) allows a person who is requesting to attend a proceeding telephonically (or by video) to make either a written motion or an oral motion
  - New Probate Rule 12(d) does not set forth a specific, objective date by which the motion must be made. Instead, new Probate Rule 12(d) provides that the motion “must be made in a timely manner considering the circumstances at the time the request was made.”
    - It further explains that circumstances may include, but are not limited to, “(1) the promptness of the party in making the request;
    - (2) the nature of the proceeding, including whether it is contested or evidentiary; .
    - (3) whether all other parties agree to the telephonic attendance or testimony;
    - (4) the reason why telephonic attendance or testimony is being requested;
    - and (5) logistical factors.”

Part II: Initiation of Probate Proceedings

- **New Probate Rule 14 for existing (Probate Rule 2(A)) and combines it with existing (Probate Rule 16):**
  - New Probate Rule 14(c)(1) now requires the clerk to file and retain an application (including any original will submitted with the application), regardless of whether

the application is granted, and mandates that any amended application or subsequent petition relating to the same decedent be filed under the same case number as that assigned to the prior application.

- Moreover, if the registrar denies the application, subpart (c)(2) requires the registrar to file a written statement that explains the reasons for the denial.
- Thus, new Probate Rule 14(c), which is intended to preserve a record of applications that are not granted, will be a significant change for how clerks and registrars in most counties deal with applications that are denied.
- 
- **New Probate Rule 15 for existing (Probate Rule 2(N)) and combines it with existing (Probate Rule 17):**
  - Whereas existing Probate Rule 17(D) requires a written objection (or a motion under Civil Rule 12, such as a motion to dismiss) to a petition to be filed at least three court days before the initial hearing on the petition,
  - New Probate Rule 15(e)(1) requires the objection to the petition (a “response”) to be filed at least seven calendar days before the initial hearing on the petition. Of course, just like existing Probate Rule 17(D), New Probate Rule 15(e)(2) also allows an oral objection to be made at the initial hearing, but in that case a written response to the petition (or a motion under Civil Rule 12) must be filed within 14 days after the initial hearing unless the court sets a different deadline.
- **New Probate Rule 16 for existing (Probate Rule 9):** The only substantive difference between the new and existing rules pertains to the required warning.
  - First, the new required warning must state that the recipient of the notice is not required to attend the hearing unless the recipient wishes to oppose the relief requested in the petition and does not file a timely response to the petition before the hearing.
  - Second, the new required warning, reflecting the change to new Probate Rule 15(e)(1), now explains that a timely response is one filed at least seven calendar days before the initial hearing date (the required warning described in existing Probate Rule 9(B) states that an objection must be filed at least three days before the hearing).
  - Last, the new required warning must also contain an admonition that failure to file a timely response to the petition or to attend the hearing may result in the court granting the relief requested in the petition without further notice and will result in the recipient of the notice not receiving additional notices of court proceedings relating to the petition unless the recipient files a demand for notice.
-

- **New Probate Rule 17(a):** Describes who must attend the initial hearing by dividing persons into the following three categories:
  - (1) the petitioner, (2) interested persons who do not oppose the relief being requested in the petition, and (3) interested persons who do oppose the relief requested in the petition. The petitioner must attend the initial hearing unless the court specifies otherwise. (Although not articulated in new Probate Rule 17(a), if the court has specified that the petitioner is not required to attend the initial hearing, the initial hearing is what presently is called a “non-appearance hearing.”)
  - An interested person who does not oppose the relief requested in the petition is not required to attend the initial hearing unless the court has ordered otherwise.
  - Last, an interested person who opposes the relief requested in the petition must attend the initial hearing unless the interested person has filed a written response to the petition at least seven calendar days prior to the hearing. As with existing Probate Rule 12(D), under new Probate Rule 17(a)(2)(B), interested persons who oppose the relief requested in the petition and who appear at the initial hearing on that petition must notify the court of their presence and opposition.
  
- **New Probate Rule 17(c):** Describes whether evidence may be presented at the initial hearing. If the court has specified that the petitioner is not required to attend the hearing, the court may not receive evidence at the initial hearing. However, if the petitioner attends the initial hearing, evidence may be presented if all parties agree.
  
- **New Probate Rule 18 for existing (Probate Rule 15.2(D), (E), and (F)):** Which deal with involuntary dismissals. Whereas the existing rule only describes dismissal of cases, the new rule is broader in that it addresses dismissal of petitions. Under new Probate Rule 18(a), if the petitioner has not obtained an initial hearing date within 60 days after filing a petition, the court must notify the petitioner (and anyone else who has filed a demand for notice), that the petition may be administratively dismissed 30 days from the date of the court’s notice unless within that 30 days the petitioner obtains a hearing date or an extension of the dismissal date. The new rule expressly states that it does not apply to a petition that is subject to court accountant review.
  
- **New Probate 18(b):** Explains the effect of an administrative dismissal. If the petition being dismissed is the only petition filed in the case, the dismissal order acts to dismiss the entire case without prejudice. On the other hand, if more than one petition has been filed in the case, the dismissal order operates as a dismissal (without prejudice) only of the petition that is the subject of the order and does not impact any other petitions or the case.

Part III: Subsequent Events and Actions



- **New Probate Rules 19 through 26:** Describe the types of court events that may occur after a probate proceeding has been initiated. Each of those rules follows a similar format. First, the type of event is defined within each of these rules. For an event that takes place in the courtroom, the applicable rule describes how that event is set, who is responsible for providing notice of the event, who must attend the event, and whether (or what type) of evidence may be presented.
  - New Probate Rule 19 for existing (Probate Rule 18): Contains the word *motion* in the title.
- **New Probate Rule 19(b):** Specifically requires a party to provide the assigned judicial officer with a copy of the party’s motion, response, or reply, which is something not addressed in the existing Probate Rules.
- **New Probate Rule 19(e):** Clarifies that only parties (i.e., persons who have actually appeared in the case, *see* new Probate Rule 2(r)) and interested persons who have filed a demand for notice must be given notice of an oral argument.
- **New Probate Rule 19(g):** prohibits the presentation of evidence that was not submitted with the motion, response, or reply.
- **New Probate Rule 20:** Addresses conferences
  - Under subsection (c), the court is responsible for giving notice of the conference to all parties and any interested person who has filed a demand for notice; an interested person who has not filed a demand for notice is not entitled to notice of the conference.
  - Under subsection (e), evidence may not be presented at a conference.
- **New Probate Rule 22:** Addresses settlement conferences
  - Under subsection (c), the court is responsible for giving notice of the settlement conference to all parties; however, the court is not required to give notice of the settlement conference to any interested person, including one who has filed a demand for notice.
  - Subsection (f) expressly authorizes the judicial officer to have *ex parte* communications with the parties during the settlement conference.
- **New Probate Rule 23 for existing (Probate Rule 28(C)):** only describes the procedure for an evidentiary hearing by incorporating Civil Rule 38 and 39 through 53 by reference: New Probate Rule 23 goes beyond that approach by first defining an evidentiary hearing as “a court event held after an initial hearing at which the parties present evidence for a

determination of factual issues” and clarifying that “[a]n evidentiary hearing includes a trial.” The court must give notice of the evidentiary hearing to all parties and any interested person who has filed a demand for notice (but no one else).

- **New Probate Rule 25:** Describes compliance and orders to show cause hearings, does not have any counterpart in the existing Probate Rules.
- **New Probate Rule 26 it replaces (Civil Rule 5.1(d)):** Deals with proposed forms of orders, decrees, and judgments.
  - New Probate Rule 26(f) reinstates the requirement that the party submitting a proposed form of order also submit extra copies and postage-paid envelopes. Otherwise, new Probate Rule 26 is substantially similar to Civil Rule 5.1(d) and existing Probate Rule 15(a).

#### Part IV: Contested Proceedings

- **New Probate Rules 27 through 29:** Set forth the procedures to be followed in contested probate proceedings.
- **New Probate Rule 27:** Allows the court flexibility; it can either require the parties to file a joint report and proposed scheduling order or, in the alternative, enter an order that sets litigation deadlines. If the court requires the parties to file a joint report and submit a proposed scheduling order, they should look at subsections (c), (d), and (e) for the required contents of those documents. Thus, new Probate Rule 27 effectively supersedes Civil Rules 16(b) and (c).
- **New Probate Rule 28 deviates from existing (Probate Rule 28(B)):** Which incorporates all of Civil Rules 26 through 37 (dealing with discovery and disclosure) by reference. The Task Force determined that the tiered discovery limits in the Civil Rules are not practical in probate proceedings. Consequently, new Probate Rule 28(b), which provides presumptive discovery limits, replaces the tiered discovery limits in Civil Rule 26.2. In addition, new Probate Rule 28(a)(2), which addresses the timing and sequence of discovery, replaces Civil Rule 26(f)(1). Moreover, new Probate Rule 28(e) expressly authorizes a fiduciary, in the performance of the fiduciary’s duties, to request the clerk to issue a subpoena duces tecum even if no contested proceeding is pending.
- **New Probate Rule 29 supersedes (Civil Rule 38):** Retains jury trials only by written demand. The written demand must be filed no later than 30 days after the initial hearing

on the petition and must specify the issues for which the jury trial is being requested. A proper demand may be withdrawn only if all parties consent.

#### Part V: General Roles and Duties of Participants

- **New Probate Rule 32:** is perhaps the most controversial and constitutes the most significant change from the existing Probate Rules. It replaces existing Probate Rule 15.1, which addresses the appointment of a “guardian *ad litem*” in a probate proceeding.
  - The first noticeable change is that, rather than using the phrase “guardian *ad litem*,” new Probate Rule 32 uses the phrase “statutory representative.” The change in terminology is necessitated by a 2009 statutory change. Prior to January 1, 2019, A.R.S. section 14-1403 specifically authorized the court, in a probate proceeding, to appoint a “guardian *ad litem*” to represent the interest of, among others, a minor or an incapacitated person.<sup>2</sup> However, when Arizona enacted the Arizona Trust Code, which is based on the Uniform Trust Code, effective January 1, 2009, A.R.S. section 14-1403 was substantially amended and A.R.S. sections 14-1404 through -1408 were added to Article 4, Chapter 1, A.R.S. Title 14. *See* 2008 Ariz. Sess. Laws Ch. 247. None of statutes mentions a “guardian *ad litem*” or authorizes the court to appoint a “guardian *ad litem*.” Instead, A.R.S. section 14-1408(A) now authorizes the court to appoint “a ***representative*** to receive notice, give consent and otherwise represent, bind and act on behalf of a minor, incapacitated person, unborn child or person whose identity or location is unknown.” (Emphasis added.) Hence, new Probate Rule 32(a) defines the phrase *statutory representative*, which is used throughout the new Probate Rules instead of the phrase *guardian ad litem*, as “a person appointed under A.R.S. § 14-1408 and includes the role traditionally described as a guardian *ad litem*.”
  - The next significant change is that new Probate Rule 32 provides a detailed instructions as to how a party to a probate proceeding may request the appointment of a statutory representative and the procedure the court must follow. Under section (c), the request must be made in a verified petition that states two things “with specificity.” First, the petition must state whether the person for

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<sup>2</sup>Prior to January 1, 2009, A.R.S. § 14-1403 read, in pertinent part, as follows:

In formal proceedings involving trusts or estates of decedents, minors, protected persons or incapacitated persons, and in judicially supervised settlements, the following apply:

...

4. At any point in a proceeding, a court may appoint a guardian *ad litem* to represent the interest of a minor, an incapacitated, unborn or unascertained person, or a person whose identity or address is unknown, if the court determines that representation of the interest otherwise would be inadequate. If not precluded by conflict of interests, a guardian *ad litem* may be appointed to represent several persons or interests. The court shall set out its reasons for appointing a guardian *ad litem* as a part of the record of the proceeding.

whom the statutory representative is being requested is a minor, an incapacitated person, an unborn child, or a person whose identity or location is unknown. Second, the petition must explain why that person's interest is not represented under A.R.S. sections 14-1404 through -1407, or why otherwise available representation is inadequate.<sup>3</sup> Under section (d), notice of the hearing on the petition must be given to all interested persons as set forth in A.R.S. section 14-1401 and additional persons as described in section (d). For example, under subsection (d)(2), if the appointment of a statutory representative for alleged incapacitated person is being requested, the person making the request must give notice in the same manner as though the appointment of a guardian were being requested (e.g., the alleged incapacitated person must be personally served and, if they can be found in Arizona, that person's spouse and parents also must be personally served, *see* A.R.S. § 14-5309(B)).

- Another significant change is that section (e) expressly prohibits the appointment of a statutory representative for the subject person of an adult guardianship or protective proceeding unless the court, after notice and hearing, has found that the subject person is an incapacitated person as defined in A.R.S. section 14-5101 or is a person in need of protection under A.R.S. section 14-5401(A)(2). The reason for this prohibition is to ensure compliance with A.R.S. section 14-1408<sup>4</sup> and the due process rights of the alleged incapacitated person.
- Section (f) describes what must be contained in an order appointing a statutory representative. At a minimum, the order must state the basis for the appointment, the appointment's scope and duration, whether the representative will represent the person or the person's best interests, and any applicable terms of compensation. The order may, but is not required to, authorize the statutory representative to access the person's medical and financial records, including records that otherwise would be privileged or confidential. Section (g) explains that the statutory representative is a party to the probate case in which the representative was appointed and has the same rights and responsibilities as any other party (e.g., the representative is subject to be called as a witness and can be deposed).

#### Part VI: Rules That Apply to Guardianships, Conservatorships, and Decedents' Estates.

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<sup>3</sup>A.R.S. §§ 14-1404 through -1407 are described in the Uniform Trust Code as "virtual representation" statutes. They describe when one person may represent and bind another person for notice purposes.

<sup>4</sup>Both current A.R.S. § 14-1408(A) and the pre-2009 version of A.R.S. § 14-1403 refer(red) to an "incapacitated person"; neither of those statutes refer(red) to an "allegedly incapacitated person." Thus, both statutes require(d) a judicial finding of incapacity prior to the appointment of a statutory representative or guardian *ad litem*.

- **New Probate Rule 39:** Addresses the issuance and recording of letters of appointment. Although it is based on existing Probate Rule 26, it differs from that rule in a few respects.
  - First, the new rule provides a definition of *letters of appointment*.
  - Second, it clarifies that a personal representative, guardian, or conservator may not act in such capacity until the clerk has issued letters of appointment.
  - Last, the new rule adds a provision that requires a personal representative to record his letters of appointment. Note, however, that the recording requirements only apply if the court has restricted the fiduciary’s power over real property.

Part VII: Rules That Apply Only to Guardianships and Conservatorships

- **New Probate Rule 41, which deals with the appointment of attorneys, medical professionals, and investigators, tracks existing (Probate Rule 19):** Whereas existing Probate Rule 19(C) only prohibits an attorney from being appointed to represent the subject person of a guardianship or conservatorship proceeding if the attorney has an *existing* attorney-client relationships with the nominated or appointed fiduciary, new Probate Rule 41(c) expands that prohibition if the attorney had a *prior* attorney-client relationship with the proposed guardian or conservator “unless after disclosure of the prior relationship to the court and parties, the court approves the appointment.”
- **New Probate Rule 42:** is the counterpart to existing Probate Rule 10(E): the new rule includes a new provision (section (b)) that is based on ER 1.14 and that describes court-appointed counsel’s role as follows:
  - The attorney for the subject person must advocate for the subject person’s wishes to the extent the attorney is able to ascertain those wishes. The attorney must, as far as possible, maintain a normal client-lawyer relationship with the subject person. In addition, the attorney must act to protect the subject person’s substantive and procedural due process rights.
- **The Arizona Supreme Court’s August 29, 2019, order adopting the new Probate Rules does not include a new Probate Rule 45:** which was intended to replace existing Probate Rules 30(A), 30(B), and 30.2, and 30.3. Those existing rules address a conservator’s inventory, account, budget, and sustainability disclosure. When the Task Force filed its initial rule change petition in January 2019, new Probate Rule 45(d) would have required a conservator to file a budget only if either the court specifically ordered the conservator to do so or the conservator believed the filing of a budget was “prudent.” In June 2019, after receiving public comment on the initial rule change petition, the Task Force proposed a new version of Probate Rule 45 that would have required the court, at the time of the conservator’s appointment and when reviewing each account filed by the

conservator, to specify whether the conservator would be required to file a budget. The August 29, 2019, order referred new Probate Rule 45 back to the Task Force's Editorial Workgroup to file a supplemental rule petition "modifying proposed Rule 45 to provide for a mandatory budget and appropriate timeframes." Hence, on September 25, 2019, the Task Force, through the Editorial Workgroup, filed a supplemental rule change petition that requests approval of a new version of Probate Rule 45. Any member of the public may submit a written comment about the supplemental rule change petition until November 1, 2019, when the public comment period ends. The Editorial Workgroup may file a reply by November 15, 2019, after which the Arizona Supreme Court will make a decision before December 31, 2019.

- The latest version of new Probate Rule 45 proposed by the Task Force begins by expressly stating in section (a) that the court may order a variation of any of that same rule's requirements (including the form used for an inventory, budget, or account) "if the court finds the variation is consistent with prudent management and oversight of the case." Thus, for example, the court could waive the filing of a conservator's budget if the court were to find that the cost of preparing the budget would exceed its benefit (such as in a minor conservatorship case when all the assets are restricted and no expenditures are anticipated).
- Section (b) states that, for purposes of Probate Rule 45, "the conservator's appointment is the date the court first issues letter of appointment."
- Section (c), which deals with the conservator's inventory, is similar to existing Probate Rule 30(A) except the new rule does not expressly require the conservator to file an amended inventory if the conservator discovers additional assets or an incorrect value after filing the initial inventory, nor does it expressly prohibit the filing of an amended inventory after the conservator's first account is filed. The reason for this change is that the Task Force determined that the any later-discovered assets or change in value would be included in the conservator's subsequent account. Subsection (c) further requires the conservator to file the consumer credit report required by A.R.S. section 14-5418(A) with the inventory.
- Consistent with existing Probate Rule 30.3, section (d) would require the conservator to file an initial budget no later than the date the conservator's inventory is due and to file a subsequent budget with each account. Rather than providing specific details regarding the contents and form of the budget and amendments to the budget, the proposed Probate Rule 45(d) refers the reader to Forms 5, 6, or 7, as applicable, and the instructions to those forms. Like existing Probate Rule 30.3(E), proposed Probate Rule 45(d)(5) provides that a timely filed budget is presumed reasonable unless an objection is filed, and the process for objecting remains the same under the proposed rule.
- Subsection (e) of proposed Probate Rule 45 deals with a conservator's accounts and is substantially similar to existing Probate Rules 45(B) and 30.2. Subsection

(f) addresses requests for additional time for any deadline established in proposed Probate Rule 45, and subsection (g) requires the court to maintain as confidential the inventory, the consumer credit report, the budget, and the account.

- **New Probate Rule 46 for existing (Probate Rule 30(C)):** Covers the annual report of guardian required by A.R.S. section 14-5315 .However, a significant difference exists between the two rules. The existing rule requires the guardian’s annual reports to be filed “on or before the anniversary date of the issuance of the guardian’s permanent letters” and provides that the first annual report must cover a nine month period and all subsequent reports must cover a 12 month period. The reason for this timing is that when the Probate Rules were first promulgated in 2009, A.R.S. section 14-5315(A) required the annual report of guardian to be filed “on each anniversary date of qualification as guardian.” Thus, the rule was written to be consistent with the statute. However, in 2013, the legislature amended the statute by removing the quoted phrase and replacing it with “annually, pursuant to rules adopted by the supreme court.” *See* 2013 Ariz. Sess. Laws Ch. 26 § 3. Consequently, new Probate Rule 46(a) now requires the guardian’s annual report to be filed “on the date established by the court, but in no event later than 60 days after the anniversary date of the issuance of the guardian’s letters of permanent appointment.” Moreover, as a result of this change, the new rule no longer requires that the first annual report cover only a nine month period. In addition, new Probate Rule 46(d) now directs the guardian to file the required medical professional’s report or summary as a confidential document under new Probate Rule 8.
- **New Probate Rule 47, which combines existing (Probate Rules 24 and 36):** Addresses the procedures for requesting that a guardian be granted inpatient psychiatric treatment authority and for renewing that authority. However, the new rule significantly differs from, and expands upon, the existing rules in some respects. First, new Probate Rule 47(a) expressly states that an initial request for inpatient psychiatric treatment authority must be made in a petition that complies with A.R.S. section 14-5312.01 and must be accompanied by a psychiatrist’s or psychologist’s evaluation report required under A.R.S. section 14-5312.01(P); neither existing Probate Rule 24 nor existing Probate Rule 36 contains such a mandate. Second, in contrast to existing Probate Rule 24, which states that “unless otherwise extended by written order of the court, the authority terminates one year from the date the order is entered,” new Probate Rule 47(a)(1) only requires that the order authorizing the guardian to place the ward in an inpatient psychiatric treatment “include a specific date that the guardian’s authority terminates.” In other words, under the new rule, the court may grant the guardian such authority for longer than one year at a time. Moreover, new Probate Rule 47(a)(1) requires the court to “limit the guardian’s authority to that reasonably necessary to obtain the ward’s care in the least restrictive alternative.”

- New Probate Rule 47(a)(2) expressly authorizes the court, for good cause, to terminate inpatient psychiatric treatment authority before the date specified in the order. Also new is the requirement that a guardian who is granted inpatient psychiatric treatment authority sign, and the court enter, new Form 2-S, the Supplemental Order to Guardian with Inpatient Psychiatric Treatment Authority and Acknowledgment. *See* New Prob. R. 47(a)(3). In addition, new Probate Rule 47(a)(4) expressly authorizes the court to grant the guardian inpatient psychiatric treatment authority without notice to the ward, but only if all the conditions in A.R.S. section 14-5310(B) have been met (e.g., that immediate and irreparable injury will result before the ward or the ward’s attorney can be heard in opposition) and the court has determined that an adequate basis exists under A.R.S. section 14-5312.01(B) and (C).
- The concepts embodied in existing Probate Rule 36, which addresses renewal of the guardian’s inpatient psychiatric treatment authority, are covered in new Probate Rule 47(a)(5) and (b). Whereas existing Probate Rule 36(A) requires a guardian who has been granted inpatient psychiatric authority to file an annual report of guardian “[n]o later than thirty days before the anniversary date of the guardian’s appointment,” new Probate Rule 47(a)(5) requires the report to be filed “no later than 30 days before the termination date of the inpatient psychiatric authority.” In contrast to existing Probate Rule 36(A)(2), which requires the court to enter an order continuing the inpatient psychiatric treatment authority until any objection on a renewal motion has been decided, new Probate Rule 47(b)(6) states that the guardian’s authority to consent to inpatient psychiatric treatment automatically continues until the court rules on the objection to the renewal motion. Section (c) of new Probate Rule 47 now requires the court to maintain the evaluation report submitted with a renewal motion as a confidential document.
- **New Probate Rule 49(a) is similar to existing Probate Rule 49(B):** In that both rules require the clerk or court administrator to administratively close a minor guardianship case when the minor reaches the age of majority or upon the minor’s adoption, marriage, emancipation, or death. However, the new rule omits the existing rule’s additional requirement that the court set a status hearing not less than 90 days prior to the minor’s 18<sup>th</sup> birthday if the court has reason to believe the minor has a disability or impairment that might necessitate the appointment of a guardian after the minor’s 18<sup>th</sup> birthday.
  - New Probate Rule 49(b) has no counterpart in the existing Probate Rules. It requires the court to administratively close a minor conservatorship and terminate the conservator’s appointment if no order terminating the conservatorship has been entered within two years after the minor’s 18<sup>th</sup> birthday. However, before doing so, the court must inform the conservator and the former minor that the conservatorship will be administratively closed unless, within 90 days after the



notice, the conservator or the former minor files a petition to terminate the conservatorship and obtains an initial hearing date. The new rule further provides that although administrative closure of the minor conservatorship results in a termination of the conservator's appointment, the closure does not discharge the conservator from liability, authorize the release of any restricted conservatorship assets, release any financial institution holding restricted conservatorship assets from liability, or exonerate the conservator's bond.

#### Part VIII: Rules That Apply Only to Decedents' Estates and Trusts

- **New Probate Rule 51:** Deals with administrative closure of decedents' estates, is substantially similar to existing Probate Rule 15.2(A) except that the new rule requires action to be taken within 60 days after the required notice to prevent the administrative closure whereas the existing rule allows 90 days for such action to be taken after the notice.

#### Part IX: Recoveries for, and Distributions to, Minors and Protected Adults

- **New Probate Rule 53:** Addresses settlements of claims for minors and adults in need of protection, expands on and clarifies the concepts embodied in existing Probate Rule 37. The new rule first addresses when court approval of a settlement made on behalf of a minor or adult in need of protection is required.
  - As described in section (a), no such settlement is binding on the minor or the adult in need of protection unless it is approved by a judicial officer except that, pursuant to A.R.S. section 14-5424(C)(19), a conservator may enter into a binding settlement without court approval so long as the claim is not for personal injury or wrongful death. This portion of the rule is consistent with *Gomez v. Maricopa County*, 175 Ariz. 469, 471-72, 857 P.2d 1323, 1325-26 (App. 1993), which reaffirmed that a parent of a minor may not settle the minor's claim without court approval.
  - Section (b) of new Probate Rule 53 then prescribes which judicial officer may approve the settlement of a claim brought on behalf of a minor or an adult in need of protection. If the claim belongs to an adult in need of protection, a superior court judge or judge *pro tem* must approve the settlement "in a probate proceeding under A.R.S. Title 14," the reason being that a conservatorship or some other protective order under Article 4, Chapter 14, A.R.S. Title 14 will need to be entered to protect the settlement proceeds. If the claim belongs to a minor, the amount of the settlement determines to which judicial officer (or in which proceeding) the request for approval must be addressed. In particular, if the amount of the settlement does not exceed \$10,000, **any** superior court judge or judge *pro tem* may approve the settlement. Thus, for example, if the settlement relates to a pending civil case and the amount of the settlement is \$10,000 or less,

the judge assigned to the civil case may approve the settlement. If, on the other hand, the amount of the settlement exceeds \$10,000, the settlement must be approved by a superior court judge or judge *pro tem* “in a probate proceeding under Title 14.” The reason for this dichotomy stems from A.R.S. section 14-5103(A), which allows a person who is under a duty to pay or deliver money or personal property to a minor, “including monies related to the settlement of a civil claim” to satisfy that duty “in amounts not exceeding ten thousand dollars per annum” by paying or delivering the money or property to anyone of a number persons, including “[a]ny person having the care and custody of the minor and with whom the minor resides” (e.g., a parent of the minor). In other words, *Gomez* and A.R.S. section 14-5103(A), when considered together, require court approval of the settlement of *any* claim brought on behalf of a minor but allow the settlement proceeds to be paid directly to the minor’s parent(s) if those proceeds do not exceed \$10,000 per year, thereby obviating the need for a conservatorship or other protecting order for a “small” settlement. However, if the amount of the settlement exceeds \$10,000 per year, a conservatorship or other protective order under Article 4, Chapter 5, A.R.S. Title 14 for the minor is required.

- Section (c) allows the court to appoint a statutory representative under A.R.S. section 14-1408 or a master under Civil Rule 53 to assist the court in determining the reasonableness of the proposed settlement, the reasonableness of the attorney fees and costs to be made from the minor’s or the adult’s settlement proceeds, the effect of the settlement on the eligibility for public benefits or other resources that might be available, and the proper apportionment of settlement proceeds among the various claimants. Section (d) then lists a variety of orders the court may make when approving the settlement.

#### Part X: Forms

- **Part Ten consists of only one rule, namely new Probate Rule 55, which replaces existing Probate Rule 38:**
  - Section (b) of new Probate Rule 55 prohibits a party from modifying Forms 5 through 10 without court approval but allows a superior court judicial officer to authorize a party to modify those forms “as provided in Rule 45(a).” However, a party, without obtaining court approval, may “adopt [all] other forms by deleting content that does not apply to a particular proceeding or by adding other relevant content, provided the adapted form includes all the information that applies to that proceeding.”
  - Attachment B to the August 29, 2019, order adopting the new Probate Rules contains the new or modified forms that are referred to in the new Probate Rules. Form 2-S is the Supplemental Order to Guardian with Inpatient Psychiatric Treatment Authority and Acknowledgment that must be used as described in new

Probate Rule 47. Form 10 is the Proof of Restricted Account from Financial Institution that is referred to in new Probate Rule 36. Probate Forms 11 through 14 are the Probate Information Form Decedent's Estate; the Probate Information Form for Guardianship/Conservatorship; the Notice of Change of Fiduciary's Contact Information; and the Notice of Change of Ward's Contact Information, all of which are discussed in new Probate Rule 13. Last, Probate Form 15 is the Authorization to Obtain Certified Copy of a Sealed Document, which should be used as described in new Probate Rule 9.