

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:

TRAINING REQUIREMENTS AND)
CURRICULUM FOR JUDICIAL)
OFFICERS, COURT APPOINTED) Administrative Order
COUNSEL, GUARDIANS AD LITEM,) No. 2012 - 62
NON- LICENSED FIDUCIARIES, AND)
COURT INVESTIGATORS IN)
PROBATE COURT MATTERS)

Protection of incapacitated and vulnerable individuals is an important concern for the Arizona Judicial Branch. On April 30, 2010, Chief Justice Rebecca White Berch issued Administrative Order No. 2010-52 establishing the Committee on Improving Judicial Oversight and Processing of Probate Court Matters (“Committee”).

The Committee was charged with making recommendations that would streamline probate case processing, improve court oversight and monitoring of probate matters, and increase accountability and transparency in how the assets of adult and minor estates are expended.

The Committee presented its final report to the Arizona Judicial Council (AJC) in June 2011, which included requiring mandatory training for judicial officers, court-appointed attorneys, guardians ad litem, non-licensed fiduciaries, and court-appointed investigators. The Supreme Court approved this recommendation and directed the AJC to develop curriculum for each.

On June 18, 2012, the Arizona Judicial Council approved curricula establishing minimum training requirements for judicial officers, court-appointed attorneys, guardians ad litem, non-licensed fiduciaries, and court-appointed investigators.

Therefore, pursuant to Article VI, Section 3, of the Arizona Constitution,

IT IS ORDERED that

1. **Judicial Officers:** Pursuant to A.R.S. § 14-1101, judicial officers presiding over Title 14 proceedings shall complete the minimum training described in Attachment A. The training shall be made available to judicial officers as determined by the Arizona Judicial College of Arizona (JCA).

Non-substantive changes may be made to the curriculum to meet the training needs of judges assigned to probate matters.

2. **Court-Appointed Attorneys and Guardians ad Litem:** Pursuant to Rule 10(E) of the Arizona Rules of Probate Procedure, effective September 1, 2012, any attorney who

seeks appointment to serve or is currently serving as court-appointed attorney or guardian ad litem for an adult ward or protected person shall complete the minimum training described in Attachment B. The attorney shall file a copy of the certificate of completion with the court making the appointment.

Any attorney who, on September 1, 2012, is serving as a court-appointed attorney or guardian ad litem for an adult ward or protected person shall complete the training described in Attachment B as soon as practicable and shall file a certificate of completion with the court making the appointment.

Non-substantive changes may be made to the curriculum to meet the training needs of court-appointed attorneys and guardians ad litem.

3. **Non-Licensed Fiduciaries:** Pursuant to Rule 27.1(A) of the Arizona Rules of Probate Procedure, effective September 1, 2012, any person who is neither a licensed fiduciary under A.R.S. § 14-5651 nor a financial institution shall complete the training described in Attachment C. The training shall be completed before letters to serve as guardian, conservator, or personal representative are issued unless the appointment was made pursuant to sections 14-5310(A), 14-5401.01(A) or 14-5207, or otherwise ordered by the court.

Rule 27.1(B), effective September 1, 2012, further provides if the appointment was made because an emergency existed, the fiduciary shall complete the training program within thirty days of the appointment or before the permanent appointment of the fiduciary, whichever is earlier. For good cause, the court may extend the time period for the fiduciary to complete the training.

Non-substantive changes may be made to the curriculum to meet the training needs of non-licensed fiduciaries.

4. **Court Appointed Investigators:** Pursuant to Rule 10(F)(1) of the Arizona Rules of Probate Procedure, effective September 1, 2012, before being appointed as an investigator pursuant to A.R.S. §§ 14-5303(C), 14-5407(B), or 36-540(G), a person shall first complete the training described in Attachment D. A copy of the certificate of completion shall be filed with the court making the appointment.

Non-substantive changes may be made to the curriculum to meet the training needs of court appointed investigators.

Dated this 31st day of July, 2012.

REBECCA WHITE BERCH
Chief Justice

ATTACHMENT A

Approved Curriculum for Judicial Officers Presiding Over Probate Matters

A. Probate Proceedings

- a. Guardianship
 - i. Adult
 - ii. Minor
- b. Conservatorship
 - i. Adult
 - ii. Minor
- c. Combined Guardianship/Conservatorship
- d. Incapacitated Minors
- e. Decedent's Estates
 - i. Formal
 - ii. Informal
- f. Trusts and Wills
- g. Petition
 - i. emergency
 - ii. temporary
 - iii. permanent
- h. Fiduciary nominated
- i. Appointment Hearing
- j. Letters
- k. Cost Benefit Analysis
- l. Miscellaneous

B. A.R.S. Title 14 – Trusts, Estates, and Protective Proceedings

- a. Substitution of Fiduciary
- b. Fees and Costs
- c. Attorney Fiduciary Duties
- d. Minor to Adult Guardianship and Conservatorship
- e. Appointment of Guardian
- f. Substitution or Resignation of G/C and Termination of Incapacity
- g. Mental Health overlap with Title 36
- h. Investigators
- i. Inventory and Records
- j. Accountings
- k. Repetitive Filings
- l. Other statutes

C. A.R.S. Title 36 – Chapter 5 Mental Health Powers

D. Arizona Rules of Probate Procedure – R-11-0023

E. Settlement Conferences

ATTACHMENT B

Approved Curriculum for Court-appointed Attorneys/Guardians ad Litem Serving in Probate Matters

A. Court Appointed Attorney

- a. Constitutional Requirements and Significance
- b. Prior to Hearing
 - i. Review pleadings
 - ii. Confer with petitioner and petitioner's counsel
 - iii. Contact and confer with other relatives
 - iv. Interview Client
 - v. Check on Medical Directives, Living Will, Powers of Attorney, estate planning documents
 - vi. Verify accuracy of identified assets and income
 - vii. Identify appropriate bond
 - viii. Determine need for independent medical exam
 - ix. Arrange for client's attendance at hearing
- c. Hearing
 - i. Presence
 - ii. No report unless ordered
 - iii. Contest or not?
 - iv. Determine whether to require limited on powers
 - v. Require initial care plan from guardian and/or conservator
- d. Statutory Procedures and Rules of Probate Procedure
 - i. Overview – adult and minor - Guardian and Conservator
 - ii. Scope of representation
 - iii. Role of Court Appointed Attorney
 1. Emergency and non Emergency
 2. Procedure if no contact with ward
 3. Medical Reports - inconsistencies
 4. Investigation
 5. Inventory
 6. Length of representation
 7. Accounting
 8. Annual Report
 9. Ethical Rules and Issues
 10. Relationship with parties and their fiduciaries and attorneys
 11. Relationships with other organizations
 - a. Adult Protective Services
 - b. Alzheimer's Association
 - c. ALTCS
 - d. AHCCCS
 - e. Behavioral Health Services
 - f. Local Area Agencies on Aging
 - g. Arizona State Hospital

12. Mediation and other ADR
13. Special Circumstances
 - a. Medical care
 - b. Infectious Disease Control
 - c. Special Needs Trusts
 - d. Dangerous placement of ward
 - e. Public Fiduciary
 - f. Hoarders and other related issues
14. A.R.S. Title 25 issues
15. A.R.S. Title 36 - Chapter 5 Mental Health issues
16. Attorneys' fees
17. Termination

B. Guardian Ad Litem

- a. Appointment at discretion of Court
 - i. Only in unusual situations where circumstances necessitate the appointment
 - ii. Court must set out its reasons for making the appointment.
 - iii. Specific findings, such as a possible conflict of interest, required
- b. Court appoints guardian ad litem if protected person becomes involved in litigation, or requires litigation
- c. Purpose to manage legal disputes for a minor or incompetent.
- d. May sue or defend; however, no rule authorizes the guardian ad litem to accept service of process.
- e. Exempted from filing a bond on appeal.
- f. Immune – like a prosecutor.
- g. Determine child's best interests in a custody proceeding.
- h. Reasonable compensation for services taxed as costs following judgment—not before.

ATTACHMENT C

Approved Curriculum for Non-Licensed Fiduciaries Appointed in Probate Matters

A. Overview (Total initial discussion – 45-60 minutes)

- a. Guardianship
 - i. What is a guardian?
 - ii. Who has priority for appointment
 - iii. What are the general responsibilities of a guardian?
- b. Conservatorship
 - i. What is a conservator?
 - ii. Who has priority for appointment
 - iii. What are the general responsibilities of a conservator?
- c. Personal Representative
 - i. What is a personal representative?
 - ii. Who has priority for appointment - General discussion of testate v. intestate
 - iii. What are the general responsibilities of a Personal Representative

B. Guardian – In-Depth discussion (Anticipated time – 60-90 minutes)

- a. Responsibilities as a guardian
 - i. Ensuring and advocating for independence and autonomy of ward
 - ii. Coordinating services to ensure ward's health, education and welfare are met
 - iii. Ensuring medical needs are being met - What is informed consent
 - iv. Ensuring benefits are received
- b. What rights does the ward maintain after appointment v. what rights transfer to the guardian
- c. Can you handle money as the guardian?
- d. Can you accept gifts from the ward?
- e. Discussion regarding the annual guardianship report
 - i. Obtaining a physician's statement
 - ii. When is the report due?
 - iii. What information is contained in the report?
- f. When must you notify the court of a change in address
- g. Making decisions in the best interest of the ward
- h. Can you be paid as the guardian?
- i. Can you hire an attorney?
- j. What happens if the ward dies?

C. Conservator – In-Depth discussion (Anticipated time – 60-90 minutes)

- a. Responsibilities as a conservator
 - i. Marshal and protect the assets
 - ii. How should assets be titled
 - iii. Documents to be filed 90 days after appointment

- iv. Inventory and Appraisalment
 - 1. What should be included
 - 2. How do you document the assets
- v. Credit report
- vi. Budget
- vii. Sustainability projection
- b. Recordkeeping
 - i. What types of records should you keep
 - ii. How should you document the payment of income/expenses
- c. What if you discover assets are “payable on death” or “transfer on death”
- d. What does it mean if the court “restricts” an asset?
- e. Obtaining and recording certified letters of appointment
- f. Notifying service providers of appointment
- g. Annual Account
 - i. What information is contained?
 - ii. When should it be filed?
 - iii. What other documents are filed with the annual account
 - 1. Budget
 - 2. Sustainability projection
- h. Making decisions in the best interest of the protected person
 - i. Can you accept gifts from the protected person?
 - j. Can you be paid as the conservator?
 - k. Can you hire an attorney?
 - l. What happens when the protected person dies

D. Personal Representative - In-Depth discussion (Anticipated time – 60-90 minutes)

- a. Supervised administration v. Non-Supervised Administration
- b. If the estate is intestate, how do you determine heirs?
- c. Providing notice to interested parties
- d. Providing notice to creditors
 - i. What happens when the creditor’s period expires
 - ii. Who gets paid in what order
 - iii. What if the estate is not large enough to cover all debts
- e. Marshal and secure all assets
- f. How should the assets be titled
 - i. Obtain EIN
- g. Inventory and Appraisalment
 - i. File with the court OR mail to interested parties
 - ii. What should be included?
 - iii. What is the date of valuation?
- h. What if you discover assets are “payable on death” or “transfer on death”
- i. Recordkeeping
 - i. What types of records should you keep
 - ii. How should you document the payment of income/expenses
- j. Can you be paid as the personal representative
- k. Can you hire an attorney

1. Steps for closing an estate
 - i. Payment of creditors claims
 - ii. Distributions to heirs
 - iii. Final tax return
 - iv. Filing the final account v. Waiver of the account by heirs/devisees

ATTACHMENT D

Approved Curriculum for Court Investigators Appointed in Probate Matters

A. Role and Responsibilities of the Investigator

- a. Applicable statutes and *Arizona Rules of Probate Procedure*
- b. Investigator acts as “eyes and ears of court” (*National Probate Court Standards*)
- c. Impartial and independent investigation to allow the court to determine need for guardianship and conservatorship.
- d. Ethical responsibilities: conflict of interest provisions in A.R.S. § 14-5308, legal information vs. legal advice, Code of Judicial Conduct for Judicial Employees.
- e. Interaction with other professionals: court appointed attorney, proposed fiduciary, medical personnel and other interested persons, including family members.

B. Progression of a Guardianship/Conservatorship Case

- a. Petition for Appointment of Guardian/Conservator
- b. Investigation
- c. Reports
- d. Court Hearing and Order

C. Conducting the Investigation

- a. Interview proposed ward in person
- b. Visit or make contact with current or proposed residence for the ward
- c. Other persons to contact/interview; including court-appointed attorney, petitioner’s attorney, petitioner, proposed fiduciary, all interested persons involved in the proceeding.
- d. Review of records
- e. Recording of notes, observations from interviews and review of records
- f. Confidentiality of documents, reports and notes
- g. Personal safety issues for the investigator

D. Case Study

- a. Case study with sample Investigative Report and forms. Identification of issues the court investigator may face in the investigation and preparation of the report.

E. Court Investigative Report

- a. Format of the Report: persons interviewed/contacted, records reviewed, etc.
- b. Findings and Recommendation of the Investigator: include the need for appointment, appropriateness of the proposed appointee, any limitations on the powers of guardian or conservator that are appropriate and available alternatives to guardianship or conservatorship.

- c. Time frames for filing the Report
- d. Responding to a subpoena to testify in court
- e. Reimbursement for the investigator's services

F. Resources

- a. Court contacts
- b. Internet resources