

SUPREME COURT OF ARIZONA

In the Matter of) Arizona Supreme Court
) No. R-18-0039
RULE 28.2, RULES OF PROBATE)
PROCEDURE)
)
)
) **FILED 08/27/2019**
)
)
_____)

ORDER

**CONTINUING THE ADOPTION OF NEW RULE 28.1, ARIZONA RULES OF PROBATE
PROCEDURE, ON AN EMERGENCY BASIS UNTIL JANUARY 1, 2020**

A petition was filed proposing to add new Rule 28.2, Rules of Probate Procedure, and no comments have been filed. In an order filed December 13, 2018, the Court adopted the rule as Rule 28.1 on an emergency basis to preserve the default of no jury trial unless requested in probate guardianship and conservatorship matters, consistent with Title 14, Arizona Revised Statutes.

This Court's Task Force on the Arizona Rules of Probate Procedure has since filed a rule petition in R-18-0044, which seeks to abrogate the current rules and replace them with a restyled set of rules, effective January 1, 2020. The proposed new rules include a new Rule 29 that is substantially similar to Rule 28.1 that is currently in effect. Therefore, upon consideration,

IT IS ORDERED continuing the adoption of Rule 28.1, Arizona Rules of Probate Procedure, on an emergency basis until January 1, 2020, at which time it will be abrogated and replaced by new Rule 29, in accordance with the attachment hereto.

DATED this 27th day of August, 2019.

_____/s/_____
ROBERT BRUTINEL
Chief Justice

TO:

Arizona Supreme Court No. R-18-0039

Page 2 of 3

Rule 28 Distribution

Hon. Rebecca White Berch (Ret.)

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.