

In the Matter of) Arizona Supreme Court
) No. R-11-0023
RULES 7, 8, 10, 10.1, 10.2, 15.1,)
15.2, 18, 19, 22, 26, 26.1, 27.1,)
28, 29, 29.2, 30, 30.1, 30.2,)
30.3, 30.4, 33, 38, RULES OF)
PROBATE PROCEDURE AND RULE 31,)
RULES OF THE SUPREME COURT)
) **FILED 12/14/2011**
)
)
)

A petition having been filed proposing to amend Rules 7, 8, 10, 10.1, 10.2, 15.1, 15.2, 18, 19, 22, 26, 26.1, 27.1, 28, 29, 29.2, 30, 30.1, 30.2, 30.3, 30.4, 33, and 38, Rules of Probate Procedure, and Rule 31, Rules of the Supreme Court, and comments having been received, upon consideration,

IT IS FURTHER ORDERED that the effective dates of the revised provisions shall be as follows:

On and after September 1, 2012: Rules 10(E)(1) and (2), 10(F)(1) and (2), 27.1, 30, 30.1, 30.2, 30.3, and 38, Rules of Probate Procedure, and Rule 31, Rules of the Supreme Court.

DATED this _____ day of December, 2011.

REBECCA WHITE BERCH
Chief Justice

TO:
Rule 28 Distribution
Lorraine Smith
Clarence S Scott
Craig H Wisnom
Robert Beckett
Crismon Cooper
Dawn Walters
Maureen Edwards
Norman J Davis
Rosa Mroz
Jeanette Bloss
Carole Collins
Heather Winters Bull
Candy Wheeler Ruby
John A Furlong
Felicia Robinson
Thomas A Curti
Louis F Comus Jr
Carla M Jones
Robert Way
Aileen B Kokaska
Lisa M Price
J R Rittenhouse

ATTACHMENT*

ARIZONA RULES OF PROBATE PROCEDURE

Rule 7. Confidential Documents and Information

A. Definitions.

1. For purposes of this rule, “confidential document” means the following:
 - a. the probate information form filed pursuant to Rule 6 of these rules;
 - b. medical reports and records obtained and filed with the court in connection with proceedings pursuant to A.R.S. §§ 14-5303, -5310, -5401.01, or -5407, or A.R.S. § 36-3206, or in connection with the requirements of A.R. S. § 14-5312.01 and -5312.02;
 - c. BUDGETS FILED PURSUANT TO RULES 30.3 AND 30.4 OF THESE RULES.
 - ~~d. e.~~ inventories and appraisements filed pursuant to A.R.S. § 14-5418(A);
 - ~~e. f.~~ accountings filed pursuant to A.R.S. Title 14;
 - ~~f. g.~~ a credit report; or
 - ~~g. h.~~ any other document ordered by the court to be filed or maintained as a confidential document pursuant to this rule.

[Remainder of rule unchanged]

COMMENT

[The first four paragraphs and the last paragraph of the Comment are unchanged. The following change shall be made to the fifth paragraph:

Section A(1)(c) ~~and (d)~~ ~~applies apply~~ only to budgets and inventories filed in connection with conservatorship estates. Because protected persons are typically vulnerable to exploitation, budgets and inventories in such cases are maintained as confidential documents to safeguard the financial information from those who might take advantage of the vulnerable adults. These same considerations do not apply in decedents’ estates; therefore, inventories for decedents’ estates do not fall within the definition of “confidential document.” As to budgets and inventories in conservatorship cases, only the budget and inventory ~~itself~~ themselves should be treated as confidential; any cover sheet should not be

* Additions to text are indicated by CAPITAL LETTERS or underscoring; deletions by ~~strikeouts~~.

treated as confidential. Thus, only the budget and inventory, including any appraisals or financial documents, should be filed as confidential.

The sixth paragraph of the Comment shall be changed by substituting “A(1)(e)” for “A(1)(d)” in the first sentence.]

Rule 8. Service of Court Papers.

A. Whenever A.R.S. Title 14 requires that notice of a hearing or other document be served personally, service shall be conducted pursuant to Rules 4(d) ~~and~~ 4.1, AND 4.2 of the Arizona Rules of Civil Procedure.

B. IF SERVICE OF A NOTICE AND PETITION THAT COMMENCES A PROBATE CASE IS NOT MADE UPON ALL PERSONS REQUIRED IN THE MANNER PRESCRIBED BY A.R.S. TITLE 14 WITHIN 120 DAYS AFTER THE FILING OF THE INITIAL PETITION, THE COURT, UPON MOTION OR ITS OWN INITIATIVE AFTER NOTICE TO THE PETITIONER, MAY DISMISS THE PETITION WITHOUT PREJUDICE OR DIRECT THAT SERVICE BE EFFECTED WITHIN A SPECIFIED TIME; PROVIDED THAT IF THE PETITIONER SHOWS GOOD CAUSE FOR THE FAILURE PRIOR TO THE EXPIRATION OF TIME ALLOWED FOR SERVICE, THE COURT SHALL EXTEND THE TIME FOR SERVICE FOR AN APPROPRIATE PERIOD.

[No change to Comment to Rule 8 except that the words “Rules 4 and 4.1” are changed to “Rule 4(d), 4.1, and 4.2 in the last sentence.]

Rule 10. Duties Owed ~~to the Court~~ BY COUNSEL, FIDUCIARIES, UNREPRESENTED PARTIES, AND INVESTIGATORS

(A) – (B) [No change]

C. Duties of Court-Appointed Fiduciaries.

1. [No change]

(2) – (3) [No change]

4. DUTIES REGARDING MINOR’S DEATH, ADOPTION, MARRIAGE OR EMANCIPATION. THE COURT-APPOINTED GUARDIAN OF A MINOR WARD WHO DIES, IS ADOPTED, MARRIES OR ATTAINS MAJORITY SHALL NOTIFY THE COURT IN WRITING WITHIN TEN DAYS OF SUCH EVENT. IF THE MINOR DOES NOT HAVE A CONSERVATOR AT THE TIME THE GUARDIANSHIP TERMINATES, THE GUARDIAN SHALL PROVIDE THE COURT AND FORMER MINOR WARD WITH A WRITTEN LIST OF ANY KNOWN ASSETS OR MONIES BEYOND PERSONAL EFFECTS BELIEVED TO BE OWNED BY THE FORMER MINOR WARD.

D. Duties Relating to Counsel for Fiduciaries ~~Upon Withdrawal.~~

1. TO MINIMIZE LEGAL EXPENSES, A FIDUCIARY'S ATTORNEY SHALL ENCOURAGE THE FIDUCIARY TO TAKE THOSE ACTIONS THE FIDUCIARY IS AUTHORIZED TO PERFORM AND CAN PERFORM COMPETENTLY ON THE FIDUCIARY'S OWN TO FULFILL THE FIDUCIARY'S DUTIES RATHER THAN HAVING THE ATTORNEY TAKE SUCH ACTIONS ON THE FIDUCIARY'S BEHALF.

2. In addition to the requirements set forth in Arizona Rule of Civil Procedure RULE 5.1, an attorney who has appeared in a probate case as counsel of record for a guardian, conservator, personal representative, or trustee shall include with any motion to withdraw a status report that advises the court and parties of any issues pending in the probate case and informs the court and parties whether, to the best of the attorney's knowledge, all required guardian reports, inventories, accountings, and other similar required reports have been filed.

E. Duties of Counsel for Subject Person of Guardianship/Conservatorship Proceeding; DUTIES OF GUARDIAN AD LITEM

1. INITIAL TRAINING. ANY ATTORNEY WHO SERVES AS A COURT-APPOINTED ATTORNEY OR GUARDIAN AD LITEM FOR A PROPOSED ADULT WARD OR ADULT PROTECTED PERSON SHALL FIRST COMPLETE A TRAINING COURSE PRESCRIBED BY THE SUPREME COURT, WHICH SHALL ISSUE A CERTIFICATE OF COMPLETION. THE ATTORNEY SHALL FILE A COPY OF THE CERTIFICATE OF COMPLETION WITH THE COURT MAKING THE APPOINTMENT. ANY ATTORNEY WHO, AT THE TIME THIS RULE BECOMES EFFECTIVE, IS SERVING AS A COURT-APPOINTED ATTORNEY OR GUARDIAN AD LITEM FOR AN ADULT WARD OR PROTECTED PERSON SHALL COMPLETE A TRAINING COURSE PRESCRIBED BY THE SUPREME COURT AS SOON AS PRACTICABLE AND THEREAFTER SHALL FILE A CERTIFICATE OF COMPLETION WITH THE COURT MAKING THE APPOINTMENT.

2. SUBSEQUENT TRAINING. ANY ATTORNEY WHO CONTINUES TO SERVE AS A COURT-APPOINTED ATTORNEY OR GUARDIAN AD LITEM FOR AN ADULT WARD OR PROTECTED PERSON SHALL COMPLETE AN ADDITIONAL TRAINING COURSE PRESCRIBED BY THE SUPREME COURT EVERY FIVE YEARS AND FILE A CERTIFICATE OF COMPLETION AS SET FORTH IN SUBSECTION 1.

3. In a guardianship or conservatorship proceeding, the participation of an attorney representing the subject person shall terminate upon the subject person's death. In extraordinary situations, the court, for good cause shown, may authorize the limited participation of the subject person's attorney after the subject person's death. In such cases, the court shall set forth, in its order authorizing the attorney's continued participation, the basis for the continued participation and the scope of the attorney's participation.

F. DUTIES OF INVESTIGATORS.

1. 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 A TRAINING COURSE PRESCRIBED BY THE SUPREME COURT, WHICH SHALL ISSUE A CERTIFICATE OF COMPLETION. THE INVESTIGATOR SHALL FILE A COPY OF THE CERTIFICATE OF COMPLETION WITH THE COURT MAKING THE APPOINTMENT.

2. ANY PERSON WHO CONTINUES TO SERVE AS A COURT-APPOINTED INVESTIGATOR SHALL COMPLETE AN ADDITIONAL TRAINING COURSE PRESCRIBED BY THE SUPREME COURT EVERY FIVE YEARS AND FILE A CERTIFICATE OF COMPLETION AS SET FORTH IN SUBSECTION A.

G. REMEDIES FOR VEXATIOUS CONDUCT; DEFINITIONS

1. IF THE COURT FINDS THAT A PERSON ENGAGED IN VEXATIOUS CONDUCT IN CONNECTION WITH A PROBATE CASE, THE COURT MAY DO EITHER OR BOTH OF THE FOLLOWING:

a. ORDER THAT THE PERSON SHALL OBTAIN THE COURT'S PERMISSION TO FILE FUTURE PLEADINGS AND OTHER PAPERS IN THE PROBATE CASE OR IN OTHER CASES. IF THE COURT ENTERS SUCH AN ORDER, NO PARTY IS REQUIRED TO RESPOND TO THE PERSON'S FUTURE FILINGS UNTIL ORDERED TO DO SO BY THE COURT.

b. ORDER THAT A FIDUCIARY, FIDUCIARY'S ATTORNEY, COURT-APPOINTED ATTORNEY, GUARDIAN AD LITEM, TRUSTEE OR PERSONAL REPRESENTATIVE SHALL NOT BE REQUIRED TO RESPOND TO FUTURE REQUESTS FOR INFORMATION MADE BY THE PERSON RELATED TO THE PROBATE CASE UNLESS REQUIRED BY SUBSEQUENT COURT ORDER.

2. THE REMEDIES PERMITTED PURSUANT TO THIS SECTION ARE IN ADDITION TO ANY OTHER CIVIL REMEDY OR ANY OTHER PROVISION OF LAW.

3. FOR THE PURPOSES OF THIS SECTION:

a. "COURT-APPOINTED ATTORNEY" MEANS AN ATTORNEY APPOINTED PURSUANT TO SECTION 14-5303, SUBSECTION C, SECTION 14-5310, SUBSECTION C, SECTION 14-5401.01, SUBSECTION C OR SECTION 14-5407, SUBSECTION B.

b. "FIDUCIARY" MEANS AN AGENT UNDER A DURABLE POWER OF ATTORNEY, AN AGENT UNDER A HEALTH CARE POWER OF ATTORNEY, A GUARDIAN, A CONSERVATOR, A PERSONAL REPRESENTATIVE, A TRUSTEE, A GUARDIAN AD LITEM, OR A SPECIAL CONSERVATOR APPOINTED UNDER SECTION 14-5409.

c. "VEXATIOUS CONDUCT" MEANS HABITUAL, REPETITIVE CONDUCT UNDERTAKEN SOLELY OR PRIMARILY TO HARASS OR MALICIOUSLY 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.

RULE 10.1. PRUDENT MANAGEMENT OF COSTS

IN A PROCEEDING BROUGHT PURSUANT TO TITLE 14:

A. THE FIDUCIARY SHALL PRUDENTLY MANAGE COSTS, PRESERVE THE ASSETS OF THE WARD OR PROTECTED PERSON FOR THE BENEFIT OF THE WARD OR PROTECTED PERSON, AND PROTECT AGAINST INCURRING ANY COSTS THAT EXCEED PROBABLE BENEFITS TO THE WARD, PROTECTED PERSON, DECEDENT'S ESTATE OR TRUST, EXCEPT AS OTHERWISE DIRECTED BY A GOVERNING INSTRUMENT OR COURT ORDER.

B. THE GUARDIAN AD LITEM, GUARDIAN OR CONSERVATOR, GUARDIAN OR CONSERVATOR'S ATTORNEY, ATTORNEY FOR THE WARD OR PROTECTED PERSON SHALL TIMELY DISCLOSE TO THE COURT AND ALL PERSONS ENTITLED TO NOTICE IF THE PERSON HAS A REASONABLE BELIEF THAT PROJECTED COSTS OF COMPLYING WITH A COURT ORDER MAY EXCEED THE PROBABLE BENEFITS TO THE WARD, PROTECTED PERSON, DECEDENT'S ESTATE OR TRUST. IF APPROPRIATE, CONSISTENT WITH DUE PROCESS, THE COURT SHALL ENTER OR MODIFY THE ORDERS AS MAY PROTECT OR FURTHER THE BEST INTEREST OF THE WARD, PROTECTED PERSON, DECEDENT'S ESTATE OR TRUST AGAINST PROJECTED COSTS THAT EXCEED PROBABLE BENEFITS.

C. MARKET RATES FOR GOODS AND SERVICES ARE A PROPER, ONGOING CONSIDERATION FOR THE FIDUCIARY AND THE COURT DURING THE INITIAL COURT APPOINTMENT OF A FIDUCIARY OR ATTORNEY, A HEARING ON A BUDGET OBJECTION AND A REQUEST TO SUBSTITUTE A COURT-APPOINTED FIDUCIARY OR ATTORNEY. AT ANY STAGE OF THE PROCEEDINGS, THE COURT MAY ORDER THAT COMPETITIVE BIDS FOR GOODS OR SERVICES BE OBTAINED.

RULE 15.1. APPOINTMENT OF GUARDIAN AD LITEM.

A. A PARTY REQUESTING THE APPOINTMENT OF A GUARDIAN AD LITEM SHALL MAKE THE REQUEST IN A MOTION THAT SETS FORTH WHY THE APPOINTMENT IS NECESSARY OR ADVISABLE AND WHAT, IF ANY, SPECIAL EXPERTISE IS REQUIRED OF THE GUARDIAN AD LITEM.

B. THE ORDER APPOINTING A GUARDIAN AD LITEM PURSUANT TO THIS SECTION SHALL CLEARLY SET FORTH THE SCOPE OF THE APPOINTMENT, INCLUDING THE REASONS FOR AND DURATION OF THE APPOINTMENT, RIGHTS OF ACCESS AS AUTHORIZED BY THIS RULE, AND THE APPLICABLE TERMS OF COMPENSATION.

C. UPON APPOINTING A GUARDIAN AD LITEM, THE COURT MAY ENTER AN ORDER AUTHORIZING THE GUARDIAN AD LITEM TO HAVE IMMEDIATE ACCESS TO THE PERSON FOR WHOM THE GUARDIAN AD LITEM HAS BEEN APPOINTED AND ALL MEDICAL AND FINANCIAL RECORDS PERTAINING TO SUCH PERSON, INCLUDING RECORDS AND INFORMATION THAT ARE OTHERWISE PRIVILEGED OR CONFIDENTIAL. UPON RECEIPT OF A CERTIFIED COPY OF SUCH ORDER, THE CUSTODIAN OF ANY RELEVANT RECORD RELATING TO A PERSON FOR WHOM A GUARDIAN AD LITEM HAS BEEN APPOINTED SHALL PROVIDE THE GUARDIAN AD LITEM WITH ACCESS TO SUCH RECORD AS AUTHORIZED BY THE COURT'S ORDER.

RULE 15.2. INVOLUNTARY TERMINATION OF APPOINTMENT; OTHER REMEDIES FOR NON-COMPLIANCE; DISMISSAL; SANCTIONS.

A. DISMISSAL OF PROBATE, SPECIAL ADMINISTRATION OR SUBSEQUENT ADMINISTRATION PROCEEDINGS FOR LACK OF PROSECUTION.

1. TWO YEARS AFTER INITIATION OF A CASE FILED PURSUANT TO TITLE 14, CHAPTER 3, A.R.S., THE COURT SHALL ISSUE A NOTICE OF IMPENDING DISMISSAL OF THE CASE UNLESS AT LEAST ONE OF THE FOLLOWING HAS BEEN FILED IN THE CASE:

- a. A CLOSING STATEMENT AUTHORIZED BY § 14-3933;
- b. A PETITION TO SETTLE THE ESTATE AUTHORIZED BY §§ 14-3931 AND -3932;
- c. AN ORDER TERMINATING THE APPOINTMENT OF A SPECIAL ADMINISTRATOR PURSUANT TO § 14-3618; OR
- d. AN ORDER SETTING THE CASE FOR FUTURE TRIAL, HEARING, OR CONFERENCE OR AN ORDER EXTENDING THE ADMINISTRATION OF THE ESTATE BEYOND TWO YEARS.

2. THE CLERK OF THE COURT OR COURT ADMINISTRATOR, WHOEVER IS DESIGNATED BY THE PRESIDING JUDGE, SHALL PROMPTLY NOTIFY PARTIES, THOSE HEIRS AND DEVISEES WHOSE ADDRESS IS CONTAINED IN THE FILE, AND ALL WHO DEMAND NOTICE IN THE CASE OF THE IMPENDING DISMISSAL OF THE CASE. AT THE EXPIRATION OF 90 DAYS AFTER ISSUANCE OF THE NOTICE, THE COURT SHALL DISMISS THE CASE WITHOUT PREJUDICE AND TERMINATE THE APPOINTMENT OF THE PERSONAL REPRESENTATIVE OR SPECIAL ADMINISTRATOR WITHOUT A HEARING UNLESS AT LEAST ONE OF THE FOLLOWING HAS BEEN FILED IN THE CASE:

- a. ANY OF THE FOUR DOCUMENTS DESCRIBED ABOVE IN RULE 15.2(A)(1)(D);
- b. A REQUEST FOR HEARING OR CONFERENCE;
- c. A PETITION TO TERMINATE THE APPOINTMENT OF THE PERSONAL REPRESENTATIVE OR SPECIAL ADMINISTRATOR; OR
- d. A STATUS REPORT DESCRIBING MATTERS THAT REMAIN TO BE RESOLVED.

ANY TERMINATION OF THE APPOINTMENT OF THE PERSONAL REPRESENTATIVE OR SPECIAL ADMINISTRATOR UNDER THIS RULE SHALL NOT DISCHARGE THE FIDUCIARY FROM LIABILITY OR EXONERATE ANY BOND. THE COURT MAY EXTEND THE PERIODS SET FORTH IN THIS RULE PRIOR TO THEIR EXPIRATION FOR GOOD CAUSE SHOWN.

B. TERMINATION OF A MINOR GUARDIANSHIP CASE. CONSISTENT WITH THE PROVISIONS OF A.R.S. § 14-5210, THE CLERK OF THE COURT OR COURT ADMINISTRATOR, WHOEVER IS DESIGNATED BY THE PRESIDING JUDGE, SHALL CLOSE A MINOR GUARDIANSHIP CASE FILED PURSUANT TO §§ 14-5201 TO -5212 UPON THE

MINOR REACHING THE AGE OF MAJORITY, THE MINOR'S ADOPTION, MARRIAGE, EMANCIPATION, OR DEATH. IF THE COURT HAS REASON TO BELIEVE THAT THE MINOR HAS A DISABILITY OR IMPAIRMENT THAT MAY NECESSITATE THE APPOINTMENT OF A GUARDIAN AFTER THE MINOR'S EIGHTEENTH BIRTHDAY, AND A PETITION HAS NOT BEEN FILED PURSUANT TO A.R.S. § 14-5303, THE COURT SHALL SET A STATUS HEARING NOT LESS THAN 90 DAYS PRIOR TO THE MINOR'S EIGHTEENTH BIRTHDAY TO DETERMINE WHETHER A PETITION FOR APPOINTMENT OF A GUARDIAN FOR AN ADULT SHOULD BE FILED.

C. REMEDIES FOR NON-COMPLIANCE BY A GUARDIAN OR CONSERVATOR FOR AN ADULT. IN THE EVENT A GUARDIAN OR CONSERVATOR FAILS TO COMPLY WITH ANY REQUIREMENTS OF A.R.S. TITLE 14, COURT RULES, OR A COURT ORDER, THE COURT MAY ENTER ANY ORDER APPROPRIATELY DESIGNED TO ENSURE COMPLIANCE WITH LEGAL REQUIREMENTS OR PROTECT THE BEST INTEREST OF THE WARD OR PROTECTED PERSON, INCLUDING:

1. AN ORDER TO THE GUARDIAN OR CONSERVATOR TO COMPLY WITHIN A TIME CERTAIN;
2. AN ORDER TO SHOW CAUSE PURSUANT TO RULE 35 REQUIRING THE GUARDIAN OR CONSERVATOR TO SHOW CAUSE WHY APPROPRIATE ACTIONS SHOULD NOT BE TAKEN BY THE COURT;
3. AN ORDER APPOINTING A COURT INVESTIGATOR TO INVESTIGATE THE REASONS FOR THE GUARDIAN'S OR CONSERVATOR'S NON-COMPLIANCE AND REPORT TO THE COURT REGARDING THE INVESTIGATOR'S FINDINGS AND PROPOSED RECOMMENDATIONS;
4. AN ORDER TERMINATING THE GUARDIANSHIP OR CONSERVATORSHIP PROCEEDING IF THE COURT DETERMINES THAT DISMISSAL IS APPROPRIATE. THE COURT SHALL NOT TERMINATE A GUARDIANSHIP OR CONSERVATORSHIP CASE IF THE COURT HAS REASON TO BELIEVE THE WARD REMAINS INCAPACITATED OR THE PROTECTED PERSON REMAINS IN NEED OF PROTECTION AND SUCH PERSON CONTINUES TO RESIDE IN ARIZONA;
5. AN ORDER IMMEDIATELY SUSPENDING OR TERMINATING THE AUTHORITY OF THE GUARDIAN OR CONSERVATOR TO TAKE ANY FURTHER ACTION ON BEHALF OF THE WARD OR THE ESTATE AND APPOINT A SUCCESSOR OR TEMPORARY FIDUCIARY;
6. AN ORDER INITIATING PROCEEDINGS THAT MAY RESULT IN ISSUANCE OF A FIDUCIARY ARREST WARRANT PURSUANT TO A.R.S. § 14-5701; OR
7. SUCH OTHER ORDER AS MAY BE APPROPRIATE IN THE CIRCUMSTANCES OF THE CASE.

D. GENERAL INVOLUNTARY TERMINATION. IF NO ACTION OR HEARING OCCURS WITHIN SIX MONTHS AFTER A CASE IS INITIATED UNDER A.R.S. TITLE 14, THE COURT SHALL ISSUE A NOTICE THAT THE CASE WILL BE ADMINISTRATIVELY TERMINATED IN

90 DAYS WITHOUT HEARING, UNLESS BEFORE THAT DATE THE INITIATING PARTY FILES WITH THE COURT A REQUEST FOR ACTION OR A STATUS REPORT THAT DESCRIBES MATTERS REMAINING FOR RESOLUTION. THE NOTICE SHALL BE PROVIDED TO ALL PARTIES, PERSONS ENTITLED TO NOTICE OF THE COMMENCEMENT OF THE CASE, AND ANY PERSON WHO FILED A DEMAND FOR NOTICE.

E. EFFECT OF DISMISSAL. UNLESS OTHERWISE ORDERED BY THE COURT, THE ENTRY OF AN ORDER DISMISSING A CASE SERVES TO DISMISS ALL PENDING MATTERS IN THE CASE WITHOUT PREJUDICE BUT DOES NOT DISMISS, VACATE, OR SET ASIDE ANY FINAL ORDER APPROVING ACCOUNTINGS OR OTHER ACTIONS OF A PERSON APPOINTED PURSUANT TO A.R.S TITLE 14.

F. DISMISSAL AUTHORITY. THE AUTHORITY OF THE COURT TO ISSUE NOTICES, DISMISS CASES AND TERMINATE APPOINTMENTS UNDER THIS RULE MAY BE PERFORMED BY COURT ADMINISTRATION OR BY AN APPROPRIATE ELECTRONIC PROCESS UNDER SUPERVISION OF THE COURT.

Rule 18. Motions

A. Generally. A motion shall be filed with the court when a party seeks procedural rather than substantive relief.

B. Motions for Appointment of ~~Guardian Ad Litem~~ or Counsel. A party requesting the appointment of a ~~guardian ad litem~~ or counsel shall make such request in a motion that sets forth why the appointment is necessary or advisable and what, if any, special expertise is required of ~~the guardian ad litem~~ or counsel.

C. IF A PARTY HAS A GOOD FAITH BELIEF THAT AN INTERESTED PERSON HAS FILED A MOTION OR PETITION THAT REQUESTS THE SAME OR SUBSTANTIALLY SIMILAR RELIEF TO THE RELIEF REQUESTED IN AN EARLIER MOTION OR PETITION FILED BY THE SAME INTERESTED PERSON WITHIN THE PRECEDING TWELVE MONTHS, AND IF THE LATER-FILED MOTION OR PETITION DOES NOT DESCRIBE IN DETAIL A CHANGE IN FACT OR CIRCUMSTANCE THAT SUPPORTS THE REQUESTED RELIEF, THE PARTY MAY FILE A NOTICE OF REPETITIVE FILING. THIS NOTICE SHALL BE FILED NO LATER THAN THE RESPONSE OR OBJECTION DEADLINE FOR THE ALLEGEDLY REPETITIVE FILING AND SHALL INCLUDE THE TITLE AND DATE OF THE ALLEGED REPETITIVE FILING, THE TITLE AND DATE OF THE EARLIER FILING, AND THE DATE OF THE COURT'S RULING ON THE EARLIER FILING. A NOTICE OF REPETITIVE FILING SHALL HAVE THE EFFECT OF STAYING THE DEADLINE TO RESPOND OR OBJECT TO THE ALLEGED REPETITIVE FILING UNTIL FURTHER ORDER OF THE COURT. THE COURT MAY SUMMARILY STRIKE A REPETITIVE MOTION, WITHOUT HEARING, ON ITS OWN INITIATIVE OR FOLLOWING RECEIPT OF A NOTICE OF REPETITIVE FILING.

Rule 19. Appointment of Attorney, Medical Professional, and Investigator

A. [No change]

B. ABSENT GOOD CAUSE, A PARTY WHO SEEKS THE APPOINTMENT OF A GUARDIAN OR CONSERVATOR SHALL NOT NOMINATE A SPECIFIC ATTORNEY TO REPRESENT THE

SUBJECT PERSON UNLESS THE ATTORNEY HAS AN EXISTING OR PRIOR ATTORNEY-CLIENT RELATIONSHIP WITH THE SUBJECT PERSON. If a party ~~who seeks the appointment of a guardian or conservator~~ nominates a specific attorney to represent the SUBJECT PERSON ~~alleged incapacitated person or the person alleged to be in need of protection~~, the party shall, in the petition for appointment of guardian or conservator, describe the attorney's prior relationship, if any, with the petitioner and the SUBJECT PERSON ~~alleged incapacitated person or the person alleged to be in need of protection~~.

C. UNLESS OTHERWISE ORDERED BY THE COURT, AN ATTORNEY SHALL NOT BE APPOINTED, ACCEPT AN APPOINTMENT, OR REMAIN APPOINTED AS THE ATTORNEY OR GUARDIAN AD LITEM FOR THE SUBJECT PERSON IF THE ATTORNEY HAS AN EXISTING ATTORNEY-CLIENT RELATIONSHIP WITH THE NOMINATED OR APPOINTED FIDUCIARY.

~~D.~~ If a party who seeks the appointment of a guardian or conservator nominates a specific medical professional to evaluate the alleged incapacitated person or the person alleged to be in need of protection, the party shall, in the petition for appointment of guardian or conservator, describe the medical professional's prior relationship, if any, with the petitioner and the alleged incapacitated person or the person alleged to be in need of protection.

E. ~~D.~~ Noncompliance with this rule may be cause for continuing the hearing on the petition for appointment of guardian or conservator to such time as the judicial officer directs.

Rule 22. ORDERS APPOINTING CONSERVATORS, GUARDIANS, AND PERSONAL REPRESENTATIVES; Bonds and Bond Companies; RESTRICTED ASSETS

A. ORDERS. Every order appointing a conservator or a personal representative shall plainly state the amount of bond required. Neither letters of conservator nor letters of personal representative shall be issued to any person until any required bond has been has filed with the clerk of court. EVERY ORDER APPOINTING A CONSERVATOR, GUARDIAN, OR PERSONAL REPRESENTATIVE SHALL INCLUDE THE FOLLOWING LANGUAGE: "WARNING: THIS APPOINTMENT IS NOT EFFECTIVE UNTIL THE LETTERS OF APPOINTMENT HAVE BEEN ISSUED BY THE CLERK OF THE SUPERIOR COURT."

B. Bonds. Each fiduciary bond filed with the clerk of court shall state on the bond or on an attachment to the bond the name and address of the bonding company's statutory agent or other person authorized to accept service of process for the bonding company in the State of Arizona. The bonding company shall promptly notify the clerk of court of any change in the company's statutory agent or in the statutory agent's address.

C. RESTRICTED ACCOUNTS

1. EVERY ORDER APPOINTING A CONSERVATOR OR PERSONAL REPRESENTATIVE, OR THAT AUTHORIZES A SINGLE TRANSACTION OR OTHER PROTECTIVE ARRANGEMENT PURSUANT TO A.R.S. § 14-5409, SHALL PLAINLY STATE ANY RESTRICTIONS ON THE FIDUCIARY'S AUTHORITY TO MANAGE ASSETS OF THE ESTATE.

2. IF THE RESTRICTION AFFECTS THE FIDUCIARY'S ABILITY TO MANAGE MONETARY ASSETS OF THE ESTATE, THE ORDER AND, UNLESS OTHERWISE ORDERED BY THE COURT, ANY LETTERS THAT ISSUE SHALL CONTAIN THE FOLLOWING LANGUAGE: "FUNDS SHALL BE DEPOSITED INTO AN INTEREST-BEARING, FEDERALLY INSURED RESTRICTED ACCOUNT AT A FINANCIAL INSTITUTION ENGAGED IN BUSINESS IN ARIZONA. NO WITHDRAWALS OF PRINCIPAL OR INTEREST MAY BE MADE WITHOUT CERTIFIED ORDER OF THE SUPERIOR COURT. UNLESS OTHERWISE ORDERED BY THE COURT, REINVESTMENT MAY BE MADE WITHOUT FURTHER COURT ORDER SO LONG AS FUNDS REMAIN INSURED AND RESTRICTED IN THIS INSTITUTION AT THIS BRANCH."

3. UNLESS OTHERWISE ORDERED BY THE COURT, THE FIDUCIARY SHALL FILE A PROOF OF RESTRICTED ACCOUNT FOR EVERY ACCOUNT ORDERED RESTRICTED BY THE COURT WITHIN 30 DAYS AFTER THE ORDER OR LETTERS, WHETHER TEMPORARY OR PERMANENT, ARE FIRST ISSUED.

4. UNLESS OTHERWISE ORDERED BY THE COURT, AN ATTORNEY WHO REPRESENTS THE FIDUCIARY, THE WARD, PROTECTED PERSON, OR INSURANCE COMPANY AND WHO IS THE RECIPIENT OF ANY PROCEEDS TO BE RESTRICTED FOR THE BENEFIT OF A MINOR, INCAPACITATED PERSON OR PROTECTED PERSON, SHALL ENSURE THE ESTABLISHMENT OF THE RESTRICTED ACCOUNT, PROPER TITLING OF THE SAME, AND SAFE DEPOSIT OF THE RESTRICTED FUNDS. THE ATTORNEY SHALL FILE A PROPERLY EXECUTED PROOF OF RESTRICTED ACCOUNT FORM EXECUTED BY AN AUTHORIZED REPRESENTATIVE OF THE FINANCIAL INSTITUTION WITHIN 30 DAYS AFTER THE ISSUANCE OF LETTERS OR ENTRY OF A SINGLE TRANSACTION ORDER.

D. RESTRICTED REAL PROPERTY

1. EVERY ORDER APPOINTING A CONSERVATOR OR A PERSONAL REPRESENTATIVE, OR THAT AUTHORIZES A SINGLE TRANSACTION OR OTHER PROTECTIVE ARRANGEMENT PURSUANT TO A.R.S. § 14-5409, SHALL PLAINLY STATE ANY RESTRICTIONS ON THE AUTHORITY TO SELL, LEASE, ENCUMBER OR CONVEY REAL PROPERTY OF THE ESTATE. NEITHER LETTERS OF CONSERVATOR NOR PERSONAL REPRESENTATIVE SHALL BE ISSUED BY THE CLERK OF THE COURT TO ANY PERSON UNLESS THE LANGUAGE RESTRICTING THE FIDUCIARY'S AUTHORITY IS CONTAINED IN THE LETTERS.

2. IF THE RESTRICTION LIMITS THE FIDUCIARY'S AUTHORITY TO MANAGE REAL PROPERTY, UNLESS OTHERWISE ORDERED BY THE COURT, THE ORDER APPOINTING THE CONSERVATOR OR PERSONAL REPRESENTATIVE, OR THAT AUTHORIZES OR RATIFIES THE TRANSACTION, SHALL CONTAIN THE FOLLOWING LANGUAGE: "NO REALTY SHALL BE LEASED FOR MORE THAN ONE YEAR, SOLD, ENCUMBERED OR CONVEYED WITHOUT PRIOR COURT ORDER."

Rule 26. Issuance AND RECORDING of Letters

A. [No change]

~~B. Any restrictions on the authority of the fiduciary to act shall be reflected in the letters issued.~~ IF THE COURT RESTRICTS THE AUTHORITY OF A CONSERVATOR, GUARDIAN OR PERSONAL REPRESENTATIVE, THE CLERK OF THE COURT SHALL NOT ISSUE LETTERS OF CONSERVATOR, GUARDIAN, OR PERSONAL REPRESENTATIVE UNLESS THE LANGUAGE RESTRICTING THE FIDUCIARY'S AUTHORITY IN THE COURT'S ORDER IS CONTAINED IN THE LETTERS OF APPOINTMENT.

(C) – (D) [No change]

E. A CONSERVATOR SHALL FILE AND RECORD A CERTIFIED COPY OF THE LETTERS WITH THE OFFICE OF THE COUNTY RECORDER IN ALL COUNTIES IN ANY STATE WHERE THE ESTATE OWNS REAL PROPERTY. THE CONSERVATOR SHALL FILE A COPY OF THE RECORDED LETTERS WITH THE COURT IN WHICH THE CONSERVATOR WAS APPOINTED WITHIN 30 DAYS AFTER THE COUNTY RECORDER HAS ISSUED THE RECORDED CONSERVATOR'S LETTERS.

RULE 26.1. WRITTEN FINDINGS ON APPOINTMENT

FOLLOWING A WRITTEN REQUEST BY A PERSON WITH HIGHER PRIORITY FOR APPOINTMENT AS A GUARDIAN OR CONSERVATOR BUT WHO WAS PASSED OVER BY THE COURT IN FAVOR OF APPOINTING A PERSON WITH LOWER PRIORITY, THE COURT SHALL MAKE A SPECIFIC FINDING REGARDING THE COURT'S DETERMINATION OF GOOD CAUSE AND WHY THE PERSON WAS NOT APPOINTED. THE REQUEST MUST BE MADE WITHIN TEN DAYS AFTER THE ENTRY OF THE ORDER.

RULE 27.1. TRAINING FOR NON-LICENSED FIDUCIARIES.

A. ANY PERSON WHO IS NEITHER A LICENSED FIDUCIARY UNDER A.R.S. § 14-5651 NOR A FINANCIAL INSTITUTION SHALL COMPLETE A TRAINING PROGRAM APPROVED BY THE SUPREME COURT BEFORE LETTERS TO SERVE AS A 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(C) OR UNLESS OTHERWISE ORDERED BY THE COURT.

B. IF THE APPOINTMENT WAS MADE BECAUSE AN EMERGENCY EXISTED, THE FIDUCIARY SHALL COMPLETE THE TRAINING PROGRAM WITHIN THIRTY DAYS OF 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 PROGRAM.

C. FOR PURPOSES OF THIS RULE, "FINANCIAL INSTITUTION" MEANS A BANK THAT IS INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION AND CHARTERED UNDER THE LAWS OF THE UNITED STATES OR ANY STATE, A TRUST COMPANY THAT IS OWNED BY A BANK HOLDING COMPANY THAT IS REGULATED BY THE FEDERAL RESERVE BOARD, OR A TRUST COMPANY THAT IS CHARTERED UNDER THE LAWS OF THE UNITED STATES OR THIS STATE.

Rule 28. Pretrial Procedures

A. Initial Procedures; Scheduling Conference.

1. If a matter is contested, unless the parties agree otherwise, the court shall set a scheduling conference that shall occur promptly after the date of the initial hearing on the petition. The scheduling conference may be held at the time set for the initial hearing on the petition. At the scheduling conference, the court and the parties shall address the following issues:

- a. the deadline for filing a written objection if one has not already been filed;
- b. the deadline for filing a joint alternative dispute resolution statement pursuant to Rule 29 16(g), Arizona Rules of Civil Procedure OF THESE RULES;
- c. any other issues the court or the parties deem relevant.

2. Unless inconsistent with these rules, Rule 16(b), Rules of Civil Procedure, shall apply to all pre-trial conferences.

3. Following the scheduling conference, the court shall enter an order setting forth the deadlines determined at the scheduling conference.

(B) – (C) [No change]

Rule 29. ~~Arbitration~~ ALTERNATIVE DISPUTE RESOLUTION

~~Unless the parties to a contested matter agree otherwise, Rules 72 through 76, Arizona Rules of Civil Procedure, pertaining to compulsory arbitration, shall not apply.~~

A. THE PARTIES TO A CONTESTED MATTER SHALL NOT BE SUBJECT TO COMPULSORY ARBITRATION AS SET FORTH IN RULES 72 THROUGH 77, ARIZONA RULES OF CIVIL PROCEDURE. HOWEVER, THE COURT IS AUTHORIZED BY ARIZONA REVISED STATUTES SECTION 14-1108, TO ORDER ALTERNATIVE DISPUTE RESOLUTION, INCLUDING ARBITRATION. IF THE COURT ORDERS ARBITRATION, THE ARBITRATION SHALL BE GOVERNED BY RULES 73 THROUGH 77, ARIZONA RULES OF CIVIL PROCEDURE.

B. UPON MOTION OF ANY PARTY OR UPON ITS OWN INITIATIVE, THE COURT MAY DIRECT THE PARTIES TO PARTICIPATE IN ONE OR MORE ALTERNATIVE DISPUTE RESOLUTION PROCESSES, INCLUDING BUT NOT LIMITED TO ARBITRATION, MEDIATION, SETTLEMENT CONFERENCE, OPEN NEGOTIATION, OR A PRIVATE DISPUTE RESOLUTION PROCESS AGREED UPON BY THE PARTIES.

C. NO LATER THAN THIRTY (30) DAYS AFTER A PROBATE PROCEEDING BECOMES CONTESTED AS DEFINED BY RULE 27, THE PARTIES SHALL CONFER, EITHER IN PERSON OR BY TELEPHONE, ABOUT:

1. THE POSSIBILITIES FOR A PROMPT SETTLEMENT OR RESOLUTION OF THE CASE;
AND

2. WHETHER THE PARTIES MIGHT BENEFIT FROM PARTICIPATION IN SOME ALTERNATIVE DISPUTE RESOLUTION PROCESS, THE TYPE OF PROCESS THAT WOULD BE MOST APPROPRIATE IN THEIR CASE, THE SELECTION OF AN ALTERNATIVE DISPUTE RESOLUTION SERVICE PROVIDER, AND THE SCHEDULING OF THE PROCEEDINGS.

D. THE PARTIES SHALL BE RESPONSIBLE FOR ATTEMPTING IN GOOD FAITH TO AGREE ON AN ALTERNATIVE DISPUTE RESOLUTION PROCESS AND FOR REPORTING THE OUTCOME OF THEIR CONFERENCE TO THE COURT. WITHIN FIFTEEN (15) DAYS AFTER THEIR CONFERENCE, THE PARTIES SHALL INFORM THE COURT OF THE FOLLOWING:

1. IF THE PARTIES HAVE AGREED TO USE A SPECIFIC ALTERNATIVE DISPUTE RESOLUTION PROCESS, THE TYPE OF ALTERNATIVE DISPUTE RESOLUTION PROCESS TO BE USED, THE NAME AND ADDRESS OF THE ALTERNATIVE DISPUTE RESOLUTION SERVICE PROVIDER THEY WILL USE, AND THE DATE BY WHICH THE ALTERNATIVE DISPUTE RESOLUTION PROCEEDINGS ARE ANTICIPATED TO BE COMPLETED;

2. IF THE PARTIES HAVE NOT AGREED TO USE A SPECIFIC ALTERNATIVE DISPUTE RESOLUTION PROCESS, THE POSITION OF EACH PARTY AS TO THE TYPE OF ALTERNATIVE DISPUTE RESOLUTION PROCESS APPROPRIATE FOR THE CASE OR, IN THE ALTERNATIVE, WHY ALTERNATIVE DISPUTE RESOLUTION IS NOT APPROPRIATE; AND

3. IF ANY PARTY REQUESTS THAT THE COURT CONDUCT A CONFERENCE TO CONSIDER ALTERNATIVE DISPUTE RESOLUTION.

E. DURING THE ALTERNATIVE DISPUTE RESOLUTION PROCESS, THE PARTIES SHALL HAVE A DUTY TO PARTICIPATE IN GOOD FAITH.

Rule 30. Guardianships/Conservatorships-Specific Procedures

A. ~~Inventories~~ INVENTORY.

1. Unless otherwise ordered by the court, the conservator shall file the inventory of the protected person's estate, AS REQUIRED BY A.R.S. SECTION 14-5418(A), within 90 days after the conservator's letters of conservator, whether temporary or permanent, are first issued. The inventory shall list all property owned by the protected person as of the date the conservator's letters of conservator, whether temporary or permanent, were first issued, and shall provide the values of such assets as of the date of the conservator's first appointment.

2. If the conservator is unable to file the inventory within 90 days after the conservator's letters of conservator, whether temporary or permanent, are first issued, the conservator shall, before the deadline, file a motion that requests additional time to file the inventory. Such motion shall state why additional time is required and how much additional time is required to file the inventory.

3. If, after filing the inventory but before filing the conservator's first ACCOUNT ~~accounting~~, the conservator discovers an additional asset or discovers that the value of an asset on the inventory,

whether appraised or not, is erroneous or misleading, the conservator shall file an amended inventory. If the conservator files an amended inventory because the conservator has discovered an additional asset and if the additional asset is not already subject to a court-ordered restriction, the conservator shall, with the amended inventory, file a petition requesting the court to either increase the amount of the conservator's bond or enter an order restricting the sale, conveyance, or encumbrance of the additional asset.

4. Unless permitted by the court, after a conservator has filed the conservator's first ACCOUNT ~~accounting~~ with the court, the conservator shall not amend the inventory. If the conservator discovers any assets after the filing of the conservator's first ACCOUNT ~~accounting~~ or if the conservator discovers that the value of an asset listed on the inventory is erroneous or misleading, the conservator shall make the appropriate adjustments on the conservator's subsequent ACCOUNTS ~~accountings~~.

B. CONSERVATOR'S ACCOUNTS ~~Accountings~~.

1. Unless otherwise ordered by the court, the conservator's first ACCOUNT ~~accounting~~ shall reflect all activity relating to the conservatorship estate from the date the conservator's letters were first issued through and including the last day of the ninth month after the date the conservator's permanent letters were issued and shall be filed with the court on or before the anniversary date of the issuance of the conservator's permanent letters. For each bank or securities account listed on the ending balance schedule of the ACCOUNT ~~accounting~~, the conservator shall attach to the ACCOUNT ~~accounting~~ a copy of the monthly statement that corresponds to the ending balance of such account as reflected on the ACCOUNT ~~accounting~~.

2. Unless otherwise ordered by the court, all subsequent ACCOUNTS ~~accountings~~ shall reflect all activity relating to the conservatorship estate from the ending date of the most recent previously filed ACCOUNT ~~accounting~~ through and including the last date of the twelfth month thereafter, and shall be filed with the court on or before the anniversary date of the issuance of the conservator's permanent letters. For each bank or securities account listed on the ending balance schedule of the ACCOUNT ~~accounting~~, the conservator shall attach to the ACCOUNT ~~accounting~~ a copy of the monthly statement that corresponds to the ending balance of such account as reflected on the ACCOUNT ~~accounting~~.

3. UNLESS OTHERWISE ORDERED BY THE COURT, THE CONSERVATOR'S ACCOUNT SHALL BE FILED IN THE FORMAT SET FORTH IN THE ARIZONA CODE OF JUDICIAL ADMINISTRATION.

~~4.3.~~ Unless otherwise ordered by the court and except as provided in A.R.S. § 14-5419(F), a conservator shall file a final ACCOUNT ~~accounting~~ for a deceased protected person within 90 days after the date of the protected person's death.

~~5.4.~~ If the conservator is unable to file an ACCOUNT ~~accounting~~ within the time set forth in this rule, the conservator shall, before the deadline, file a motion that requests additional time to file the ACCOUNT ~~accounting~~. The motion shall, at a minimum, state why additional time is required and how much additional time is required to file the ACCOUNT ~~accounting~~.

~~6.5.~~ For purposes of this rule, if the conservator's appointment initially was temporary, "the date the conservator's letters were first issued" shall mean the date the conservator's temporary letters were

issued; otherwise, “the date the conservator's letters were first issued” shall mean the date the conservator's permanent letters were issued.

C. [No change]

RULE 30.1. FINANCIAL ORDER

A. FOLLOWING THE APPOINTMENT OF A CONSERVATOR FOR AN ADULT, THE CONSERVATOR SHALL INSTITUTE AND FOLLOW A BUDGET, AS SET FORTH IN RULE 30.4, UNLESS OTHERWISE ORDERED BY THE COURT, AND THE COURT MAY ENTER ONE OR MORE OF THE FOLLOWING ORDERS:

1. LIMITING EXPENDITURES FROM THE ESTATE OF THE PROTECTED PERSON AS THE COURT FINDS IS IN THE PROTECTED PERSON'S BEST INTEREST; OR,

2. REQUIRING THE CONSERVATOR TO PROCEED IN ANY OTHER LAWFUL MANNER THE COURT FINDS IS IN THE PROTECTED PERSON'S BEST INTEREST.

B. AFTER A CONSERVATOR IS APPOINTED FOR AN ADULT, THE COURT MAY DISCHARGE THE PROTECTED PERSON'S ATTORNEY IF THE COURT FINDS THAT THE COST OF THE CONTINUED REPRESENTATION EXCEEDS THE PROBABLE BENEFIT TO THE PROTECTED PERSON. UNTIL DISCHARGED, THE PROTECTED PERSON'S ATTORNEY HAS A CONTINUING DUTY TO REVIEW THE CONSERVATOR'S INVENTORY, BUDGETS AND ACCOUNTS AND TO NOTIFY THE COURT OF ANY OBJECTIONS OR CONCERNS THE ATTORNEY IDENTIFIES WITH RESPECT TO THE CONSERVATOR'S INVENTORY, BUDGETS AND ACCOUNTS.

RULE 30.2. SUSTAINABILITY OF CONSERVATORSHIP

A. THE CONSERVATOR SHALL DISCLOSE WHETHER THE ANNUAL EXPENSES OF THE CONSERVATORSHIP EXCEED INCOME AND, IF SO, WHETHER THE ASSETS AVAILABLE TO THE CONSERVATOR LESS LIABILITIES ARE SUFFICIENT TO SUSTAIN THE CONSERVATORSHIP FOR THE DURATION OF TIME THE PROTECTED PERSON NEEDS CARE OR FIDUCIARY SERVICES.

B. THE ESTATE SUSTAINABILITY SHALL BE CALCULATED AS FOLLOWS:

[AVAILABLE ASSETS MINUS LIABILITIES OF THE ESTATE] ***DIVIDED BY***
[ANNUAL EXPENDITURES MINUS ANNUAL INCOME] ***EQUALS*** ESTATE
SUSTAINABILITY

C. IF THE ASSETS ARE NOT SUFFICIENT TO SUSTAIN THE ESTATE, THE CONSERVATOR SHALL ALSO DISCLOSE THE MANAGEMENT PLAN FOR THE NON-SUSTAINABLE CONSERVATORSHIP.

D. THE INFORMATION REQUIRED BY THIS RULE SHALL BE A GOOD FAITH PROJECTION BASED UPON THE INFORMATION THAT IS REASONABLY AVAILABLE TO

THE CONSERVATOR CONCERNING THE SUBJECT PERSON. THIS INFORMATION MAY BE CONSIDERED BY THE COURT WHEN ENTERING ORDERS.

E. UNLESS OTHERWISE ORDERED BY THE COURT, THE CONSERVATOR SHALL DISCLOSE THE INFORMATION REQUIRED BY THIS RULE, INCLUDING THE CONSERVATOR'S ASSUMPTIONS AND CALCULATION, WHEN FILING AN INVENTORY, ANY CONSERVATOR'S ACCOUNT, AND FOLLOWING ANY MATERIAL CHANGE OF CIRCUMSTANCES.

F. UNLESS OTHERWISE ORDERED BY THE COURT, THE SUSTAINABILITY DISCLOSURE SHALL BE FILED IN THE FORMAT SET FORTH IN THE ARIZONA CODE OF JUDICIAL ADMINISTRATION.

G. THE DISCLOSURE REQUIRED BY THIS RULE IS NOT REQUIRED IN THE CONSERVATORSHIP FOR A MINOR UNLESS OTHERWISE ORDERED BY THE COURT.

COMMENT

THE PURPOSE OF THE DISCLOSURE REQUIRED BY THIS RULE IS TO PROVIDE THE COURT AND PARTIES WITH A GENERAL IDEA AS TO WHETHER THE ASSETS AND INCOME OF THE CONSERVATORSHIP ESTATE ARE SUFFICIENT TO PAY FOR THE PROTECTED PERSON'S EXPENSES FOR THE DURATION OF TIME THE PROTECTED PERSON NEEDS CARE AND FIDUCIARY SERVICES. THUS, THE DISCLOSURE REQUIRED BY THIS RULE IS INTENDED TO SERVE SOLELY AS A MANAGEMENT TOOL; THE COURT DOES NOT INTEND THAT A GOOD FAITH PROJECTION WILL FORM THE BASIS FOR A CLAIM OF LIABILITY AGAINST THE CONSERVATOR.

THE FOLLOWING EXAMPLE DESCRIBES HOW THE REQUIRED DISCLOSURE IS CALCULATED: ASSUME A PROTECTED PERSON'S ESTATE CONSISTS OF \$20,000 IN BANK ACCOUNTS AND A RESIDENCE WITH A FAIR MARKET VALUE OF \$120,000 AND A \$65,000 MORTGAGE. FURTHER, ASSUME THAT SAME PROTECTED PERSON HAS AN ANNUAL INCOME OF \$20,000 AND ANNUAL EXPENSES (INCLUDING FIDUCIARY AND ATTORNEY FEES) OF \$45,000. THE CONSERVATORSHIP'S SUSTAINABILITY IS CALCULATED AS FOLLOWS:

$$(\$120,000 + \$20,000 - \$65,000) = \text{ESTATE SUSTAINABILITY}$$

$$(\$45,000 - 20,000)$$

$$\underline{\$75,000} = \text{ESTATE SUSTAINABILITY OF 3 YEARS}$$

$$\$25,000$$

THUS, IF BASED ON THE CONSERVATOR'S KNOWLEDGE OF THE PROTECTED PERSON'S MEDICAL CONDITION AND AGE, THE CONSERVATORSHIP IS NOT SUSTAINABLE, THE CONSERVATOR SHALL EXPLAIN HOW THE PROTECTED PERSON'S EXPENSES WILL BE MANAGED AFTER THREE YEARS.

RULE 30.3. CONSERVATORSHIP ESTATE BUDGET

A. UNLESS OTHERWISE ORDERED BY THE COURT, THE CONSERVATOR SHALL FILE A BUDGET NOT LATER THAN THE DATE THE INVENTORY IS DUE AND THEREAFTER WITH EACH CONSERVATOR'S ACCOUNT, FOLLOWING CONSULTATION WITH ANY ATTORNEY OR GUARDIAN AD LITEM FOR THE PROTECTED PERSON. THE FIRST BUDGET SHALL COVER THE DATE OF THE CONSERVATOR'S INITIAL APPOINTMENT THROUGH AND INCLUDING THE END DATE OF THE CONSERVATOR'S FIRST ACCOUNT.

B. UNLESS OTHERWISE ORDERED BY THE COURT, THE BUDGET SHALL BE FILED IN THE FORMAT SET FORTH IN THE APPROPRIATE FORM PRESCRIBED IN THE ARIZONA CODE OF JUDICIAL ADMINISTRATION.

C. THE CONSERVATOR MUST PROVIDE A COPY OF THE BUDGET TO ALL PERSONS ENTITLED TO NOTICE OF THE CONSERVATOR'S ACCOUNTS PURSUANT TO ARIZONA REVISED STATUTES SECTION 14-5419(C).

D. THE CONSERVATOR SHALL FILE AN AMENDMENT TO THE BUDGET AND PROVIDE NOTICE IN THE SAME MANNER AS THE INITIAL BUDGET WITHIN THIRTY DAYS AFTER REASONABLY PROJECTING THAT THE EXPENDITURES FOR ANY SPECIFIC CATEGORY WILL EXCEED THE APPROVED BUDGET BY A THRESHOLD PRESCRIBED BY THE ARIZONA JUDICIAL COUNCIL AND AS SET FORTH IN THE INSTRUCTIONS FOR THE CONSERVATOR'S BUDGET AS ADOPTED IN THE ARIZONA CODE OF JUDICIAL ADMINISTRATION.

E. AN INTERESTED PERSON MAY FILE A WRITTEN OBJECTION TO THE BUDGET OR AMENDMENT WITHIN FOURTEEN DAYS AFTER THE FILING DATE OF THE BUDGET OR AMENDMENT. ON THE FILING OF A WRITTEN OBJECTION, THE COURT MAY OVERRULE ALL OR PART OF THE OBJECTION, ORDER A REPLY BY THE CONSERVATOR OR SET A HEARING ON THE OBJECTION. THE COURT MAY ALSO SET A HEARING IN THE ABSENCE OF AN OBJECTION. AT A HEARING, THE CONSERVATOR HAS THE BURDEN TO PROVE THAT A CONTESTED BUDGET ITEM IS REASONABLE, NECESSARY AND IN THE BEST INTEREST OF THE PROTECTED PERSON. IF AN INTERESTED PERSON FAILS TO OBJECT TO A BUDGET ITEM WITHIN FOURTEEN DAYS AFTER THE FILING DATE OF THE BUDGET OR AMENDMENT, THE BUDGET ITEM SHALL BE DEEMED PRESUMPTIVELY REASONABLE AT THE TIME OF THE CONSERVATOR'S ACCOUNT.

F. THE COURT MAY ORDER THAT A BUDGET IS ACCEPTED IN THE ABSENCE OF AN OBJECTION. ON THE COURT'S OWN MOTION OR UPON THE FILING OF A WRITTEN OBJECTION, THE COURT SHALL APPROVE, DISAPPROVE OR MODIFY THE BUDGET TO FURTHER THE PROTECTED PERSON'S BEST INTEREST.

Rule 33. Compensation for Fiduciaries and ~~Attorney's Fees~~ Attorneys; STATEWIDE FEE GUIDELINES

A. A GUARDIAN, CONSERVATOR, ATTORNEY OR GUARDIAN AD LITEM WHO INTENDS TO BE COMPENSATED BY THE ESTATE OF A WARD OR PROTECTED PERSON SHALL GIVE WRITTEN NOTICE OF THE BASIS OF ANY COMPENSATION AS REQUIRED BY ARIZONA REVISED STATUTES SECTION 14-5109.

~~B.A.~~ Unless otherwise ordered by the court, a petition that requests approval of compensation for a personal representative, trustee, guardian, conservator, guardian ad litem, attorney representing such fiduciary, or an attorney representing the subject person in a guardianship or conservatorship proceeding for services rendered in proceedings under A.R.S. Title 14 shall be accompanied by a statement that includes the following information:

1. If compensation is requested based on hourly rates, a detailed statement of the services provided, including 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;
2. An itemization of costs for which reimbursement is sought that identifies the cost item, the date the cost was incurred, the purpose for which the expenditure was made, and the amount of reimbursement requested, or, if reimbursement of costs is based on some other method, an explanation of the method being used for reimbursement of costs; and
3. If compensation is not based on hourly rates, an explanation of the fee arrangement and computation of the fee for which approval is sought.

~~C.B.~~ Copies of all petitions for compensation and fee statements shall be provided to or served on each party and person who has appeared or requested notice in the case. Proof of such service shall be filed with the court.

~~D.C.~~ If a petition for compensation or fees is contested, the objecting party shall set forth all specific objections in writing, and a copy of such written objections shall be given to or served on each party and person who has appeared or requested notice in the case. Proof of service or delivery of such notice shall be filed with the court.

~~E.D.~~ When an attorney or fiduciary fee statement accompanies an annual accounting, the fee statement shall match the charges reported in the annual accounting or a reconciliation of the fee statement to the accounting shall be provided by the fiduciary

~~F.E.~~ WHEN DETERMINING REASONABLE COMPENSATION, ~~the superior court SHALL FOLLOW THE STATEWIDE FEE GUIDELINES SET FORTH IN THE ARIZONA CODE OF JUDICIAL ADMINISTRATION may adopt fee guidelines designating compensation rates that may be used in determining the reasonableness of fees payable to licensed fiduciaries in cases under A.R.S. Title 14.~~

~~G.F.~~ Unless ordered by the court, neither a personal representative nor a personal representative's attorney is required to file a petition for approval of such person's fees.

~~H.~~ COMPENSATION PAYABLE TO ATTORNEYS OR GUARDIANS AD LITEM FROM THE ESTATE OF A WARD OR PROTECTED PERSON IS WAIVED IF NOT SUBMITTED IN COMPLIANCE WITH ARIZONA REVISED STATUTES, SECTION 14-5110.

Rule 38. ~~Appendix to Forms~~

~~A. The forms~~ FORMS 1 THROUGH 4 included in Appendix A are the preferred forms and meet the requirements of these rules. Whenever these rules require the use of a form that is “substantially similar” to a form contained in this rule, such language means that the content of these forms may be adapted to

delete information that does not apply to a particular case or add other relevant information, provided that all information contained in the preferred form and applicable to the case is included. The deletion of information contained in the preferred form or the failure to complete a portion of the preferred form constitutes a representation to the court and adverse parties that the omitted or unanswered questions or items are not applicable. Any form may be modified for submission at times and under circumstances provided for by an Administrative Order of the Supreme Court of Arizona.

~~B. The forms~~ FORMS 1 THROUGH 4 in Appendix A shall not be the exclusive method for presenting such matters in the superior court.

B. FORMS 5 THROUGH 9 PRESCRIBED IN THE ARIZONA CODE OF JUDICIAL ADMINISTRATION MEET THE REQUIREMENTS OF THESE RULES. UNLESS OTHERWISE ORDERED BY THE COURT, FORMS 5 THROUGH 8 SHALL BE THE EXCLUSIVE METHOD FOR PRESENTING SUCH MATTERS IN THE SUPERIOR COURT. FORM 9 MAY BE USED BY A CONSERVATOR ONLY IF AUTHORIZED BY THE COURT TO DO SO. THE INSTRUCTIONS INCLUDED WITH FORMS 5 THROUGH 9 SUPPLEMENT THE RULES AND HAVE THE SAME FORCE AND EFFECT AS THE RULES.

COMMENT

~~The f~~ Forms 1 THROUGH 4 contained in Appendix A are sufficient under the rules and are intended to indicate the simplicity and brevity of statement that these rules contemplate. Although use of these forms is encouraged, the forms are not the exclusive means for addressing the court in writing.

FORMS 5 THROUGH 8, HOWEVER, MUST BE USED IN THEIR EXACT FORM AS THEY ARE THE EXCLUSIVE MEANS FOR ADDRESSING THE COURT IN WRITING. FORM 9 IS A SIMPLIFIED FORM THAT MAY ONLY BE USED BY THE CONSERVATOR IF THE COURT SO AUTHORIZES. THE REQUIREMENT OF USING THESE FORMS IS IMPOSED IN AN EFFORT TO INCREASE JUDICIAL OVERSIGHT OF CONSERVATORSHIPS. THESE FORMS WILL BRING UNIFORMITY AND COMPARABILITY TO JUDICIAL OVERSIGHT OF CONSERVATORSHIPS.

Rule 31, Rules of the Supreme Court

Rule 31. Regulation of the Practice of Law

(a) Supreme Court Jurisdiction Over the Practice of Law.

....

(b) Authority to Practice. Except as hereinafter provided in section (d), no person shall practice law in this state or represent in any way that he or she may practice law in this state unless the person is an active member of the state bar.

....

(d) Exemptions. Notwithstanding the provisions of section (b), but subject to the limitations of section (c) unless otherwise stated:

....

30. A PERSON LICENSED AS A FIDUCIARY PURSUANT TO A.R.S. §14-5651 MAY PERFORM SERVICES IN COMPLIANCE WITH ARIZONA CODE OF JUDICIAL ADMINISTRATION, PART 7, CHAPTER 2, SECTION 7-202. NOTWITHSTANDING THE FOREGOING PROVISION, THE COURT MAY SUSPEND THE FIDUCIARY'S AUTHORITY TO ACT WITHOUT AN ATTORNEY WHENEVER IT DETERMINES THAT LAY REPRESENTATION IS INTERFERING WITH THE ORDERLY PROGRESS OF THE PROCEEDINGS OR IMPOSING UNDUE BURDENS ON OTHER PARTIES.