IN THE SUPREME COURT
STATE OF ARIZONA

In the Matter of the Conservatorship of: WILLIAM JOHN CHALMERS, An Adult.	No. CV-23-_____-PR Court of Appeals, Division One No. 1 CA-CV 22-0429 Maricopa County Superior Court No. PB2017-001373

PETITION FOR REVIEW

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This case involves the court of appeals' erroneous interpretation of a statute, A.R.S. § 14-5109(A), which had never been interpreted in a published opinion until the opinion below. AR.S. § 14-5109(A) is part of Title 14, Chapter 5, which deals with "Protection of Persons Under Disability and Their Property." Its correct interpretation is not only a matter of first impression for this Court, but also a legal issue of statewide importance, and one that will certainly recur, given that the statute deals with the compensation of those charged with protecting persons under a disability.

The statute says that a guardian, conservator, an attorney or a guardian ad litem who will seek compensation from the estate of a ward "must" file a Notice that gives "a general explanation of the compensation arrangement and how the compensation will be computed," and must do so when he or she "first appears in the proceeding. . . ." The statute does not provide any sanction for failing to give this preliminary Notice. It does not provide for a waiver or forfeiture of compensation subsequently earned if such Notice is not provided; and it certainly does not warn anyone that compensation will be forfeited completely, or rescinded, if the Notice is not given. And we know the legislature chose not to include a waiver/forfeiture sanction in Section 14-5109, because it specifically included such a remedy

in the very next statute, A.R.S. § 14-5110. That section, entitled "Claim deadline for compensation," states that a fee claim "is waived" if not presented within four months of certain dates.

Despite the foregoing clear words in the statutes (which are the best indication of legislative intent), in a split opinion, the court of appeals majority read a forfeiture remedy into the Notice statute, and thus ordered the appellants in this case, who had not filed the Notice, to repay over $300,000 in fees that had not only been well-earned according to the probate court, but also of which the ward had been fully advised. In doing so, the majority defied settled precepts of statutory interpretation, engaged in inappropriate judicial legislation, and created a new trap for the unwary. In contrast, the dissent, rejecting the forfeiture added by the majority, gave full effect to the statute's actual language, stating that the probate court is in the best position to assess the prejudice and sanction, if any, associated with a failure to file the Notice.

No Arizona decision controls the point of law in question, and the court of appeals incorrectly decided this important issue of law. ARCAP 23(d)(3). Review should be granted, and the court of appeals' attempt to add

a waiver/forfeiture provision into § 14-5109(A) vacated. The statute should be interpreted according to its actual terms.

I. ISSUE PRESENTED FOR REVIEW

Did the lower court err as a matter of law in reading a waiver/forfeiture provision into A.R.S. § 14-5109 where the legislature chose not to include one?

II. FACTS

Appellants are professionals who were appointed on a temporary and emergency basis to assist Mr. Chalmers complete his divorce when he was unable to do so. [*See, e.g.*, R. 4, 13, 23, 28.] Because Mr. Chalmers' mental health issues made it difficult for him to assist his divorce attorney, the family court appointed Appellant Mr. Theut as Chalmers' guardian ad litem. Mr. Theut then filed petitions in probate court to appoint a temporary guardian and temporary conservator for Mr. Chalmers, to which Mr. Chalmers agreed. [*Id.*; *see also Chalmers v. East Valley Fid. Svcs, Inc.*, 2021 WL 5895612 (Ariz. Ct. App. Dec. 14, 2021).] Appellant East Valley Fiduciary Services (EVFS) was appointed temporary guardian and conservator, and it retained Appellant Mr. Scharber to represent it in the probate matter, and

Appellant Mr. McKindles to represent it in the divorce action. Gary Doyle was appointed as Mr. Chalmers' counsel in the probate proceeding. [*Id.*]

The guardianship and conservatorship were truly temporary proceedings, lasting one month and one year respectively. [*Id.*] Because the appointments were done on an emergency and temporary basis (the guardianship lasted only one month; the conservatorship a year), the professionals neglected to file the preliminary Notice. But appellants fully complied with the next statute, A.R.S. § 14-5110, entitled "Claim deadline for compensation." That statute *does* provide a deadline and a sanction for failing to comply. It states that a fee claim "is waived" if not presented within four months of certain dates. No one at the time—including the ward's counsel and the probate court itself—objected to appellants' failure to file the A.R.S. § 14-5109(A) Notice, probably because the court and counsel were fully aware of appellants' fees (*see* below).

Due to Mr. Chalmers' mental health issues, the professionals frankly had to go to heroic lengths to carry out their duties. Mr. Chalmers was a difficult tenant, and as a result, the professionals were required to move him three or four times—gathering, cataloguing, and moving all his belongings each time—and to find places where he could live. [*See* R. 124, 146.] He got

into trouble with the law, and they had to retain a criminal attorney to get him out of jail. [*Id*.] They also worked hard to finalize the divorce, which was accomplished with everyone ultimately signing off on a Rule 69 agreement, ARFLP. [R. 66.]

The preliminary injunction associated with the divorce had tied up Mr. Chalmers' assets, and thus EVFS had to seek court approval for basically every move it made and every expense it incurred for Mr. Chalmers. In this regard, the professionals submitted very detailed fee requests, called "Rule 33 petitions," that totaled hundreds of pages in length and fully explained the basis for their fees, which were served on Mr. Chalmers' counsel, and which the probate court, Judge Passamonte, approved in 2018. [*See, e.g*., R. 75, 85, 87, 91, 96, 97, 103, 124-128, 143, 146, 149, 156, 157, 177-178, 182, 191, 195-197, 199.] Judge Passamonte, who had presided over the proceedings all along, stated in part, "These are extremely troubling cases and required the Rule 33 applicants to work in the best interest of a very difficult Ward. This Court has no doubt that the Rule 33 applicants listed herein have earned the fees set forth in their separate Rule 33 statements. . . ." [R. 124, 146.]

After the conservatorship ended, Mr. Chalmers' appointed counsel, Mr. Doyle, withdrew. [R. 206.] At that point, Mr. Chalmers hired attorney

S. Alan Cook to represent him. [R. 209.] Cook spared no effort in an attempt to vilify the professionals and help Mr. Chalmers avoid the obligation to pay them. He filed a civil lawsuit for breach of fiduciary duty against everyone who had ever been involved in the process.[1] Cook also objected to the professionals' final Rule 33 accountings in probate court (but *not* on the basis of a failure to provide the A.R.S. § 14-5109(A) notice). [R. 210.] The day before the hearing, though, he had Mr. Chalmers file for bankruptcy. [R. 258.] The hearing in probate court was continued for months until the stay was lifted.

When the probate hearing finally occurred on December 14, 2020, Judge Marquoit (who had taken over for Judge Passamonte) concluded it would be improper to reconsider the awards Judge Passamonte had approved. He noted that Judge Passamonte was the assigned judicial officer

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[1] That suit was dismissed on grounds of judicial immunity (Theut) and abatement (EVFS and Scharber), and the court awarded fees to EVFS and Scharber and against Mr. Chalmers and Cook jointly and severally under A.R.S. § 12-349. Mr. Chalmers and Cook appealed and lost, with the court of appeals again awarding fees to EVFS and Scharber in the 2022 appeal. *Chalmers v. E. Valley Fiduciary Servs.*, 2021 WL 5710014 (Ariz. Ct. App. Dec. 2, 2021); *Chalmers v. E. Valley Fiduciary Servs.*, 2022 WL 1421295 (Ariz. Ct. App. May 5, 2022).

for the vast majority of the case. She was present in court with the parties and was able to observe the quality of the work completed by the professionals here. She also considered objections from Mr. Chalmers' counsel before making her decisions and provided specific reasons as she was approving large fee petitions. [R. 302, p. 3.] Judge Marquoit also found any appeal of those fee approvals untimely. [*Id*., pp. 3-4.] But he denied the last remaining set of Rule 33's because "the requesting parties did not file the required notices [of compensation] and have already received substantial compensation for their work in this case." [*Id*., p. 4.] Due to Cook's contumacious behavior, the probate court, in a separate 14-page minute entry, sanctioned Cook personally. [R. 301.] Cook was also reprimanded by the State Bar.[2]

Mr. Chalmers appealed Judge Marquoit's ruling pro per. The court of appeals ruled that because Judge Passamonte's fee awards did not contain Rule 54(b) language, they were still appealable. Further, although Judge

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[2] https://www.azcourts.gov/Portals/101/2022/Cook%20PDJ%202021-9101.pdf?ver=_z3f7PfvJwBOolfT1Rbnhw%3d%3d

Marquoit had specifically declined to revise Judge Passamonte's fee rulings, the court of appeals said he should have determined whether the professionals' failure to file the A.R.S. § 14-5109(A) preliminary Notices made all the professionals' 2018 requests for compensation "manifestly erroneous or unjust." *Chalmers v. East Valley Fid. Svcs, Inc.*, 2021 WL 5895612, at *1 (Ariz. Ct. App. Dec. 14, 2021) (noting that the "policy against horizontal appeals will not be applied 'when an error in the first decision renders it manifestly erroneous or unjust.'").

On remand, Judge Marquoit ruled that although the professionals had completed work that was "beneficial and challenging," nevertheless "the failure of the professionals to comply with the applicable statute regarding a Notice of Compensation waived their right to seek such compensation. As a result, the approval of the fees was manifestly unjust." The court ordered the professionals to return all of the fees awarded in 2018 to Mr. Chalmers. Judge Marquoit reasoned that reading A.R.S. § 14-5109 *in pari materia* with A.R.S. § 14-5110 meant that he should read a waiver/forfeiture provision like the one in the Claim for Compensation statute into the Notice statute. [R. 371, pp. 3-4.]

Appellants appealed. In a split opinion, the court of appeals affirmed with respect to appellants' *initial* compensation requests. Slip op. ¶¶ 22, 25. Eschewing the *in pari materia* doctrine, the majority said the language of the Notice statute was plain, and that it would not "read the mandatory language out of Section 14-5109." Slip op., ¶ 18.[3] It reasoned that the "plain language" of Section 14-5109 made the Notice a "prerequisite to claiming fees under Section 15-5110," *id.*, ¶ 19, though the statute contains no "prerequisite" language. Further, the majority also ruled—a bit contradictorily—that although the absence of the "mandatory" Notice forfeited fees associated with the initial applications, appellants' Rule 33 petitions could take the place of the missing Notices, and thus entitle appellants to retain fees *subsequently* requested and awarded, after the initial request. The majority remanded for the trial court to make that determination. *Id.*, ¶¶ 23, 24.

Dissenting, Judge Williams disagreed that the failure to provide the preliminary Notice foreclosed the requester from seeking reasonable

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[3] The majority did not hesitate, however, to read a forfeiture sanction *into* the statute where there was none.

compensation. Instead, he interpreted the statutes consistently and in a way that neither read the mandatory provision out of Section 14- 5109, nor read a forfeiture provision into Section 14-5109:

> [Section 14-5109] does not preclude (as a consequence for non-compliance) an award of fees that is ultimately deemed to be reasonable, and I would not read such a consequence into the statute. In my view, the failure to provide notice under § 14-5109 may be a basis for challenging the amount of fees charged by a professional, but it is not a basis from which to preclude altogether a fee request for services rendered here.
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> Notwithstanding the failure to file the § 14-5109 notice, the initial judicial officer who analyzed the first fee request determined those fees to be reasonable for services rendered. Accordingly, I would reject the superior court's post hoc rejection of those previously awarded fees based on the failure to file a § 14-5109 notice.

Id., ¶¶ 27-28.

III. REASONS REVIEW SHOULD BE GRANTED

1. By reading a forfeiture provision into A.R.S. § 14-5109 where the legislature did not provide one, the court of appeals majority failed to heed a fundamental tenet of statutory construction—"the presumption that what the legislature means, it will say." *Padilla v. Indus. Comm'n*, 113 Ariz. 104, 106 (1976) ("The most basic rule of statutory construction is that in construing the legislative language, courts will not enlarge the meaning of

simple English words in order to make them conform to their own peculiar sociological and economic views."). More importantly, the majority engaged in improper judicial legislation—an approach this Court has previously rebuffed. *See, e.g., Jackson v. Phoenixflight Prods., Inc.*, 145 Ariz. 242, 245 (1985) ("We will not judicially legislate a garnishment lien where none is provided for by the garnishment statutes.").

If the Court's primary goal in interpreting a statute is to "discern and give effect to legislative intent," and if the best way of doing that is to follow the statute's plain language, *see State ex rel. Arizona Dep't of Revenue v. Tunkey*, 254 Ariz. 432, __, ¶ 24 (2023) (Bolick, J. concurring), the court of appeals majority did not do that—despite claiming that it did. *See* slip op., ¶ 21 (The statute "explicitly and unambiguously requires notice upon first appearance.").[4] As is evident from A.R.S. § 14-5110, the legislature knows how to include a forfeiture provision in a statute, and it could have done so in Section 14-5109 had it wanted to. The fact that it did not is a clear

[4] A.R.S. § 14-5109 *does* undisputedly require the filing of a Notice upon first appearance. It does *not*, however, "mandate" a forfeiture sanction for the failure to comply.

indication that it did not want forfeiture to be a sanction for a failure to comply. *See Columbus Life Ins. Co. v. Wilmington Tr., N.A.*, __ Ariz. __, 532 P.3d 757, 761 (Ariz. 2023) ("the legislature knows how to deem a contract void when it so wishes and did not do so here."); *Leibsohn v. Hobbs*, 254 Ariz. 1, 46 (2022) ("the legislature knows how to specify when an address requires a unit number, and it did not do so [here]").

The majority's interpretation also creates a conflict with Rule 33(e), Ariz.R.Prob.P. That rule dictates that compensation is waived "if a request is not timely submitted under A.R.S. § 14-5110." It does not say a claim for compensation is waived if a Notice is not filed under A.R.S. § 14-5109. In short, review and relief are necessary to bring this case back into conformance with the Rules of Probate Procedure and the longstanding precepts of separation of powers and statutory interpretation, both of which the court of appeals majority violated.

2. The majority's interpretation also conflicts with the precept that statutes containing apparently mandatory language, but which do not expressly impose any penalty or sanction for a failure to comply, are merely "directory" when the "legislative purpose can best be carried out by such construction." *See, e.g., Dep't of Revenue v. Southern Union Gas Co.*, 119 Ariz.

512, 514 (1978) ("had the Legislature intended [dismissal to result from noncompliance with a 90-day provision] it could have plainly spelled it out in appropriate language."); *Lewis v. Debord*, 238 Ariz. 28, 31 (2015) (Court declines rule that lien invalidity is a consequence of failing to file information statement where statute does not include language requiring such a result); *Way v. State*, 205 Ariz. 149, 154 (Ct. App. 2003) (stating "general rule" that "if a statute states the time for performance of an official duty, without any language denying performance after a specified time, it is directory.").

The legislative purpose of the Notice statute can best be carried out without judicially writing a forfeiture provision into it. First, wards and their responsible parties could be well informed of the basis for and reasonableness of the claimed fees even if a Notice is not filed, as was the case here. No one objected on "lack of notice" grounds and the court found the fees well earned; thus the purpose of the Notice statute was fulfilled. Second, when applied as written, the statute avoids a situation in which a "lack of Notice" objection a month or two into a guardianship or conservatorship causes the guardian, conservator, guardian ad litem and/or attorney to simply resign rather than continue working for no compensation.

The point, again, is that courts need to heed the legislature's language, not rewrite it.

3. Because A.R.S. § 14-5109 does not warn prospective guardians, conservators, or attorneys of any forfeiture sanction for failing to comply, the majority's insertion of such a sanction results in a denial of due process for these individuals. *See Boutilier v. Immigr. & Naturalization Serv.*, 387 U.S. 118, 123 (1967) (a statute may violate due process where it fails to give fair warning that conduct is sanctionable; void for vagueness doctrine applies to civil as well as criminal statutes); *see also CAVCO Indus. v. Indus. Comm'n of Arizona*, 129 Ariz. 429, 433 (1981) (a vague statute may violate due process if it fails to give fair warning); *County of Suffolk v. First American Real Estate Solutions*, 261 F.3d 179, 195 (2nd Cir. 2001) ("Due process requires that before a criminal sanction or significant civil or administrative penalty attaches, an individual must have fair warning of the conduct that makes such a sanction possible.").[5] This is especially true given that the statute is not limited to "a

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[5] *See also Bouie v. City of Columbia*, 378 U.S. 347, 352 (1964) ("There can be no doubt that a deprivation of the right of fair warning can result not only from vague statutory language but also from an unforeseeable and retroactive judicial expansion of narrow and precise statutory language.").

professional" who regularly takes on these roles, as the majority suggested, Slip op., ¶ 1; it also applies to non-licensed persons who might become guardians or conservators and seek fees. The judicial insertion of a forfeiture sanction in the statute is a surprise "gotcha" for these prospective guardians and conservators as well as appellants herein.

On the other hand, the dissent's resolution of the issue gives effect to the exact statutory language requiring a preliminary Notice, yet without causing a due process violation, without engaging in judicial legislation, without violating the Rules of Probate Procedure, and without misapplying precepts of statutory interpretation. If someone objects to an award of fees for failure to comply with Section 14-5109, the parties can argue the appropriate sanction, if any, and the reasons therefor, and the probate court can take the failure to comply into account in deciding whether to allow/disallow all or some of the requested fees. Review and relief are necessary to establish that the dissent's resolution of the issue is the appropriate one.

CONCLUSION

For the foregoing reasons, Appellants Mike Bogle, Andrew Stone, East Valley Fiduciary Services, Inc., John McKindles, Ryan Scharber, and Brian

Theut respectfully request the Court to grant review, vacate the court of appeals' and trial court's decisions, and reinstate Judge Marquoit's initial ruling refusing to reconsider Judge Passamonte's award of appellants' fees.

RESPECTFULLY SUBMITTED this 20th day of October, 2023.

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IN THE

ARIZONA COURT OF APPEALS

DIVISION ONE

In the Matter of the Conservatorship of:

WILLIAM JOHN CHALMERS, *An Adult*,

No. 1 CA-CV 22-0429
FILED 9-21-2023

Appeal from the Superior Court in Maricopa County
No. PB2017-001373
The Honorable Thomas Marquoit, Judge *Pro Tempore*

AFFIRMED IN PART; VACATED AND REMANDED IN PART

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OPINION

Presiding Judge Jennifer M. Perkins delivered the opinion of the Court, in which Judge Angela K. Paton joined. Judge D. Steven Williams dissented.

P E R K I N S, Judge:

¶1 In Arizona, a professional who intends to seek compensation from a ward's estate must give a "general explanation of the compensation arrangement and how the compensation will be computed" upon the first appearance in a probate proceeding. *See* A.R.S. § 14-5109(A) ("notice requirement"). We address here what happens when a professional fails to comply with the notice requirement.

¶2 The superior court ordered Appellants East Valley Fiduciary Services, Inc. ("EVFS"), Brian J. Theut, Ryan M. Scharber, and John M. McKindles (collectively, "the Professionals") to repay fees previously awarded because they failed to give the required notice. The ward, William Chalmers, argues that the statute is mandatory and noncompliance precludes any compensation. For the following reasons, we affirm in part and vacate and remand in part.

FACTS AND PROCEDURAL BACKGROUND

¶3 Chalmers filed for legal separation, later converted to dissolution, from his wife in September 2016. During the divorce proceedings, Chalmers' counsel successfully moved to appoint a guardian ad litem ("GAL") for Chalmers, citing concerns that Chalmers lacked capacity to understand the proceedings or act in his own best interests. The superior court appointed Theut as Chalmers' GAL in July 2017.

¶4 At Theut's request, the court appointed EVFS as temporary guardian and temporary conservator for Chalmers in August 2017. EVFS retained Scharber to represent it as temporary guardian and temporary conservator and McKindles to represent Chalmers in his divorce proceedings. Theut continued as Chalmers' GAL.

¶5 During the conservatorship, the Professionals filed Arizona Rule of Probate Procedure ("Rule") 33 applications for fees and costs. These applications detailed the Professionals' work on Chalmers' legal matters

and requested court approval to withdraw funds from Chalmers' estate in payment.

¶6 Theut filed his first application in March 2018, requesting fees for the initial eight months of services. EVFS, Scharber, and McKindles filed their first applications a month later, requesting fees covering their initial six (McKindles), seven (Scharber), and eight (EVFS) months of service. The Professionals' total requested compensation in these initial applications amounted to over $312,000. The court approved the requests in orders between May and July 2018 ("initial fee orders").

¶7 The Professionals filed subsequent fee applications covering their remaining months of service. Generally, the subsequent applications covered March through October 2018.

¶8 Another judicial officer took over Chalmers' case in 2019. The narrow issue before us arose when the superior court noted in a July 2020 minute entry that EVFS, Theut, Scharber, and McKindles never filed Section 14-5109(A) notices upon first appearance. The court asked the parties to address the issue at a September 2020 hearing.

¶9 EVFS conceded that it did not submit a Section 14-5109(A) notice at the outset but argued the parties and the court "constantly" addressed the Professionals' fees throughout the pleadings and during oral argument; EVFS cited its Rule 33 applications as examples of such pleadings. No other party acknowledged the failure to submit the required notice.

¶10 Chalmers challenged the Professionals' fee requests, including those approved in the initial fee orders. The superior court rejected the challenge to the initial fee orders, concluding that Chalmers effectively requested an impermissible horizontal appeal. The court denied the remaining Rule 33 applications for failure to file the required notice.

¶11 The court also ruled that the initial fee orders were final when issued and Chalmers' time to object to those fee requests had passed. When Chalmers appealed, we held that his time to object had not passed. *See Chalmers v. E. Valley Fiduciary Servs., Inc.*, 1 CA-CV 21-0163, 2021 WL 5895612, at *2, ¶ 11 (Ariz. App. Dec. 14, 2021) (mem. decision). We remanded for the court to determine whether the Professionals' failure to file Section 14-5109(A) notices rendered the court's decision to approve their initial fee requests "manifestly erroneous or unjust." *Id.* at *2–3, ¶¶ 11–12, 15 ("The policy against horizontal appeals will not be applied 'when an error in the first decision renders it manifestly erroneous or unjust.'").

¶12 After remand, the superior court held "[t]he attorneys in this matter did not comply with A.R.S. § 14-5109(A)." The court ruled that the Professionals therefore waived their right to seek compensation. The court found that although Section 14-5109(A) contains no language identifying the consequences for failure to file a written notice, the following provision, Section 14-5110(A), contains a forfeiture clause, and these two statutes should be read *in pari materia*. When read together, the court concluded that "parties must follow both statutes, and that filing of a Notice of Compensation is a prerequisite to the filing of a claim for compensation." Based on the Professionals' failure to file Section 14-5109(A) notices, the court found the fees approved in the initial fee orders were manifestly unjust and ordered the Professionals to return those fees to Chalmers within 60 days. The Professionals, and Michael Bogle and Andrew C. Stone acting as licensed fiduciaries for EVFS, timely appealed. We have jurisdiction. *See* A.R.S. § 12-2101(A).

DISCUSSION

¶13 We review *de novo* issues of statutory interpretation. *Compassionate Care Dispensary, Inc. v. Ariz. Dep't of Health Servs.*, 244 Ariz. 205, 211, ¶ 17 (App. 2018). "Statutory interpretation requires us to determine the meaning of the words the legislature chose to use. We do so neither narrowly nor liberally, but rather according to the plain meaning of the words in their broader statutory context, unless the legislature directs us to do otherwise." *S. Ariz. Home Builders Ass'n v. Town of Marana*, ___ Ariz. ___, ___, ¶ 31, 522 P.3d 671, 676 (2023). Our objective is to "effectuate the text if it is clear and unambiguous." *BSI Holdings, LLC v. Ariz. Dep't of Transp.*, 244 Ariz. 17, 19, ¶ 9 (2018).

¶14 We previously held that the initial fee orders contained insufficient finality language under Arizona Rule of Civil Procedure 54(b) or (c). *Chalmers*, 1 CA-CV 21-0163, at *2, ¶ 11. Because these orders were never certified as final, they are subject to challenge. And because the superior court decided Chalmers' challenge to the applications uniformly on the lack of notice issue, it did not take up whether the requests were reasonable under Section 14-5109(C). Thus, the only issue presented here is the interpretation of the notice requirement:

> When a guardian, a conservator, an attorney or a guardian ad litem *who intends to seek compensation* from the estate of a ward or protected person *first appears in the proceeding*, that person *must give written notice* of the basis of the compensation by filing a statement with the court and providing a copy of the

> statement to all persons entitled to notice pursuant to §§ 14-5309 and 14-5405. The statement must provide a general explanation of the compensation arrangement and how the compensation will be computed.

A.R.S. § 14-5109(A) (emphasis added). The statute's plain text requires a professional to provide notice at the time of a first appearance, before seeking compensation. The language is unequivocally mandatory.

¶15 The Professionals ask us to excuse their failure to provide this notice for two reasons. First, they assert that because the statute does not contain language setting forth a consequence for failure to comply, there must be no consequence. Second, they contend that the fee applications—submitted as many as eight months after a first appearance and approaching one-third of a million dollars in fees accrued—can satisfy the notice requirement.

¶16 While Section 14-5109 contains no "purpose" statement, the Professionals argue the legislature's purpose is "to simply advise those responsible for managing the protected person's estate of the professional's rate of compensation." But the legislature adopted Senate Bill 1499 in response to widespread reports of financial abuse by court-appointed fiduciaries and attorneys over wards and protected persons. The Arizona Supreme Court Committee on Improving Judicial Oversight and Processing of Probate Court Matters convened in the wake of such reports and recommended the statutory changes contained in Senate Bill 1499. In its June 2011 final report to the Arizona Judicial Council, the committee explained that Section 14-5109(A) serves "to promote transparency and disclosure of fees paid from the estate of a ward or protected person." Ariz. Sup. Ct. Comm. on Improving Jud. Oversight and Processing of Prob. Ct. Matters, *Final Report to the Arizona Judicial Council* 102 (2011).

¶17 The procedural rules our supreme court subsequently adopted emphasize the transparency requirement for such compensation requests. Specifically, the version of Rule 33 in effect in 2017 mirrored the requirements of Section 14-5109: "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." Ariz. R. Prob. P. 33(A) (2017) (amended 2020). And Rules 30.1, 30.2, and 30.3 required an appointed conservator to submit and abide by a budget and disclose the conservatorship's financial sustainability. *See* Ariz. R. Prob. P. 30.1–30.3 (2017) (abrogated 2020).

¶18 Because Section 14-5109 is unambiguous, we need not employ the *in pari materia* doctrine to discern its meaning. *See SolarCity Corp. v. Ariz. Dep't of Revenue*, 243 Ariz. 477, 480, ¶ 8 (2018) (We read the statute's plain language "in context with other statutes relating to the same subject or having the same general purpose, and when that language is unambiguous, we apply it without resorting to secondary statutory interpretation principles."). But even if we applied the doctrine to construe the two statutes together, we would not use the doctrine to read the mandatory language out of Section 14-5109. *Collins v. Stockwell*, 137 Ariz. 416, 419 (1983) ("Statutes *in pari materia* must be read together and all parts of the law on the same subject must be given effect, if possible.").

¶19 Although the superior court erred in applying the *in pari materia* doctrine here, its conclusion is consistent with our determination: by its plain language, notice upon first appearance is a prerequisite to claiming fees under Section 14-5110(A). An "inten[t]" to "seek compensation" is anticipatory; it applies before professionals begin incurring fees and rendering services. And the notice requirement is mandatory, leaving no textual basis for us to conclude the legislature viewed it as optional or merely duplicative. If the statutory text presents "only one reasonable interpretation, we apply it without further analysis." *Stambaugh v. Killian*, 242 Ariz. 508, 509, ¶ 7 (2017) (citation omitted).

¶20 The structure of Section 14-5109 supports our conclusion that the notice provision is mandatory. The statute first tells an appointed individual he must provide advance notice of certain things before submitting a fee application. A.R.S. § 14-5109(A). Next, it makes clear that additional notice is required for any change in the basis for compensation. A.R.S. § 14-5109(B) (requiring thirty days' advance notice). Finally, the statute clarifies that the appointed individual cannot qualify for payment unless the court makes findings that the proposed work is reasonable, necessary, and appropriate for the estate. A.R.S. § 14-5109(C). In sum, each part of the statute underscores the mandatory prerequisite nature of the notice requirement.

¶21 All parties acknowledge, and we agree, that Section 14-5109(A) specifies no consequence or remedy for failure to file notice. Contrary to the dissent's perspective, we do not take this omission to render the provision a mere suggestion. The statute explicitly and unambiguously requires notice upon first appearance. Our duty to read statutory language in context should not lead us to nullify unambiguous language our legislature chose to adopt. And reading the statute as the dissent does suggests the potential for absurd outcomes: a guardian who provided

notice under subsection (A) of fees at $75 per hour must provide thirty days' advance notice to change that rate to $100 per hour. But a guardian who skipped the notice under subsection (A) need not provide any notice of a fee change according to the dissent's view—that guardian need only submit the proper Rule 33 application after incurring fees at the increased rate.

¶22 No one disputes that the Professionals failed to provide a "general explanation of the compensation arrangement and how the compensation will be computed" when they first appeared in the proceeding. A.R.S. § 14-5109(A). They therefore failed to meet the prerequisite that would allow them to collect the first round of fees. We affirm the court's order requiring the Professionals to return the fees requested in their initial Rule 33 applications—those subject to the initial fee orders discussed at ¶ 6, *supra*.

¶23 The failure to file the prerequisite notice is prejudicial as to any initial Rule 33 applications, for which interested persons lack a "general explanation of the compensation arrangement and how the compensation will be computed." A.R.S. § 14-5109(A). But nothing in the statute prevents a factual finding that an initial Rule 33 application suffices to provide the content of the required notice necessary for subsequent fee requests. The court may evaluate whether an initial application provides the information required by Section 14-5109(A), thereby providing the required notice in substance, if not in the form required by the statute. And the prejudice inherent in the lack of notice would dissipate as to the later fee requests for which interested persons now have the compensation details before incurring additional fees. In this case, the court may conclude that the failure to file at first appearance is not prejudicial to applications submitted after the requests approved in the initial fee orders.

¶24 Accordingly, we vacate the court's order as to the Professionals' subsequent applications (described in ¶ 7, *supra*) and remand for the court to consider in the first instance whether the contents of the initial Rule 33 applications satisfy the statute's notice requirement. If so, the court should evaluate the subsequent applications for timeliness. *See* A.R.S. § 14-5110(A) (A claim for compensation "is waived if not submitted to the fiduciary in writing within four months after either rendering the service, incurring the cost, initial appointment of the fiduciary or the effective date of this section, whichever is later.").

CONCLUSION

¶25 We affirm the superior court's ruling requiring the Professionals to return the fees requested in their Rule 33 applications, subject to the initial fee orders. We vacate as to the later applications and remand for proceedings consistent with this opinion.

W I L L I A M S, J., dissenting

¶26 I respectfully dissent. I agree that A.R.S. § 14-5109's plain language establishes a written notice requirement for professionals who anticipate seeking future compensation from a protected person or ward's estate, *supra* ¶ 14. But I disagree that a failure to provide such written notice necessarily forecloses a professional from subsequently seeking reasonable compensation for services rendered.

¶27 Section 14-5109(A) mandates that a professional who intends to seek compensation in this context provide a "general explanation of the compensation arrangement and how the compensation will be computed." And a professional who fails to file a § 14-5109 notice runs a significant risk that his or her fee rate will be rejected as unreasonable or that the overall amount sought may be rejected. But the statute does not preclude (as a consequence for non-compliance) an award of fees that is ultimately deemed to be reasonable, and I would not read such a consequence into the statute. In my view, the failure to provide notice under § 14-5109 may be a basis for challenging the *amount* of fees charged by a professional, but it is not a basis from which to preclude altogether a fee request for services rendered here.

¶28 Notwithstanding the failure to file the § 14-5109 notice, the initial judicial officer who analyzed the first fee request determined those fees to be reasonable for services rendered. Accordingly, I would reject the superior court's *post hoc* rejection of those previously awarded fees based on the failure to file a § 14-5109 notice.

¶29 The absence of language in § 14-5109 creating an absolute bar to payment of requested fees if a preliminary notice is not provided is particularly significant when the statute is read in conjunction with A.R.S. § 14-5110. That provision establishes a time limit for seeking fees—"within four months," as relevant here, of "rendering services." But unlike § 14-

5109, § 14-5110 expressly establishes a consequence for a professional's noncompliance—the claim for compensation "is waived."

¶30 When construing these related statutes together, the *absence* of waiver language in § 14-1509 reflects the *absence* of legislative intent to wholly bar professionals who fail to timely provide § 14-1509 notice when first appearing from subsequently seeking compensation for services rendered under § 14-1510. In other words, had the legislature intended to impose such an overarching, automatic procedural bar, it would have done so explicitly—as it plainly did in § 14-1510—not by implication. *See SolarCity Corp.*, 243 Ariz. at 480, ¶ 8 ("The best indicator of [the legislature's] intent is the statute's plain language, which we read in context with other statutes relating to the same subject or having the same general purpose[.]"); *cf. Luchanski v. Congrove*, 193 Ariz. 176, 179, ¶ 14 (App. 1998) ("When the legislature has specifically included a term in some places within a statute and excluded it in other places, courts will not read that term into the sections from which it was excluded.").

¶31 In the absence of such express waiver language, I conclude that a professional's submission of a § 14-5110 compliant claim for compensation substantively—though not temporally—may satisfy § 14-5109(A)'s notice requirement. The majority agrees with that conclusion, but only on a prospective basis for subsequent (not initial) claim requests, *supra* ¶ 23. The majority does not explain, however, why employing that approach on a prospective basis does not negate altogether the importance the majority places on the "unequivocally mandatory" statutory language, discussed *supra* ¶14, of the professional's compensation notice when "first appear[ing]." A.R.S. § 14-5109. In my view, it does.

¶32 While an interested party could challenge a § 14-5110 compliant claim as defective under § 14-5109, and the superior court could deny or reduce a fee award on that basis, when no interested party timely objects and the court accepts the claim for compensation and engages in a reasonableness determination, ultimately finding the requested fees appropriate, from my perspective, the professional should be able to rely on that reasonableness determination in continuing to render services.

¶33 Here, because the superior court concluded the Professionals' waived their previously approved claims for compensation by failing to provide a § 14-5109 notice when first appearing in the proceeding, I would reverse the court's rulings on the initial fee orders. And because the Professionals reasonably relied on the court's reasonableness determination concerning their initial compensation claims, finding those

fees appropriate, I would likewise vacate the superior court's ruling denying the Professionals' subsequent claims for compensation as defective for lack of § 14-5109 notice.

AMY M. WOOD • Clerk of the Court
FILED: AA

IN THE

COURT OF APPEALS

STATE OF ARIZONA

DIVISION ONE

DIVISION ONE
FILED: 09/27/2023
AMY M. WOOD,
CLERK
BY: MAO

In the Matter of the Conservatorship of:	)	Court of Appeals Division One
	)	No. 1 CA-CV 22-0429
WILLIAM JOHN CHALMERS,	)	
	)	Maricopa County
	)	Superior Court
An Adult.	)	No. PB2017-001373
	)	

ORDER AMENDING OPINION VIA INTERLINEATION

The Court, Presiding Judge Jennifer M. Perkins, Judge Angela K. Paton, and Judge D. Steven Williams has reviewed the Opinion issued on September 21, 2023. On the court's own motion,

IT IS ORDERED directing the Clerk of this court to amend, by interlineation, paragraph number 30, lines 2 and 3 of the Opinion by: amending the statute referenced from § 14-1509 to § 14-5109.

IT IS FURTHER ORDERED directing the Clerk of this court to amend, by interlineation, paragraph number 30, lines 5 and 7 of the Opinion by: amending the statute referenced from § 14-1510 to § 14-5110.

IT IS FURTHER ORDERED that a copy of this order be sent to each party appearing herein or to the attorney for such party, and to the Honorable Thomas Marquoit.

_____/s/_____
Jennifer M. Perkins, Presiding Judge

A copy of the foregoing
was sent to:

David L Abney
Eileen Dennis GilBride
Hon Thomas Marquoit
Raymond L Billotte