

Task Force on the Arizona Rules of Probate Procedure

Meeting Agenda

Friday, April 6, 2018

10:00 a.m. to 2:00 p.m.

State Courts Building * 1501 West Washington * Conference Room 119 * Phoenix, AZ

Item no. 1	Call to Order Welcome and introduction of members	<i>Hon. Rebecca Berch, Chair</i>
Item no. 2	Review of Administrative Order 2017-133 Approval of Task Force Rules for Conducting Business	<i>Justice Berch</i>
Item no. 3	Restyling conventions	<i>Mr. John Rogers</i>
Item no. 4	Discussion of issues and concerns regarding the current probate rules, including but not limited to: <ul style="list-style-type: none">• Relationship between probate and civil rules• A.C.J.A. §§ 3-301 to 3-303 (with related forms) and 7-202	<i>All</i>
Item no. 5	Workgroups: workgroup members and rule assignments	<i>Justice Berch</i>
Item no. 6	OneDrive Overview	<i>Ms. Angela Pennington</i>
Item no. 7	Roadmap <ul style="list-style-type: none">• Meeting schedule	<i>Justice Berch</i>
Item no. 8	Call to the Public Adjourn	<i>Justice Berch</i>

The Chair may call items on this Agenda, including the Call to the Public, out of the indicated order.

Please contact Mark Meltzer at (602) 452-3242 with any questions concerning this Agenda.

Persons with a disability may request reasonable accommodations by contacting Angela Pennington at (602) 452-3547. Please make requests as early as possible to allow time to arrange accommodations.

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)
)
ESTABLISHMENT OF THE) Administrative Order
TASK FORCE ON THE ARIZONA) No. 2017 - 133
RULES OF PROBATE PROCEDURE)
AND APPOINTMENT OF MEMBERS)
_____)

This Court’s Strategic Agenda, *Advancing Justice Together: Courts and Communities*, includes the review of certain Arizona court rules to restyle, simplify, and clarify the rules. This Court has recently adopted restyled Rules of Civil Appellate Procedure, Rules of Evidence, Justice Court Rules of Civil Procedure, Rules of Protective Order Procedure, Rules of Civil Procedure, and Rules of Criminal Procedure.

The current set of the Arizona Rules of Probate Procedure were adopted with an effective date of January 1, 2009. Although they have been amended at various times since their adoption, a comprehensive review of those rules would now be beneficial.

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

IT IS ORDERED that:

1. ESTABLISHMENT: The Task Force on the Arizona Rules of Probate Procedure is established.
2. PURPOSE: The Task Force shall review the Arizona Rules of Probate Procedure to identify possible changes to conform to modern usage and to clarify and simplify language. The Task Force shall seek input from various interested persons and entities with the goal of submitting a rule petition by January 10, 2019, with respect to any proposed rule changes.
3. MEMBERSHIP: The individuals listed in Appendix A are appointed as members of the Task Force for a term beginning immediately and ending December 31, 2019. The Chief Justice may appoint additional members as may be necessary.
4. MEETINGS: Task Force meetings shall be scheduled at the discretion of the Chair. All meetings shall comply with the Arizona Code of Judicial Administration § 1-202: Public Meetings.

5. STAFF: The Administrative Office of the Courts shall provide staff for the Task Force and shall assist the Task Force in developing recommendations and preparing any necessary reports and petitions.

Dated this 20th day of December, 2017.

SCOTT BALES
Chief Justice

Membership List
Task Force on the Arizona Rules of Probate Procedure

Chair

Justice Rebecca Berch (Ret.)

Members

Judge Andrew Klein
Superior Court in Maricopa County

Judge David L. Mackey
Superior Court in Yavapai County

Judge Patricia K. Norris (Ret.)
Arizona Court of Appeals, Division One

Judge Robert Carter Olson
Superior Court in Pinal County

Judge John Paul Plante
Superior Court in Yuma County

Judge Jay Polk
Superior Court in Maricopa County

Judge Wayne Yehling
Superior Court in Pima County

Commissioner Julia Connors
Superior Court in Pima County

Aaron Nash
Clerk of Court's Office
Superior Court in Maricopa County

Marlene Appel
Marlene Appel PLLC

John H. Barron III
Barron & Associates, P.C.

Colleen Cacy
Gadarian & Cacy, PLLC

Robert B. Fleming
Fleming & Curti, P.L.C.

Lisa M. Price
Entrust Fiduciary Services, Inc.

Catherine Robbins
Maricopa County Public Fiduciary

T.J. Ryan
Frazer Ryan Goldberg & Arnold LLP

Denice R. Shepherd
Law Office of Denise R. Shepherd PC

**Probate Rules Task Force
*Rules for Conducting Task Force Business***

1. Quorum

The minimum number of members to conduct business and act on any item is ten.

2. Decision-Making

Task Force decisions will be considered upon a motion that is properly seconded and following discussion on the motion. Task Force decisions will be made by majority vote of the members attending the meeting. A numerical vote will be recorded unless the decision is unanimous. The chair will vote only to break a tie.

3. Responsibility of Members and Proxy Policy

Members are encouraged to actively participate in Task Force meetings, as members are selected for their expertise. However, Task Force members may send a proxy to attend meetings when necessary. A member should give twenty-four hours' notice to Task Force staff concerning the attendance of a proxy.

- A proxy has all the responsibilities of a member, including voting power. A proxy must review the agenda issues, be prepared for a meeting, and brief the member on the meeting within a reasonable time thereafter.
- Another Task Force member may not serve as a proxy.
- A proxy is included in the count of members present to determine a quorum.
- A member may not use a proxy for more than three meetings without approval of the Task Force chair.

4. Call to the Public

As provided in A.C.J.A. § 1-202, every meeting agenda will include a "Call to the Public" before the meeting is adjourned. The chair will announce the opportunity for public comment regardless of whether a member of the public is attending the meeting or has expressed any desire to comment. The chair may impose reasonable time, place, and manner limitations upon members of the public who respond to the call, including setting time limits, banning repetition, and prohibiting profanity and disruptive behavior.

**Terms, Phrases & Words of Choice
and Other Style Conventions**
(Revised 11/30/15)

1. **General Rule:** Use the style conventions used in the Federal Rules of Civil Procedure, unless there is a good reason for not doing so. The Federal Rules provide easily identified, and readily accessible, “default” conventions.
2. **Terms/Words of Choice**
 - (a) **Shall:** Consider changing references to “shall” to “must,” “should,” “may,” “will” or “is/are,” as the context dictates. *See* Bryan Garner, *Guidelines for Drafting and Editing Court Rules* (the “*Guidelines*”) at 29. Note that the word “should” is generally considered the preferred word of choice if a rule’s command is “directory” but not “mandatory.”
 - (b) **Clerk:** Currently, the Arizona rules refer to “clerk of court,” “court clerk,” or “clerk.” The federal rules use “clerk”—*see, e.g.*, Fed. R. Civ. P. 79(a)(1). Unless the context of the rule calls for a more specific reference (*i.e.*, if distinguishing a superior court clerk from an appellate court clerk or a justice court clerk), use “clerk.”
 - (c) **Days:** The current rules sometimes use words (*e.g.*, “ten”), sometimes use numbers instead of words (*e.g.*, “10” instead of “ten”) and sometimes does both (*e.g.*, “ten (10)”). The convention used in the federal rules is to use numbers only if the number is above two. *See, e.g.*, Fed. Rs. Civ. P. 6(d) & 12(a), 18(b) (“two”). Follow the federal convention.
 - (d) **Service:** When cross-referencing Rule 4 service of process use the phrase “in the same manner that a summons and pleading are served under Rules 4, 4.1, or 4.2, as applicable.” Note that Rule 4, 4.1 and 4.2 refer *only* to the service of a summons and pleading. Thus, for service of other items (such as a subpoena or a Rule 27 petition), it makes no sense to say that it should be served “under Rules 4.0, 4.1 or 4.2, as applicable.”
 - (e) **Avoid redundancies.** Thus: “*may*” and not “*may, in its discretion.*”
 - (f) **“Upon” v. “on”:** Unless there is a temporal element (*i.e.*, something has to happen when an act occurs), use “on,” *e.g.*, “serve on”, not “serve upon.”
 - (g) **Where/When vs. If:** The word “where” is not to be used as a synonym for “if” (*e.g.*, “If there are multiple parties on a side,” not “Where there are multiple parties on a side”). “When” is appropriate in some limited circumstances, but, in most cases, “if” should be preferred to “when.” *See Guidelines* at 5.

- (h) Use “*if*” instead of “*in the event that*” or “*on the condition that.*”
- (i) Use “*later*” rather than “*subsequently.*” Similarly, use “*after*” rather than “*subsequent.*”
- (j) Use “*before*” rather than “*prior to.*”
- (k) Use “*under,*” “*by,*” “*prescribed by*” or “*provided in*” rather than “*pursuant to*” or “*provided by.*”
- (l) ***Hereof, herein, thereof, therein:*** Avoid use of these words. Either restructure the sentence or use a demonstrative pronoun such as “that,” “this,” “these,” or “those.”
- (m) Use “*on its own,*” not “*on its own initiative.*” See, e.g., Fed. Rs. Civ. P. 39(a)(2), 56(f)(3) & 60(a).
- (n) Use “*after a pleading is filed*” rather than “*after filing of the pleading*”; similarly, use “*after a pleading is served*” rather than “*after service of the pleading.*” If giving direction to the same person/party who just filed/served, “*after filing/serving a pleading.*”
- (o) Use “*a party who*” rather than “*a party that.*” See, e.g., Fed. R. Civ. P. 35(b)(1) & 65(b)(3).
- (p) Use “*attorney’s fees*” not “*attorneys’ fees.*” See, e.g., Fed. R. Civ. P. 37(d)(3).
- (q) Use “*attorney,*” not “*lawyer.*” See, e.g., Fed. R. Civ. P. 5(b)(1).
- (r) Use “*local rule*” rather than “*Local Rules of Practice.*” See Ariz. R. Civ. P. 83.
- (s) Use “*the State of Arizona*” when referring to the governmental entity; use “*Arizona*” when referring to activity or persons within or outside state boundaries.
- (t) When referring to a specific number of days or a specific number of items, use “*fewer than*” rather than “*less than.*” But note, if you are talking about a period of time, the proper phrase is “less than.” (E.g., “Not many of these buildings are less than thirty years old.”)
- (u) Use “**no later than**” rather than “**not later than.**” (Synonymous, but “no later than” is considered less formal.)
- (u) ***Other Words:*** See *Guidelines* at 33-34.

3. Other Style Conventions

(a) **Cross-references:** References to other rules or other subdivisions should refer to the rule (i.e., “Rule 15(a)(2)”) and **not** use the words “subpart,” “subdivision” or similar words (i.e., “Rule 15(a)(2)” and not “subpart (a)(2)”). If it does not cause confusion and is on the same level, refer simply to the subdivision (e.g., “if allowed in (b)”, not “if allowed in subpart (b)”). See *Guidelines* at 35. When referring to “this rule” or “these rules,” the first letter of “rule(s)” should not be capitalized.

(b) **Heading & Subheading Titles:**

(i) If the heading or subheading of a federal rule counterpart differs from the state rule’s heading or subheading, adopt the federal rule’s heading or subheading, unless you have a good reason for not doing so.

(ii) **Capitalization:** Note that the Arizona rules are inconsistent in capitalizing the first letter in each major word in a rule’s heading.

A. If there is a federal rule counterpart, follow the capitalization used in the headings and subheadings for the federal rule.

B. Capitalize the first letter of the first word in a heading or subheading, even the rules below indicate that you should not capitalize the first letter of the word.

C. If there is no federal rule counterpart, capitalize the first letter in major words in the rule’s title or subheading, consistent with the federal rules’ current format.

D. Capitalize the first letter in the words “Not,” “Are,” “Is,” and “Be.”

E. Do not capitalize the first letter of a conjunction: “but,” “and,” “or.”

E. Unless the word begins the heading or subheading, the first letter in the words “to,” “and,” “or,” “but,” and “as” should not be capitalized.

F. **Prepositions:** Generally, the first letter of preposition should be capitalized only if it is 5 letters or more. This appears to be the convention in the federal rules. Thus, the following should be capitalized: “After,” “Against,” “Before,” “Between,” “Outside,” “Through,” “Within,” and “Without.” The

following should not be capitalized: “with,” “for,” “if,” “by,” “on,” “in,” “at.”

(iii) ***Bolding & Italics:***

- (A) The heading to each rule should be in **bold**.
- (B) Each first-level lettered subdivision (*e.g.*, (a)) should have a subheading, which should appear in **bold**.
- (C) Each second-level numbered subdivision (*e.g.*, (a)(1)) also should have a subheading, which should appear in ***bolded italics***.
- (D) Each third-level letter subdivision (*e.g.*, (a)(1)(A)) should have a subheading, which should appear in *unbolded italics*.
- (E) In contrast to the subheadings, all alpha-numeric subdivision designations (*e.g.*, (a), (1), (A) & (iv)) should be in **bold** and not be in italics or bolded-italics. (For an illustration, *see* Fed. R. Civ. P. 45(a)(1)(A)(iv).)

(iv) ***Use of Parenthesis:*** Subheading alpha-numeric designations should appear in parenthesis (*i.e.*, “(a)(1)(A)(ii),” not “a.1.A.ii.”).

(v) ***Use of Periods:***

- (A) In the title of a rule, the rule number should be followed by a period, but a period should not follow the title of the rule (*e.g.*, “Rule 4. Summons”).
- (B) In all the subdivisions of a rule, the subheading should be followed by a period, but not the alpha-numeric designation (*i.e.*, “(b) Issuance.”, not “b. Issuance”).

(c) ***Indentation:*** Use the federal format for indentation:

- (i) The heading of each rule (*e.g.*, “Rule 1.”) should be flush with the left margin. The rest of the heading should start at least three spaces to the right. If the heading goes on to a second line, the text should start at least three spaces after the start of the text on the second line. (*See, e.g.*, Fed. R. Civ. P. 37.)
- (ii) The first-level subdivision heading (*e.g.*, (a)) should be flush with the left margin, with the subheading generally starting one space after the

letter designation. The left margin for the second line should be the same as where the heading for the subdivision begins.

- (iii) Generally, add one space for each additional subdivision heading (*e.g.*, (a)(1), (b)(2)(A), (c)(3)(B)), and follow the convention set forth in (i).
- (iv) For a good general illustration of (ii)-(iii), look at Fed. R. Civ. P. 45.
- (d) **Bullets:** Contrary to the recommendation in the *Guidelines*, do not use “bullets” to separate subdivisions.
- (e) **Comments:**
 - (i) *Placement of Comments:* Currently, some comments appear in the middle of a rule following the subdivision to which the comment pertains (*e.g.*, Rule 13(a)), and sometimes comments appear right after the heading for a rule (*e.g.*, Rule 39). In all cases, move such comments so they appear after the end of the rule (and not just the subdivision).
 - (i) *Note:* Moving a comment to the end may require the title of the comment (or the comment itself) to be modified to identify the subdivision to which the comment pertains. For example, if a comment refers only to subdivision of a rule but that is not clear from the comment’s text, consider inserting the subdivisions alpha-numeric designation into the title of the comment. For example, in moving the first comment to Rule 11(a) to the end of the rule, consider modifying the comment to say “1984 Amendment to Rule 11(a).” (Addition underscored.)
 - (ii) *Comment Titles:* Currently, comments to the Arizona rules have various titles, depending on who wrote them—State Bar Committee Notes, Committee Comment, Comment, Court Comment, Supplemental Note. For now, if you decide to keep a comment, retain its existing title. The title should be centered over the comment, and, generally, only the first letter in each major word in the comment title should be capitalized.
- (f) **Abrogated Subdivisions:** The current rules are littered with subdivisions that are totally “abrogated” (*e.g.*, Rule 5(e)), “deleted” (*e.g.*, Rule 26(h)), “renumbered” (*e.g.*, Rule 42(d)), or “repealed” (*e.g.*, Rule 53(g)). Unless it would cause confusion or there is some other reason for not doing so, all the

references to these subdivisions should be deleted and the remaining subdivisions renumbered.

- (g) ***Font, Spacing and Margins:*** Consistent with the Arizona Supreme Court’s preferred font style and size for rule amendments, use Times New Roman, 13 point font, except, at the beginning of each rule, the words “Rule X.” should be in 14 point font. Each subdivision should be single spaced, with each subdivision separated by a 6 point space (including the title of the rule and the first subdivision). Each rule should be separated from the next rule by a 24 point space. The margins should be standardized, and be right-justified.
- (h) ***Commas:*** In an enumerated series, use the serial comma before the conjunction. Thus: “books, documents, or tangible things” and not “books, documents or tangible things.”

Rule Restyling
Key Principles and Examples

Objectives: Improve the rules’ organization, clarity, and consistency, and adopt plainer, more easily understood language.

Key Resource: Bryan Garner, *Guidelines for Drafting and Editing Court Rules* (1996).

Key Principles:

1. **Formatting:** To make it easier to find what you are looking for, make generous use of subparts and subheadings, and make lists if a rule calls for multiple items or factors to follow a general rule. Also use left-side indents so that a rule’s hierarchy is displayed graphically.

An example - Rule 22(a) currently:

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 filed with the clerk of the court. Every order appointing a guardian shall include a specific finding as to whether the appointment of a guardian is due solely to the ward's physical incapacity. 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.”

Rule 22(a) as proposed:

(a) Orders.

- (1) **Required Warning.** Every order appointing a conservator, guardian, or personal representative must include the following language: “Warning: This appointment is not effective until the clerk of the superior court issues the letters of appointment.”
- (2) **Guardianship Finding.** Every order appointing a guardian must include a specific finding as to whether the guardian’s appointment is due solely to the ward’s physical incapacity.
- (3) **Bond Amount.** Every order appointing a conservator or a personal representative must plainly state the amount of bond required. The court will not issue letters of conservator or letters of personal representative until the required bond has been filed.

Another example - Rule 29 currently:

Rule 29. Alternative Dispute Resolution

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 29 as proposed:

Rule 29. Alternative Dispute Resolution.

- (b) **Generally.** On a party's motion or on its own, the court may order the parties to participate in one or more alternative dispute resolution processes, such as arbitration, mediation, settlement conference, or open negotiation, or, if the parties agree, a private dispute resolution process.
- (c) **Duty to Confer.** The parties have a duty to make a good faith effort to agree on an alternative dispute resolution process. No later than 30 days after a probate proceeding becomes contested under Rule 27, the parties must 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 participating in alternative dispute resolution and, if so, 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 proceedings.
- (d) **Report to the Court.** No later than 15 days after their conference under (b), the parties must inform the court:
- (1) if the parties agreed to alternative dispute resolution and, if so, the type of alternative dispute resolution process, the name and address of their alternative dispute resolution service provider, and the date by which they anticipate the alternative dispute resolution proceedings will be completed;
 - (2) if the parties have not agreed to use alternative dispute resolution, the position of each party concerning the type of alternative dispute resolution appropriate for the case or, in the alternative, why alternative dispute resolution is not appropriate; and
 - (3) whether any party requests the court to conduct a conference for considering alternative dispute resolution options.
- (e) **Other Duties.** If the parties agree to participate in alternative dispute resolution, they have a duty to participate in the process in good faith. [Staff Note: Section (a) also contains a good faith requirement. Should there be a global good faith requirement in one of the initial rules?] The parties also have a duty to report the outcome to the court.
- (f) **Arbitration.** The parties to a contested matter are not subject to compulsory arbitration under Rules 72 through 77 of the Arizona Rules of Civil Procedure.

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However, A.R.S. § 14-1108 authorizes the court to order alternative dispute resolution, including arbitration, and, if the court orders arbitration, Rules 73 through 77 of the Arizona Rules of Civil Procedure will govern the process.

2. Run-On Sentences: Break-up or simplify overlong sentences.

An example - Current Rule 8(B), with 98 words in one sentence:

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.

Rule 8(b) as revised, with 82 words in two sentences:

(b) Time to Complete Service. If a required person is not served, in the manner provided in A.R.S. Title 14, with a notice and petition commencing a probate case within 120 days after the petition is filed, the court—on motion, or on its own after notice to the petitioner— may dismiss the petition without prejudice or order that service be made within a specified time. But if the petitioner shows good cause for the failure, the court must extend the time for an appropriate period.

3. Ambiguous Terms: Avoid using ambiguous terms.

Do not use “shall,” which has lost all meaning over the years. Instead, use “must,” “may,” “should,” “will,” or “is/are,” depending on the context. Note that the word “should” is generally considered the preferred word of choice if a rule’s command is “directory” but not mandatory. And sometimes it is better to use the present tense of the operative verb if the rule does not involve an act or duty of a court or party (e.g., Rule 24(a): “A party begins the following actions by filing a verified petition with the superior court clerk....” rather than “A party *shall* commence the following actions by filing a verified petition with the clerk of the superior court...”).

Use “enter” or “file” instead of “issues.” Some people understand the term “issue” to mean the date when a judge signs an order rather than the date when the order is filed.

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Use “order” instead of “direct” when describing court actions. Courts enter orders, not directions.

4. **Redundant Terms:** Avoid saying the same thing twice, and especially avoid “redundant intensifiers.”

Use “may” instead of “may, in its discretion.”

An example - the last sentence of current Rule 24 says, “The court may, in its discretion, order that the authority terminates sooner than one year from the date the order is entered.”

Same for “may, if appropriate.”

Use “must show” rather than “must show affirmatively.”

Use “unless the court orders” rather than “unless the court expressly orders.”

Use “on its own, a court may” not “on its own initiative, a court may.”

Another example – the first sentence of current Rule 22(a) says, “Every order appointing a conservator or a personal representative shall plainly state the amount of bond required.” (Is there a difference between “plainly state” and “state?”)

5. **Archaic Terms:** Avoid archaic, outdated “legalistic” terms such as “hereto,” “therein,” “thereto,” “hereinafter,” “thereafter,” “therewith,” “wherein.” Either restructure the sentence or use a demonstrative pronoun such as “that,” “this,” “these,” or “those.”

An example – the second sentence of Rule 27, which says, “A contested probate proceeding shall be limited to the disputed facts and issues raised in the petition and the objection thereto.”

6. **Simpler Words and Proper Word Choice:** Prefer simpler words over the more complex and choose words that have the meaning you intend (not a near-miss). For example:

Use “if” instead of “where,” “when” (unless there is a temporal element), “in the event that” or “on the condition that.”

Use “later” rather than “subsequently.” Similarly, please use “after” rather than “subsequent.”

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An example – current Rule 16(A)(4) says, “...appoint a personal representative to administer a subsequently discovered asset in accordance with A.R.S. § 14-3938.” (Substitute, “a later discovered asset.”)

Use “before” rather than “prior to.”

Use “under,” “by,” or “provided in” rather than “pursuant to” or “provided by.”

Use “unless” rather than “provided that.”

Unless there is a temporal element (i.e., something has to happen when an act occurs), use “on” instead of “upon” (e.g., “serve on”, not “serve upon”).

The word “where” is not to be used as a synonym for “if” (e.g., “If there are multiple parties on a side,” not “Where there are multiple parties on a side”). “When” is appropriate in some limited circumstances, but, in most cases, “if” should be preferred to “when.”

An example – current Rule 11(D) says, “Telephonic or electronic appearances and testimony shall be of such quality that the voices of all parties and counsel are audible to each participant, the judicial officer, and, where applicable, the certified reporter or electronic recording device.” (Substitute, “and, if applicable.”)

Use “a party who” rather than “a party that.”

Use “affected” rather than “impacted.”

Avoid use of the words “paragraph,” “section,” “subsection,” “subpart,” and the like when describing portions of a rule. Their use inevitably leads to inconsistency. Refer instead to “this rule,” “Rule 16(b),” or, if the same rule, “(b)” (i.e., the relevant subpart).

7. “Of” Phrases: Minimize the use of “of” phrases. Use possessives if needed.

Use “Supreme Court clerk” rather than “clerk of the Supreme Court.”

Use “superior court clerk” or “clerk” rather than “clerk of the superior court.”

Say “Commencing Proceedings” rather than “Commencement of Proceedings.”

Say “after counsel’s appointment” rather than “after appointment of counsel.”

Say “Supreme Court justices” rather than “justices of the Supreme Court.”

Say “opposing counsel’s response” rather than “the response of opposing counsel.”

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Say “court’s order” rather than “the order of the court.”

8. **“By” Phrases:** Similarly, minimize the use of “by” by putting the subject in front of the verb. Thus, say “unless the court orders otherwise” rather than “unless otherwise ordered by the court”
9. **The Active Voice:** Use the active voice, i.e., the subject of the sentence is performing an action, which is reflected by the verb.

Example – Current Rule 16(A): “An application shall be filed with the court only when an interested person is requesting the probate registrar to do any of the following acts...”

As revised: “An interested party may file an application only when requesting the probate registrar to do the following...”

Example - Current Rule 26(A): “If the appointment of a fiduciary is limited in time by statute or court order, the letters issued shall reflect the termination date of the appointment.”

As revised: “If the duration of a fiduciary’s appointment is limited by statute or court order, the letters must state the appointment’s termination date.”

Example – Current Rule 27(A): “A probate proceeding becomes contested when an objection, whether written or oral, is made to a petition.”

As revised: “An interested person may contest a probate proceeding by making a written or oral objection to a petition.”

10. Comments:

- (a) ***Deletion of No Longer Useful Comments:*** In reviewing a rule, consider whether any of the comments can be profitably deleted altogether. Some of the comments may no longer be accurate or are of historical use only.
- (b) ***Insertion of a Comment into the Rule:*** If a comment sets forth a requirement not found in the rule and you decide that the requirement is worth retaining, consider adding the requirement to the rule’s text.
- (c) ***“Applicability” Notes:*** Delete notes entitled “Application,” which generally indicate that a rule is not applicable during certain time periods that have long ago expired.

Probate Rules Task Force: Restyling Principles and Examples
April 6, 2018

- (d) ***Placement of Comments:*** In all cases, if a comment still has currency, it should appear after the end of the rule, not after a subpart.

SUPREME COURT OF ARIZONA

In the Matter of) Arizona Supreme Court
) No. R-17-0051
PETITION TO ADOPT AMENDED)
LOCAL RULES OF PRACTICE) **FILED 03/26/2018**
)
)
)
_____)

**ORDER
APPROVING THE PROPOSED ABROGATION AND REPLACEMENT OF
THE LOCAL RULES OF THE SUPERIOR COURT, PIMA COUNTY**

A petition having been filed seeking approval of the abrogation and replacement of the Local Rules of the Superior Court, Pima County (but not the current forms associated with those rules), and having considered the petition and the comments submitted in response to the petition,

IT IS ORDERED approving the abrogation and replacement of the Local Rules of the Superior Court, Pima County, as modified and set forth in Attachment A to this Order, effective July 1, 2018.

IT IS FURTHER ORDERED that the forms associated with the current local rules shall remain in effect.

DATED this 26th day of March, 2018.

/s/
SCOTT BALES
Chief Justice

TO:

Hon. Kyle Bryson

Amelia C. Cramer

John A. Daddona

Michael Fleischman

Jon R. Hultgren

Steven K. Marlowe

Jeffrey A. Marks

Terri Wooldridge

Karl E. Macomber

Trisha Lotzer

Michael Aaron

Kristy Clairmont

Reagen A. Kulseth

Ronald N. Allen

Cheryl K. Coperstone

ATTACHMENT A

the Conciliation Court. The Conciliation Court may consider the finances of the parties and the issues involved in the matter in determining whether an evaluation or assessment will occur. If appropriate, an assessment or evaluation may be conducted, in accordance with Rule 68(C), ARFLP. The parties must appear at all conferences scheduled and must furnish all information requested by the evaluator. The parties must complete the Domestic Relations Education on Children's Issues course and mediation before an evaluation being commenced unless otherwise ordered by the Court.

(B) Reports to the Court. At the completion of an assessment or evaluation, the Conciliation Court will submit a report with recommendations to the Court, with copies to the attorneys, or the parties if self-represented. The report must be filed with the Court and an order will be entered sealing the report, to be opened or viewed only by Court order. The Court will consider the report and recommendations in determining legal decision-making and/or parenting time.

Should the parties reach an agreement regarding legal decision-making and/or parenting time during the evaluation, the evaluator will submit a written report to the Court. The report must summarize the parents' participation, and must include the agreement reached by the parents, the recommendations of the evaluator, if any, and a statement of the evaluator's opinion whether the agreement is in the best interests of the minor children.

(3.13) Parenting Coordinator—Private Appointments and Conciliation Court Appointments: The Court may appoint a parenting coordinator pursuant to Rule 74, ARFLP. The appointed parenting coordinator is not subject to subpoena and may not be called as a witness in the case, except as permitted by the Court.

Rule 4 - Probate Matters

General Administration

(4.1) Cases: Probate matters include those matters set forth in Rule 1 of the Arizona Rules of Probate Procedure, Adult Adoptions, and Title 36 mental health cases. Sections 3-301, *et seq.* of the Arizona Code of Judicial Administration are also applicable in probate matters. The Code of Judicial Administration is available at <https://www.azcourts.gov/AZ-Supreme-Court/Code-of-Judicial-Administration>.

(4.2) Presiding Probate Judge: The Presiding Judge of the Probate Division is charged with all cases specified in Pima County Local Rule 4.1. All such matters are active cases until an order is entered closing the file or the Probate Registrar issues a closing certificate.

(4.3) Administrative Directives; Approval of Forms; Informational Guides:

(A) Administrative Directives. The Presiding Judge of the Probate Division may adopt administrative directives for the probate division not in conflict with rules or policies adopted by the Arizona Supreme Court, Court Administrator, and Clerk of the Court, which provide for the orderly processing of probate cases. A copy of the administrative directives shall be available to the public at the clerk's office of the Pima County Superior Court, and the Pima County Law Library.

(B) Forms; Guides. Forms approved by the Arizona Supreme Court and informational guides are available at <http://www.azcourts.gov>. Additional forms from the Arizona Superior Court in Pima County website are available at <http://www.sc.pima.gov> under the Self-Service Forms tab for Probate/Guardianship.

(4.4) Caption of Pleadings; Consolidation:

(A) Caption of Pleadings. In addition to the requirements of Rule 5, Arizona Rules of Probate Procedure, the caption of pleadings must contain the date of birth of the decedent, minor, protected person, or incapacitated person.

(B) Consolidation. When there are two or more petitions relating to the estate of the same decedent or the guardianship or conservatorship of the same ward, all the petitions must, except for good cause shown, be consolidated in the file bearing the lowest file number.

(4.5) Fiduciary Information; Change of Address:

(A) Fiduciary Information. Form for Notice of Change of Address can be found at the Arizona Superior Court in Pima County website at <http://www.sc.pima.gov/> under the Self-Service Forms tab for Probate/Guardianship.

(B) Change of Address. During the term of the appointment, every fiduciary must immediately notify the Court in writing of a change of mailing address. An attorney representing a fiduciary must inform the client of this requirement. The Notice of Change of Address notice must be either:

- (1) Delivered personally to the Probate Division of the Clerk of the Court; or
- (2) Sent by first class mail, postage prepaid, to the following address: Clerk of the Superior Court, Probate Division, Pima County Court, 110 W. Congress, Tucson, Arizona 85701.

A separate notice shall be filed for each case in which the fiduciary holds appointment.

(C) Sanctions for Failure to Notify of Change of Address. Failure to notify the Court of the fiduciary's change of address may result in sanctions which may include any of the following:

- (1) An order requiring payment of all costs to the Court or the estate which result from the failure to notify the Court;
- (2) Removal of a fiduciary; or
- (3) Issuance of an arrest warrant for the fiduciary if the fiduciary cannot be readily located.

(4.6) Assignment of Cases: All probate matters will be assigned by the Clerk of the Court, Probate Division, to the Probate Court Commissioners, except the following which are to be assigned to the Probate Presiding Judge:

- (A) Emergency or temporary petitions relating to adults;
- (B) Contested matters unless otherwise ordered by the Presiding Probate Judge;
- (C) Request for injunctive relief; and
- (D) Any matter referred by the Probate Commissioners or the Presiding Probate Judge for reassignment.

(4.7) Uncontested Matters and Matters Becoming Contested: Unless a different time is set by the Court, uncontested probate matters will be heard Mondays, Tuesdays, Wednesday, and Thursdays at 9:00 a.m., 9:30 a.m., 10:00 a.m., and 10:30 a.m. Order to Show Cause hearings will be heard at 11:00 a.m. Upon the matter becoming contested, as defined in Pima County Local Rule 4.8, the Court Commissioner will assign the matter to the Presiding Probate Judge for all further proceedings.

(4.8) Contested Matters: In addition to those matters in Rule 27, Arizona Rules of Probate Procedure, a contested probate matter includes any of the following:

- (A) A request for injunction;
- (B) An Order to Show Cause arising under Title 14, Arizona Revised Statutes; or
- (C) A civil complaint filed in a probate proceeding.

(4.9) Reference and Assignment of Contested Matters: All contested matters referred to in Pima County Local Rule 4.8 will be assigned for trial before the Presiding Probate Judge. In the Presiding Probate Judge's discretion, such matters may be reassigned to a probate commissioner or judge pro tempore.

(4.10) Form, Content and Captions: All pleadings and motions in contested probate matters, including but not limited to petitions, objections, oppositions, complaints and answers, must conform to the Arizona Rules of Probate Procedure and the Arizona Rules of Civil Procedure. In a contested probate matter, a separate caption showing the parties to the dispute must be set forth beneath the original caption and must be filed under the assigned probate case number.

(4.11) Hearings and Oral Argument:

(A) Notice of Hearing; Oral Argument; Evidentiary Hearing; M Book or Submitted Motions. The requirements for a Notice of Hearing are set forth in Rule 9, Arizona Rules of Probate Procedure. The following requirements are in addition to those set forth in Rule 9:

- (1) If oral argument or an evidentiary hearing is desired, the parties are required to follow the dictates of Pima County Local Rule 2.9 entitled “Oral Argument, Notice of Hearing, Submitted Motions”;
- (2) If the party submitting the Notice of Hearing is requesting oral argument and/or an evidentiary hearing, the Notice of Hearing must so state;
- (3) Any Notice of Hearing for an appearance hearing must provide the Court with an estimated amount of time necessary for the hearing. Otherwise, the Court will set the hearing for as few as 5 minutes; and
- (4) Failure to submit a Notice of Hearing to the assigned Division at the time of filing a Petition or moving paper or any document in opposition thereto or failure to request oral argument and/or an evidentiary hearing within the Notice of Hearing will result in the matter being placed on the Court’s “M Book” Calendar and will be decided by the Court had as proscribed in (B) below without oral argument/evidentiary hearing unless the Court orders otherwise.

(B) M Book Calendar; Submitted Motions. Matters placed on the Court’s M Book Calendar will be decided on the papers submitted unless otherwise ordered by the Court.

(C) Non-Appealance Calendar.

- (1) Each Probate Court Commissioner and Probate Judge will maintain a non-appearance calendar. Any uncontested matter except the appointment of a guardian or conservator may be heard on the non-appearance calendar unless the Court notifies the filing party that an appearance is required.
- (2) A proposed form of order or judgment must be submitted with the documents relating to the non-appearance hearing.
- (3) Non-appearance hearings are set for 8:55 a.m. on the appointed date unless otherwise ordered by the Court.

(D) Setting Dates. Each Probate Court Commissioner and Probate Judge will set the date and time for hearings on matters assigned to their Division. Except for emergencies, requests for injunctive relief, or as otherwise provided for under the Arizona Rules of Civil Procedure, the hearing date shall not be fewer than 21 days from the filing date of the applicable pleading absent good cause.

(E) Continuances. Requests for continuances may be made as follows:

- (1) Filing a motion to continue, a proposed order, notice of hearing, and proof of notice to all interested persons entitled to notice by statute, rule, or court order;
- (2) Filing a written stipulation of all necessary parties and persons requesting notice, and a proposed order; or
- (3) Making an oral request at the hearing.

(F) Form and Proof of Notice.

- (1) Proof of Notice of any document or item filed with or provided to the Court is required.
- (2) If the form of Proof of Notice is set forth by statute or court rule, that form must be followed. The rules applicable to captions and other matters of form of pleadings apply to all proofs of notice provided by this rule.
- (3) If the form of proof of notice is not set forth by statute or court rule then proof of notice must be made by one of the following methods and must be signed by the person effectuating service:
 - (a) By filing a separate document in the matter entitled “Proof of Notice” which contains a description of the documents or things filed and served, the time and manner of service, and the name and service address of every noticed person; or
 - (b) By certification of service/notice as set forth in Rule 5, Arizona Rules of Civil Procedure, which includes the time and manner of service, and the name and address of every noticed person.

The proof of notice or certification must identify any noticed person who is known by the party to be a minor or a person under disability and, as to such person, state whether notice was given to the guardian, conservator, or court-appointed attorney of the person.

(G) Waivers of Notice. In addition to the requirements of Rule 14, Arizona Rules of Probate Procedure, matters in which notice has been waived may be presented for approval to the Presiding Probate Judge or a Probate Court Commissioner who will set the matter for hearing without the requirement of notice. Such matters will be set and considered as time permits. If a matter is time sensitive, the petition or motion must identify the time constraint. If all required waivers of notice, stipulations, and consents are filed with the petition or motion, the Court may grant the requested relief without further delay. In such cases, the party seeking relief must mail or deliver a copy of the order to all interested persons upon receipt and file proof of notice thereof, within a reasonable time not to exceed 14 days.

(H) Compensation of Attorneys and Fiduciaries. In all matters filed in court related to compensation of fiduciaries, attorneys, and court-appointed investigators, the party requesting compensation or approval of compensation must file a verified, detailed statement of the services rendered and the time involved as required by statute, rule and applicable case law. This Rule does not apply to claims against Pima County for a Pay Order; such claims must adhere to Pima County's billing requirements.

(4.12) Motions to Withdraw as Counsel: In addition to Rule 5.3, Arizona Rules of Civil Procedure, and Rule 10(D)(2), Arizona Rules of Probate Procedure, regarding withdrawal of counsel, no attorney will be permitted to withdraw as attorney of record after an action has been set for trial, an evidentiary hearing or oral argument, unless either of the following is satisfied:

(A) There is endorsed upon the application therefore either the signature of a substituting attorney stating that such attorney is advised of the date of the hearing or trial and will be prepared for same or the signature of the client stating that the client is advised of the date of the hearing or trial and has made suitable arrangements to be prepared for same; or

(B) The Court is satisfied for good cause shown that the attorney should be permitted to withdraw.

Guardianships and Conservatorships

(4.13) Guardian of Minor, Fingerprints: Where the proposed guardian of a minor is required to be fingerprinted pursuant to Arizona Revised Statutes § 14-5206, the proposed guardian must be fingerprinted promptly after filing the petition for appointment of guardian of a minor. Information about the fees and the procedure for fingerprinting may be obtained by contacting the Clerk of the Court. Rule 21, Arizona Rules of Probate Procedure, contains further requirements.

(4.14) Court Order Appointing Attorney, Medical Examiner, and Investigator: In addition to the requirements of Rule 19, Arizona Rules of Probate Procedure, in any

proceeding in which a court-appointed attorney, medical examiner, or investigator is requested:

(A) The petitioner must submit a form of order with the name and address for the attorney and investigator left blank for completion by the Court or Probate Registrar.

(B) The petitioner must include in the form of order the name and address of the medical examiner.

(C) The party seeking the order of appointment must:

(1) Immediately inform the court-appointed attorney, medical examiner and investigator of their appointment; and

(2) Also mail or deliver a copy of the order of appointment to the court-appointed attorneys, medical examiner and investigator within 2 days after the order is signed.

(D) The Presiding Probate Judge will maintain a rotating list of court-appointed attorneys and court-appointed investigators for Title 14 and Title 36 matters. For good cause shown, the Court may appoint an attorney or investigator other than those on the rotating list.

(4.15) Temporary Appointment of Guardian or Conservator: When petitioning for an emergency appointment of temporary guardian of an adult or conservator of a minor or adult, the petitioner must submit conformed copies of the petition and all required pleadings to the Presiding Probate Judge, or in the absence of the Presiding Probate Judge, to the Probate Registrar, unless otherwise ordered or directed.

(4.16) Appointment of Attorney: If the rights of an unrepresented minor may be compromised because the minor is unrepresented, the Court may appoint an attorney to represent the minor.

(4.17) Settlement Conferences:

(A) Settlement conferences are not mandatory in probate matters and are governed by Rule 29, Arizona Rules of Probate Procedure.

(B) The Probate Presiding Judge will compile a list of attorneys qualified and willing to serve as judges pro tempore for purposes of presiding over and facilitating settlement conferences.

(C) Any attorney included on the list of judges pro tempore for the probate settlement conferences may, upon the attorney's request, be deleted from the Court's list of persons subject to appointment as arbitrators pursuant to Rule 73, Arizona Rules of Civil Procedure.

Decedents' Estates

(4.18) Review of Pending Decedents' Estates; Status Report:

(A) Completion; Verification. At the time a personal representative or special administrator is appointed, the Court will order the fiduciary to file a status report between 60 and 30 days before the second anniversary of the appointment and set a review hearing on the non-appearance calendar to review any status report filed by the fiduciary or the fiduciary's counsel.

(B) Status Report. The status report must include the following:

- (1) Reasons why the estate has not been closed;
- (2) Tasks remaining to be completed;
- (3) Distributions to beneficiaries;
- (4) Inventory of assets remaining;
- (5) Status of insurance and taxes on assets, if applicable;
- (6) Name and address of unpaid creditors including amounts owed; and
- (7) Estimated time for completion of the estate administration.

The personal representative must mail a copy of the status report to all interested persons no later than 30 days before the review hearing and must file proof of notice with the Court.

(C) Early Completion. The procedure described in Pima County Local Rule 4.19 must be followed on each subsequent anniversary of the appointment until the estate is closed unless otherwise ordered by the Court. If the estate is closed before any status date, the status and compliance hearing dates shall be vacated.

(D) Noncompliance. For failure of the fiduciary or the fiduciary's counsel to comply with this rule, a judge or commissioner of the probate division may make such order as permitted by law, including, but not limited to, the following: (1) removal of the fiduciary (2) taxation of costs and/or attorneys' fees then or subsequently incurred; or (3) imposition upon either counsel or the fiduciary of further sanction or penalty provided by statute, rule or authority of the Court, including contempt of court.

Adult Mental Health

(4.19) Mental Health Hearing Calendar: Hearings pursuant to Chapter 5, of Title 36, Arizona Revised Statutes, entitled "Mental Health Services," will be conducted at such times and places as may be designated by the Presiding Judge of the Probate Division. Such hearings will be conducted by Probate Court Commissioners unless otherwise directed by the Presiding Probate Court Judge.

(4.20) Hearings:

(A) Length of Hearing. Hearings on petitions for court ordered treatment or continued court ordered treatment will not exceed one hour unless otherwise ordered by the Court on its own motion or for good cause upon a party's request. Any request by a party for an extended hearing must be submitted not later than 2 days before the hearing.

(B) Hearings Open to Public. Hearings on petitions for court ordered treatment will be open to the public, unless otherwise ordered by the judicial officer presiding over the hearing, and must conclude by 5:00 p.m., except as otherwise ordered.

(C) Stipulations to Continue or Expedite Hearing. Any stipulation of the parties to continue a hearing on a petition for court ordered treatment, or any request to expedite the hearing, must be filed not later than noon on the day before the hearing.

(D) Motions. Any motion hearings related to mental health cases must be scheduled at the earliest available hearing date. If the hearing on the motion cannot be set by the Court within 2 business days after filing of the motion, the Court may conduct a telephonic hearing with counsel to expedite scheduling the hearing on the motion or, alternatively, to hear the arguments on the motion telephonically. Unless otherwise ordered by the Court, no motion hearing may exceed 30 minutes.

(E) Changes Affecting Court Calendar. All matters, including stipulations, which affect the court calendar must be approved by the division to which the case is assigned and must be submitted not later than noon on the day before the hearing, unless the Court approves otherwise.

(F) Written Testimony. By stipulation of the parties, witness testimony at hearings may be presented by written testimony in lieu of oral testimony.

(G) Telephonic Testimony. The judicial officer assigned to the hearing, for good cause, may allow telephonic testimony of a witness at a hearing on a petition for court ordered treatment. Any such request by either party must be promptly presented to the judicial officer presiding over the hearing and opposing counsel.

(4.21) Disclosure of Witnesses and Exhibits: Each party must comply with the following disclosure requirements:

(A) Each party must promptly exchange a list of all witnesses, including their names and telephone numbers;

(B) Each party must promptly exchange a list of all exhibits;

(C) Such disclosure must be made not later than 2 days prior to the time of the hearing; and

(D) Each party shall promptly supplement the witness and exhibit list whenever a new witness or exhibit is discovered.

(4.22) Confidentiality of Files:

(A) Pursuant to A.R.S. § 36-509, the Clerk of the Court or court staff must limit access to mental health files and must disclose only the following information:

(1) That a mental health file exists for any named individual;

(2) The number of that file;

(3) Any scheduled hearing date; and

(4) The time and place of the hearing and the name of the judicial officer assigned to preside at that hearing.

(B) The court docket shall list the docket number only, which must remain public.

(C) Access to the contents of a mental health file must not be allowed except in compliance with A.R.S. § 36-509.

(D) If the Clerk of the Court or court staff is uncertain whether a person requesting information or access is entitled to the same under A.R.S. § 36-509, the person must be referred to the Presiding Judge of the Probate Division.

(E) Transfer to the State Hospital. If the Department of Health Services does not admit a person court ordered to the Arizona State Hospital within 20 days after the entry of the court order for transfer, the county attorney's office must file written notice thereof with the Court with a copy to the judicial officer who presided over the hearing. The judicial officer may set a hearing to determine the status of the patient's admission to the Arizona State Hospital and whether alternatives to admission to the Arizona State Hospital exist at that time. The Court may designate the hearing as either evidentiary or non-evidentiary.

Rule 5 - Criminal

(5.1) Appointed Counsel; Compensation: When a defendant is entitled to appointed counsel pursuant to Rule 6.1(b), Arizona Rules of Criminal Procedure, the Court will appoint the Public Defender. If it is determined that the Public Defender cannot be appointed, the Court will appoint the Legal Defender. If neither the Public Defender nor the Legal Defender can be appointed, the Court will appoint the Legal Advocate or any other available public defense agency. If no public defense agency can be appointed, the Court will appoint private counsel under contract with the county to provide indigent defense legal services. The rate of compensation for court-appointed private counsel and related professional support services will be established by the Court pursuant to A.R.S. § 13-4013(A) and administered by the county through its indigent defense contract. The Court will not review claims for compensation by appointed private counsel or claims for related expenses except as provided in the county contract.