Task Force on the Arizona Rules of Probate Procedure

Meeting Agenda

Tuesday, May 8, 2018
10:00 a.m. to 4:00 p.m.
State Courts Building * 1501 West Washington * Conference Room 119 * Phoenix, AZ

Item no. 1	**Call to Order**	*Hon. Rebecca Berch, Chair*
Item no. 2	**Approval of the April 6, 2018 meeting minutes**	*Justice Berch*
Item no. 3	**Discussion of OneDrive issues**	*Lou Ponesse. A.O.C.*
Item no. 4	**Workgroup reports and discussion of rules** **Workgroup 1: Rules 6 and 11** **Workgroup 2: Rules 1, 2, 2.1, and 3** **Workgroup 3: Rules 20, 21, 26.1, and 27.1**	 *Judge Polk* *Judge Olson* *Judge Mackey*
Item no. 5	**Roadmap** • **Meeting schedule** • **Next meeting: Friday, June 15, 2018**	*Justice Berch*
Item no. 6	**Call to the Public** **Adjourn**	*Justice Berch*

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.

Probate Rules Task Force

State Courts Building, Phoenix

Meeting Minutes: April 6, 2018

Members attending: Hon. Rebecca Berch (Chair), Marlene Appel, John Barron III, Colleen Cacy, Hon. Julia Connors (by telephone), Robert Fleming, Hon. Andrew Klein, Hon. David Mackey, Aaron Nash, Hon. Patricia Norris, Hon. Robert Carter Olson (by telephone), Hon. John Paul Plante (by telephone), Hon. Jay Polk, Lisa Price, Catherine Robbins, T.J. Ryan, Denice Shepherd, Hon. Wayne Yehling (by telephone) [all members present]

Guests: John Rogers

Task Force Staff: Theresa Barrett, Jodi Jerich, Mark Meltzer, Angela Pennington

1. Call to order; introductions; preliminary remarks. The Chair called the first meeting of this Task Force to order at 10:05 a.m. She expressed her appreciation for the members' service on this project. She noted that some members had previously served on the first Probate Rules Committee (Administrative Order No. 2006-87), the Committee on Improving Judicial Oversight and Processing of Probate Court Matters (Administrative Order No. 2010-52), or both committees. The Chair introduced Task Force staff, and requested the members to introduce themselves. She then advised members that the Task Force has a web page on the Arizona Judicial Branch website where materials for each Task Force meeting will be posted. She recommended that members retain paper packets of meeting materials for future reference. Today's meeting packet includes Rules for Conducting Task Force Business, which the Chair reviewed with the members. Among other things, those Rules specify certain requirements that comply with Arizona Code of Judicial Administration § 1-202 concerning open meetings.

2. Administrative Order No. 2017-133. The Chair proceeded to another document in the meeting packet, Administrative Order No. 2017-133, which established this Task Force. The Order noted that other sets of Arizona rules, including the civil, civil appellate, justice court civil, criminal, and protective order rules, have been recently restyled. Although the probate rules were adopted with an effective date of January 1, 2009, the Order stated that "a comprehensive review of those rules would now be beneficial." The Order provided that the purpose of the Task Force is to identify possible changes to the Probate Rules "to conform to modern usage and to clarify and simplify language."

The Order establishes a goal that the Task Force submit a rule change petition by January 10, 2019. However, the Chair recommended that members have an initial draft of proposed rule changes by September 2018. Doing so would allow interested committees and stakeholders to critique the draft, and permit the Task Force to make

appropriate revisions before it files a petition in January. The Order also states that members' terms do not conclude until December 31, 2019, and this will allow the Task Force time to collect comments on its petition, and to consider and respond to those comments during the 2019 rules cycle. Finally, the Order requires the Task Force to seek input from interested persons and entities. As the Task Force progresses through this project, the Chair requested members to reach out to probate, elder law, senior citizen, and other interested groups for feedback.

3. Rule restyling principles. The Chair next introduced John Rogers, a Supreme Court staff attorney who has been involved in several previous rule restyling projects, to summarize restyling principles.

Mr. Rogers noted that the objectives of restyling include improving the organization of the rules, making the rules internally consistent, and clarifying the language of each rule. A restyling project concerning the federal civil rules began in the 1990's, but the project bogged down during consideration of substantive rule changes and wasn't completed until 2007. During that project, Bryan Garner prepared a booklet (*Guidelines for Drafting and Editing Court Rules,* which staff previously provided to the members) that was utilized during the federal rules restyling and continues to serve as a guide for Arizona rule restyling projects. Applying those *Guidelines*, and following conventions used in previous Arizona rules restyling projects, Mr. Rogers and staff prepared a preliminary draft of restyled probate rules.

Today's meeting materials included two additional reference documents prepared by Mr. Rogers. One document is a compendium of rule restyling conventions. The other document summarizes restyling principles and provides examples of how they could apply to the probate rules. The following are among Mr. Rogers' suggestions.

> Improved formatting and organization will help users more easily find what they want. Make generous use of subparts and subheadings, and make lists when a rule calls for multiple items or factors. Mr. Rogers referred to the current version of Rule 22(a), and demonstrated how reorganization alone can improve the rule's clarity. He also showed how section headings could make Rule 29's provisions easier to locate.
>
> Avoid run-on sentences, which Mr. Rogers characterized as "stream of consciousness" rules. Mr. Rogers cited current Rule 8(B) as an example of such a rule; the rule consists of a single sentence of 98 words. He explained how the rule could be restyled and clarified by using two sentences totaling 82 words. He noted that em-dashes could be used in some rules that have multiple clauses, such as the restyled version of Rule 8(b), but em-dashes should be used sparingly.

Avoid archaic terms such as "thereto" or "hereinafter," which are not ordinarily used in conversations.

Good restyling uses simpler words and proper word choice. He suggested saying the court "orders" rather than "directs." The court also "enters" or "files" its orders rather than "issues" them. Use "later" rather than "subsequently," and "under" instead of "pursuant to."

Avoid redundant intensifiers, such as the phrase, "the court in its discretion may…." "May" means the court has discretion.

Minimize "of" and "by" phrases. For example, use the phrase "court clerk," which is more direct than "clerk of the court." Say, "unless the court orders otherwise" rather than "unless otherwise ordered by the court."

Eliminate ambiguous terms. "Shall" has various meanings, but "must," "may," "will" or "should" are more specific.

Avoid references to "sections" or "paragraphs." Instead, use the subpart designation.

Use the active voice. It is more comprehensible and using it improves the overall quality of the rule.

Some comments may no longer be useful, or may be inaccurate or misleading, and the Task Force should consider deleting those comments. A comment is not part of a rule's substance, and the Task Force should relocate to the body of a rule any substantive requirements that might currently be in a comment. If a comment is necessary to understand a rule, there may be a need to rewrite the rule more clearly.

The Chair asked Mr. Rogers if an apostrophe was necessary in the term "attorneys fees," and if it was, whether it should be after the "y" or after the "s." Mr. Rogers responded that using the term without an apostrophe might eliminate ambiguity about the number of attorneys entitled to fees, but the most important consideration for any term, including that one, is using it consistently throughout the rules. The Chair advised members that staff's restyled probate rules are a starting point; members should modify staff's versions, or disregard them entirely, as they deem appropriate. She also noted that staff have added a variety of questions and comments for members in the restyled drafts. Mr. Rogers' comments are identified as "JWR notes" and those from Ms. Jerich and Mr. Meltzer are tagged as "staff notes." The Chair thanked Mr. Rogers for his informative presentation.

4. OneDrive. Staff's preliminarily restyled rules are stored in the Cloud, and members can access them through OneDrive, a feature of Microsoft Office. OneDrive will facilitate collaboration among workgroup members when they prepare revisions to those draft documents, and members will need to utilize OneDrive during this project. Ms. Pennington had previously distributed a OneDrive information sheet, and the Chair invited her to demonstrate the functionality and use of OneDrive. Ms. Pennington reminded members that whatever computer they first use to log on to OneDrive will be the one the program thereafter recognizes. She also explained that any member with Microsoft 2007, or an early version, may have limitations when using OneDrive. Ms. Pennington will be available to answer members' questions concerning OneDrive throughout this project. The Chair thanked Ms. Pennington for her assistance and further advised that the functionality of OneDrive might be affected if more than one person attempts to make changes during a workgroup session, so only one person should serve as the designated scribe during a workgroup meeting.

5. Roundtable discussion. Before discussing workgroups, the Chair asked members if they had issues or concerns regarding this rule restyling project. A member inquired how the Task Force would distinguish a restyling change from a substantive one. The Chair assured members that they did not need to pose the philosophical question about whether a proposed change is stylistic or substantive. Rather, they should ask whether a change—whether stylistic or substantive—will make the rule work better. She noted the administrative order that established this Task Force used broad terms about identifying possible rule changes, so the Task Force can propose changes not only concerning a rule's language, but also changes that improve the way a rule works.

Members then discussed the relationship between the probate rules and other sets of rules, particularly the civil rules. Current Probate Rule 3 makes these other rules applicable in probate proceedings. But especially with the recent civil rules restyling (2017) and civil justice reform amendments (2018), some civil rules have dubious application in probate proceedings. One member suggested that the committees that proposed those recent civil rule changes may not have appreciated or contemplated the effect those changes would have on other case types, such as probate proceedings. For example, the newly adopted requirements for tiering civil discovery might be incongruent with mental health cases, which are heard by the probate court.

Members of the first probate rules committee were divided on whether the probate rules should be a standalone set, and a judge member of this Task Force requested reconsideration of this issue. The member believed that a standalone set of probate rules would not only be better for stakeholders who routinely use the probate rules, but also would be more helpful for self-represented litigants who might use them for a single matter. One member gave an example of an adult exploitation case, which might proceed as a civil case in a civil department, but could also be in probate court and present different procedural issues in that context. The member recommended that probate rules

acknowledge distinctions between probate and civil proceedings. One judge member with two other Task Force attorney members has begun a preliminary review of the civil rules to see which ones are applicable to probate proceedings, and how those applicable provisions could be relocated and recreated, with modifications, in the probate rules.

Another member acknowledged that adopting pertinent civil provisions as probate rules would probably result in a doubling of the number of probate rules. The member further recognized that even if the Task Force did this, it might not resolve issues that could arise from filing a different matter in probate court, such as a family court petition that is governed by another set of rules. The Chair recognized that creating a standalone set of probate rules would could greatly expand the work of this Task Force. Other members made these comments:

- A freestanding set of probate rules might result in the loss of a rich body of interpretation in civil case law and treatises.

- Just as the standalone family rules duplicate many civil rule provisions, such as those concerning service, discovery, and motions, a standalone set of probate rules might also be redundant.

- The civil rules in effect at the time of adoption of the probate rules are far different than the current civil rules. If the probate rules were freestanding, they would eventually diverge from amended civil rules unless they were continually amended to conform to the civil rules.

- Tiering might be beneficial in certain probate cases, and could promote appropriately limited discovery. The recently adopted civil concept of proportional discovery might be useful in probate cases.

- Probate proceedings have a broad scope (one can find virtually any type of case in probate court) and it would be challenging to have a freestanding set of rules that covered every type of probate proceeding. But some civil rules don't translate well to probate proceedings, for example, service of process, and the Task Force should address those incongruous rules. Moreover, is a breach of fiduciary duty claim governed by the civil rules or the probate rules? The probate rules should clarify these types of issues.

- Members should consider what effects SB 1204 (Chap. 102, Laws 2018) has on this project. Members also should consider the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act recently promulgated by the Uniform Law Commission.

- The first probate rules committee didn't methodically consider how each of the civil rules applied in probate proceedings, but this Task Force should do so. The Task Force should target certain civil rules that would make filings in probate court easier and more straightforward.

- The Task Force should clarify Probate Rule 3. The restyled probate rules should also carve out specific civil rules that might apply in a probate case. For example, a probate rule could say that Civil Rule 56 applies to summary judgment motions in probate court. This would be a simple modification, and if the civil rule thereafter changed, the probate rule would not require a conforming amendment.

The Chair concluded the discussion by asking members to review pertinent civil rules. Workgroups should determine whether a civil rule as written would serve the needs of probate proceedings, and if not, how the rule should be modified for application in a probate matter. Members also should consider sections of the Arizona Code of Judicial Administration that apply in probate proceeding, and whether all or some of those provisions should be further highlighted in the probate rules because self-represented litigants are often unaware of these code sections.

6. Workgroups. At this point in the meeting, the Chair distributed a sheet that showed which members were assigned to each of three Task Force workgroups and the rule assignments for each workgroup. The rule assignments, which are not exactly but are relatively equal, are:

Workgroup 1: General Administration – Part II (general procedures)

Workgroup 2: Petitions and Proceedings – Part I (scope, applicability, and definitions), Part III (applications, petitions, and motions), Part V (contested probate proceedings, except Rule 27.1), and Part VIII (forms)

Workgroup 3: Fiduciaries – Part IV (procedures relating to the appointment of fiduciaries), Part VI (post-appointment procedures), and Part VII (other matters), as well as Rule 27.1 (training for non-licensed fiduciaries)

The Chair advised members that workgroup meetings are not public meetings and workgroups do not need to comply with open meeting requirements, because workgroups merely propose rule amendments. The Task Force will make decisions on workgroup proposals during open meetings that the public can attend. Accordingly, workgroups can meet at any location, including a private office. Members can participate in workgroup meetings by telephone, and workgroup members can attend meetings of other workgroups. At least one staff member should be present at each workgroup meeting to provide assistance.

The Chair would like each workgroup to propose amendments for about 3 to 5 rules at the next Task Force meeting. She suggested that workgroups begin their tasks with comparatively easy rules that don't require major changes. The workgroups should designate one of their members to present each completed rule at the upcoming Task Force meeting. Each workgroup should assure that Task Force staff has the workgroup's proposed amendments at least a week before the Task Force meeting. She requested that workgroup members confer after adjournment to set dates for their initial meetings.

7. **Roadmap.** After discussion, it appears that Friday is the best day of the week for members to attend a Task Force meeting. However, to stay on a monthly schedule, the Chair proposed Monday, May 7, or Tuesday, May 8 for the second Task Force meeting. She further proposed Friday, June 8 for the third Task Force meeting. She directed staff to poll the members after adjournment regarding their availability on these dates.

8. **Call to the public.** There was no response to a call to the public.

9. **Adjourn.** The meeting adjourned at 12:42 p.m.

Rule 1. Scope, Applicability, and Construction.

(a) Scope. These rules govern procedures in all probate ~~proceedings~~ cases in the superior court.~~, including cases concerning decedents' estates, trusts, guardianships, conservatorships, and related matters. These rules also govern proceedings to challenge or enforce the decision of a person authorized to make health care decisions for a patient.~~

~~(a)~~**(b) Applicability.** These rules apply to all persons in a probate case, whether self-represented or represented by an attorney.

(c) Construction. ~~Parties and courts should construe these rules, and courts~~ Courts ~~should~~ must enforce ~~them~~these rules and construe them in a manner that~~, in a manner that~~ ensure~~ss~~ a consistent, predictable, prompt, efficient, and just resolution of ~~a~~ probate ~~proceeding~~ cases.

Workgroup's alternative Section (c), version 2: The court must enforce compliance with these rules. The court must construe these rules in a manner that ensures a consistent, predictable, prompt, efficient, and just resolution of probate cases.

~~**(b)**~~ **Workgroup's alternative Section (c), version 3:** The court must enforce compliance with these rules and in doing so must construe them in a manner that ensures a consistent, predictable, prompt, efficient, and just resolution of probate cases.

CURRENT COMMENT

In some counties, more than one type of matter may be assigned to a particular judicial officer, division, or department. Thus, for example, a judicial officer assigned to a "probate department" may also be assigned mental health matters brought under A.R.S. § 36-501 et seq., or matters relating to the adjudication of the status of sexually violent persons pursuant to A.R.S. § 36-3701 et seq. These rules are not intended to apply to these latter matters simply because the matter has been assigned to a "probate" judicial officer. Instead, these rules apply only to proceedings brought under A.R.S. Title 14, A.R.S. § 12-1834, and A.R.S. § 36-3206, and to proceedings brought under A.R.S. § 12-1832 to construe a will, trust, or power of attorney.

COMPARE RESTYLED Family Law Rule 1: Parties and courts should construe these rules, and courts should enforce them, in a manner that ensures a just, prompt, and inexpensive determination of every action and proceeding.

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(a) Scope. These rules govern procedures in all probate cases in the superior court.

(b) Applicability. These rules apply to all persons in a probate case, whether self-represented or represented by an attorney.

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Rule 2. Probate Case and Proceedings~~"Probate Proceeding.~~

(a) Generally. The definitions of "probate case" and "probate proceeding" distinguish between a court case and the various proceedings that may occur within the case."

(b) Meaning of "Probate ~~Proceeding~~Case." A probate case is a court case originally commenced by a probate proceeding. Each probate case is assigned a unique number by the court clerk. A probate case will include one or more probate proceedings and may include one or more non-probate proceedings.

(c) Meaning of "Probate Proceeding." A probate proceeding is:

~~—~~**(1)** A proceeding arising ~~A "probate proceeding" is a court case arising~~ under A.R.S. Title 14, including cases concerning decedents' estates, trusts, guardianships, conservatorships, and related matters, and any associated ~~of the Arizona Revised Statutes that was originally commenced for one or more of the following purposes:~~

proceeding for declaratory relief under ~~CHAPTER 32, tITLE 36~~

~~to administer the estate of a decedent who died with or without a will~~A.R.S. Title 12, Chapter 10, Article 2; or~~;~~

~~(1)~~**(2)** A proceeding under A.R.S. Title 36, Chapter 32, regarding living wills and health care directives.

~~**(2) Meaning of "to appoint a guardian for an incapacitated person or a minor under A.R.S. §§ 14-5201 to -5315;**~~

~~**(3) to appoint a conservator or request a protective order under A.R.S. §§ 14-5401 to -5433;**~~

~~**(4) to designate a successor custodian under A.R.S. § 14-7668(D), or to determine or enforce the rights of persons under the Arizona Uniform Transfers to Minors Act, A.R.S. §§ 14-7651 through -7671;**~~

~~**(5) to designate a custodial trustee under A.R.S. § 14-9113(D) or to determine or enforce the rights of persons under the Arizona Uniform Custodial Trust Act;**~~

~~**(6) to request a judicial order relating to the internal affairs of a trust under A.R.S. §§ 14-10201 to -10204;**~~

~~**(7) to challenge or enforce the decision of one authorized to make health care decisions for another person, including challenges to, or enforcement of, health**~~

~~**care directives and living wills under A.R.S. Title 36, Chapter 32; [Staff Note: Staff added the underlined language.]**~~

~~**(8) to obtain a declaratory judgment with respect to the construction or interpretation of a will, trust, or power of attorney; or**~~

~~**(9) to obtain a declaratory judgment under A.R.S. § 12-1834.**~~

~~**(b)**~~**(a) ~~Consolidated Cases~~Non-Probate Proceeding.”** ~~A civil, juvenile, or family law case filed within, or consolidated with, a probate case~~A non-probate proceeding is one which can be filed as a separate case but may be appropriately filed within or consolidated with a probate case, such as a civil action, a juvenile proceeding, or a family law proceeding. ~~is not a “probate proceeding.”~~

Note: This is derived from current Rule 2(O) and 2(P).

The comment to Rule 2(O) and 2(P) says:

> Regarding Rules 2(O) and (P). The definitions of “probate case” and “probate proceeding” are intended to distinguish between the establishment of a court case and the various proceedings that may occur within the case. Thus, a “probate case” is a court case originally commenced for one or more of the listed purposes. Each probate case is assigned a single number by the clerk of court. A probate case will involve one or more probate proceedings. *See, e.g.*, A.R.S. § 14-3107. For example, a probate case relating to a decedent’s estate may involve a proceeding to probate a will and appoint a personal representative, a proceeding to approve the sale of real property, and a proceeding to settle the estate and discharge the personal representative. Each application or petition filed within a probate case gives rise to a separate probate proceeding. A probate case may also involve non-probate issues such as personal injury claims or breach of contract claims. Thus, a probate case also may involve a civil action or a family law proceeding filed within or consolidated with the probate case.
>
> Regarding Rule 2(P). For purposes of these rules, the definition of “civil action” includes, but is not limited to, actions that assert claims for breach of contract, negligence, fraud, or statutory abuse.

Rule 2. Probate Case and Proceedings

(a) Generally. The definitions of "probate case" and "probate proceeding" distinguish between a court case and the various proceedings that may occur within the case.

(b) Meaning of "Probate Case." A probate case is a court case originally commenced by a probate proceeding. Each probate case is assigned a unique number by the court clerk. A probate case will include one or more probate proceedings and may include one or more non-probate proceedings.

(c) Meaning of "Probate Proceeding." A probate proceeding is:

(1) A proceeding arising under A.R.S. Title 14, including cases concerning decedents' estates, trusts, guardianships, conservatorships, and related matters, and any associated proceeding for declaratory relief under A.R.S. Title 12, Chapter 10, Article 2; or

(2) A proceeding under A.R.S. Title 36, Chapter 32, regarding living wills and health care directives.

(d) Meaning of "Non-Probate Proceeding." A non-probate proceeding is one which can be filed as a separate case but may be appropriately filed within or consolidated with a probate case, such as a civil action, a juvenile proceeding, or a family law proceeding.

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includes, but is not limited to, actions that assert claims for breach of contract, negligence, fraud, or statutory abuse.

Rule 2.1. Definitions.

(a) "Application" means is a written request to the probate registrar that complies with under Rule 16 of these rules.

B. "Licensed fiduciary" means a person or entity that is certified by the Supreme Court of Arizona pursuant to A.R.S. § 14-5651.

(b) "Civil action" means is a lawsuit brought to enforce, redress, or protect private rights and includes suits in equity and actions at law. For purposes of these probate rules, the term "civil action" excludes any family law or probate proceeding.

D. "Commissioner" means a judicial officer who has the powers and duties set forth in Rule 96, Rules of the Supreme Court. Commissioners may be appointed as judges pro tempore and, as such, may act as judges in matters assigned to them.

(c) "Evidence" means testimony, writing, material objects, or other things offered to prove the existence or nonexistence of a fact.

(d) "Evidentiary hearing" or "hearing" means is a proceeding held before a judicial officer or a jury during which evidence is presented.

(e) "Family law proceeding" means is a proceeding brought under A.R.S. Title 25.

(f) "Guardian ad litem" means is a representative person appointed by the court pursuant tounder A.R.S. § 14-1408, or a person appointed pursuant to under Rule 17(f), Arizona Rules of Civil Procedure, by the court to represent the interests of a minor, unborn, or unascertained person; a person whose identity or address is unknown; or an incapacitated person in a particular case before the court. "Guardian ad litem" does not include an attorney appointed pursuant to under A.R.S. §§ 14-5207(D), -5303(C), or -5407(B).

(g) "Judicial officer" includes a commissioner, judge pro tempore, and judge.

(h) "Motion" means is an oral or written request made to the court that complies with under Rule 18 of these rules.

(i) "Non-appearance hearing" means is a hearing scheduled pursuant tounder Rule 12 of these rules.

(j) "Oral argument" means is a proceeding before a judicial officer during which when parties or their lawyers state their positions in support of or in opposition to a motion. Evidence is not presented at an oral argument.

(k) "Party" means is a person who has filed a notice of appearance, an application, a petition, or an objection in a probate proceeding. An interested person who has filed a demand for notice, but has not filed a notice of appearance, a petition, or an objection, is not a party.

(l) **"Person"** means an individual or an organization.

(~~l~~m) "Petition" ~~means~~ is ~~a written request to the court~~ under Rule 17 ~~for substantive relief that complies with Rule 17 of these rules~~.

(~~m~~n) "Protected adult" ~~means~~ is an adult who qualifies for the appointment of a conservator under Arizona statutes regardless of whether a conservator has been appointed.

(~~n~~o) "Subject person" ~~means~~ is the decedent, alleged incapacitated person, ward, person allegedly in need of protection, or protected person. [**Staff Note:** Should this rule include definitions for each of these terms?]

Rule 2.1. Definitions.

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(n) "Protected adult" is an adult who qualifies for the appointment of a conservator under Arizona statutes regardless of whether a conservator has been appointed.

(o) "Subject person" is the decedent, alleged incapacitated person, ward, person allegedly in need of protection, or protected person. [**Staff Note:** Should this rule include definitions for each of these terms?]

Rule 3. Applicability of Other Rules.

(a) ~~Generally~~Probate Proceedings.~~.~~

~~(a)~~**(1) Civil Rules.** ~~Unless these rules provide otherwise or they are inconsistent with these rules, the~~ The *Arizona Rules of Civil Procedure* apply to probate proceedings unless they are inconsistent with these probate rules or statutes.~~; and~~

~~**(1)** the *Arizona Rules of Civil Procedure* apply in a civil case that is filed within or consolidated with a probate case;~~

~~**(2)** the *Arizona Rules of Family Law Procedure* apply in a family law case that is filed within or consolidated with a probate case; and~~

~~**(3)** the *Arizona Rules of Procedure for the Juvenile Court* apply in a juvenile case that is consolidated with a probate case.~~

(2) ~~Arizona~~ Rules of Evidence. The court may exclude relevant evidence if its probative value is substantially outweighed by one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, needlessly presenting cumulative evidence, or lack of reliability.

~~**(b)** ***Trials and***~~

~~(1)~~**(A) *Contested ~~Proceedings~~Hearings*.** The Arizona Rules of Evidence apply ~~in~~ to trials and contested ~~probate~~ hearings~~proceedings. However, if~~ unless all parties and the court agree those rules will not apply. ~~and the court enters an order to that effect, all relevant evidence is admissible, subject to (b)(3).~~

~~**(2)** *U~~U~~ncontested ~~Proceedings~~Hearings*.** The Arizona Rules of Evidence do not apply in uncontested ~~probate proceedings~~hearings. ~~All relevant evidence is admissible in such proceedings, subject to (b)(3).~~

(B) ~~*Exclusion of Relevant Evidence.*~~ ~~In any proceeding, the court may exclude any relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, needlessly presenting cumulative evidence, or lack of reliability.~~

(b) Non-Probate Proceedings. In non-probate proceedings, the same procedural and evidence rules apply as if the matter had been litigated as a separate action.

~~**(3)**~~

CURRENT COMMENT

The Arizona Rules of Probate Procedure are intended to supplement the Arizona Rules of Civil Procedure as they relate to probate proceedings and to help fill the gaps where the Arizona Rules of Civil Procedure do not clearly or logically apply to probate proceedings. The civil rules provide background in several areas not covered by these probate rules, including methods for computing time and serving process, among others. Thus, the Arizona Rules of Civil Procedure apply to probate proceedings unless they are inconsistent with the Arizona Rules of Probate Procedure. Application of both sets of rules requires that those involved in probate cases be familiar with the Arizona Rules of Civil Procedure as well as these probate rules.

Probate cases occasionally involve a "case within a case." For example, a civil action involving breach of fiduciary duty, fraud, and racketeering claims against a personal representative may be consolidated with the underlying probate case relating to the administration of the decedent's estate. *See Marvin Johnson, P.C. v. Myers*, 184 Ariz. 98, 907 P.2d 67 (1995). Probate cases may also involve issues such as dissolution of marriage, child support, or other family law matters. These probate rules shall apply to that portion of the consolidated case involving a probate proceeding. Rule 3(A) makes clear that the Arizona Rules of Civil Procedure apply to a civil case filed within or consolidated with a probate case, as well as to the probate case itself. Rule 3(B) makes clear that the Arizona Rules of Family Law Procedure apply to a family law case filed within or consolidated with a probate case. Rule 3(C) makes clear that the Arizona Rules of Procedure for the Juvenile Court apply to a juvenile proceeding consolidated with a probate case.

Many probate proceedings are uncontested. In those proceedings, the formality of the Arizona Rules of Evidence is not required. Rule 3(D)(1) clarifies that the Rules of Evidence do apply in contested probate proceedings, unless the parties agree not to apply them and the court so orders.

Although relevant evidence is generally admissible, subject to limitations that parallel the limitations in Arizona Rule of Evidence 403, the judge has discretion to preclude admission of evidence that is not adequately and timely disclosed.

A probate case may be consolidated into a juvenile case pursuant to A.R.S. § 8-202(A)-(C). If a juvenile case and a probate case are consolidated, the case retains the juvenile case number and is assigned to the judicial officer assigned to the juvenile matter.

COMMENT TO 2016 AMENDMENT

Rule 3(D)(1) has been amended to recognize that there may be a jury in contested proceedings; the other changes are purely stylistic and are made to conform to the

2012 restyling of the Arizona Rules of Evidence.

Rule 3. Applicability of Other Rules.

(a) Probate Proceedings.

(1) Civil Rules. The *Arizona Rules of Civil Procedure* apply to probate proceedings unless they are inconsistent with these probate rules or statutes.

(2) Rules of Evidence. The court may exclude relevant evidence if its probative value is substantially outweighed by one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, needlessly presenting cumulative evidence, or lack of reliability.

(A) ***Trials and Contested Hearings.*** The Arizona Rules of Evidence apply to trials and contested hearings unless all parties and the court agree those rules will not apply.

(B) ***Uncontested Hearings.*** The Arizona Rules of Evidence do not apply in uncontested hearings.

(b) Non-Probate Proceedings. In non-probate proceedings, the same procedural and evidence rules apply as if the matter had been litigated as a separate action.

CURRENT COMMENT

The Arizona Rules of Probate Procedure are intended to supplement the Arizona Rules of Civil Procedure as they relate to probate proceedings and to help fill the gaps where the Arizona Rules of Civil Procedure do not clearly or logically apply to probate proceedings. The civil rules provide background in several areas not covered by these probate rules, including methods for computing time and serving process, among others. Thus, the Arizona Rules of Civil Procedure apply to probate proceedings unless they are inconsistent with the Arizona Rules of Probate Procedure. Application of both sets of rules requires that those involved in probate cases be familiar with the Arizona Rules of Civil Procedure as well as these probate rules.

Probate cases occasionally involve a "case within a case." For example, a civil action involving breach of fiduciary duty, fraud, and racketeering claims against a personal representative may be consolidated with the underlying probate case relating to the administration of the decedent's estate. *See Marvin Johnson, P.C. v. Myers*, 184 Ariz. 98, 907 P.2d 67 (1995). Probate cases may also involve issues such as dissolution of marriage, child support, or other family law matters. These probate rules shall apply to that portion of the consolidated case involving a probate proceeding. Rule 3(A) makes clear that the Arizona Rules of Civil Procedure apply to a civil case filed within or consolidated with a probate case, as well as to the

probate case itself. Rule 3(B) makes clear that the Arizona Rules of Family Law Procedure apply to a family law case filed within or consolidated with a probate case. Rule 3(C) makes clear that the Arizona Rules of Procedure for the Juvenile Court apply to a juvenile proceeding consolidated with a probate case.

Many probate proceedings are uncontested. In those proceedings, the formality of the Arizona Rules of Evidence is not required. Rule 3(D)(1) clarifies that the Rules of Evidence do apply in contested probate proceedings, unless the parties agree not to apply them and the court so orders.

Although relevant evidence is generally admissible, subject to limitations that parallel the limitations in Arizona Rule of Evidence 403, the judge has discretion to preclude admission of evidence that is not adequately and timely disclosed.

A probate case may be consolidated into a juvenile case pursuant to A.R.S. § 8-202(A)-(C). If a juvenile case and a probate case are consolidated, the case retains the juvenile case number and is assigned to the judicial officer assigned to the juvenile matter.

COMMENT TO 2016 AMENDMENT

Rule 3(D)(1) has been amended to recognize that there may be a jury in contested proceedings; the other changes are purely stylistic and are made to conform to the 2012 restyling of the Arizona Rules of Evidence.

Rule 6. Probate Information Form.

~~(a)~~ **(a) Generally.** A ~~If a petition or application requests the~~ party who requests the appointment ~~that the court appoint~~ment of a ~~personal representative, a guardian, or a conservator~~, the person filing the petition must also fiduciary~~,~~ must file a form that contains the information specified in (c) ~~must accompany the petition or application~~[JMP1]. For purposes of this rule, "fiduciary" is limited to a personal representative, special administrator, guardian, or conservator. The court may request the information listed in this rule, or other information relating to a trust, including information regarding trust beneficiaries, trustees, and trustors.

~~(b)~~ **(b) Exception.** ~~None~~A party does not need to provide~~one of~~ the information required in (c)()(~~(c)~~1) ~~ineeds to be provided i~~f the proposed ~~personal representative, guardian, or conservator~~fiduciary is a licensed fiduciary, a national banking association, a holder of a banking permit under Arizona law, a savings and loan association authorized to conduct trust business in Arizona, a title insurance company qualified to do business in Arizona, or a trust company holding a certificate to engage in trust business from the superintendent of financial institutions. However, if the proposed personal fiduciary~~y~~

~~(c)~~ ~~representative, guardian, or conservator~~ is a licensed fiduciary, the fiduciary's license number must be included on the probate information form. ~~THESE ARE TJS ADDITIONS~~

~~(d)~~ **(c) Required Information.**

(1) ***About the Proposed ~~Personal Representative, Guardian, or~~ Fiduciary~~Conservator~~.*** The form must include the proposed fiduciary's~~personal representative's, guardian's, or conservator's~~:

(A) mailing address;

(B) physical address;

(C) ~~home~~ home, work, and cell phone ~~telephone~~ ~~number~~numbers, and email address; ~~[**Staff Note:** Include a cell phone number? An email address?]~~[JMP2]

~~**(D)** work telephone number;~~

~~**(E)**~~**(D)** date of birth;

~~**(F)**~~**(E)** social security number;

~~(G)~~(F) race, height, weight, eye color, hair color; and sex. [~~**Staff Note:** Would it be feasible to require a photograph of the person's face? Include the person's gender/sex?~~][JMP3]

~~(H) relationship to the decedent, or to the person alleged to be incapacitatedi or in need of protection; and~~.

~~(I) if a licensed fiduciary, the entity's or individual's license number.~~[JMP4]

(2) ***About the Person Alleged to Need a Guardian or Conservator~~Be Incapacitated or Needing Protection~~.*** The form must include the following information for a person alleged to be ~~incapacitated or needing~~ in need of a guardian or conservator~~ing protection~~:

(A) mailing address;

(B) physical address;

(C) ~~home~~ home, work, and cell phone numbers,~~telephone number;~~[JMP5] and email address;

(D) date of birth; and

(E) social security number.

(3) ***About a Decedent.*** For appointment of a personal representative of a decedent's estate,[JMP6] the form must include the decedent's date of birth and date of death.

~~(e)~~(d) **Confidentiality.** The court ~~will~~ mustmust~~will~~ maintain an information form filed under this rule as a confidential document under~~, as provided in~~ Rule 7.

~~(f)~~(e) **Service.** ~~Unless the court orders otherwise~~Except as required~~, and except as by~~~~provided in~~ Rule 10(C)(1)(d)[JMP7] or by the court, a party who files a form under this rule is not required to provide other parties or interested persons with a copy of the form.

~~(g)~~(f) **Non-Compliance.** ~~The petitioner's or applicant's~~A party's ~~failure to provide all the information required by this rule does not precludepre~~ The clerk may not reject a petition or application because the filing party failed to provide all the information required by this rule.~~clude the filing of a petition or application.~~

COMMENT

For various administrative functions, the court needs certain basic identifying information regarding fiduciaries and their wards and protected persons. The sole purpose of the probate information form is to provide the court with the information it needs to identify accurately the fiduciary and the ward or protected person. In some counties, the data contained in the probate information form will be entered

into the court's electronic database and maintained by the clerk of the court or court administration. Each document filed with the court under Title 14 is deemed to include an oath, affirmation, or statement to the effect that the representations in it are true to the best of the knowledge of the person signing the document, and thus each document may subject the person signing or filing it to penalties relating to perjury. A.R.S. § 14-1310. [The TF should consider a mandated statewide form, which would dispense with much of Rule 6 and this comment.]

~~Generally, proceedings relating to the administration of a trust are not subject to the requirements of Rule 6. However, nothing in this rule limits the court's authority to request the information listed in Rule 6 or other information relating to a trust, including information regarding trust beneficiaries, trustees, and trustors.~~

~~As to the requirement in Rule 6(C~~B~~), if the nominated licensed fiduciary is an entity, only the entity's fiduciary license number need be provided. The fiduciary license number of an individual is required only if the nominated licensed fiduciary is an individual rather than an entity.~~

Pursuant to Rule 10(C) of these rules, court-appointed fiduciaries have a duty to update the information contained in the information form filed pursuant to this rule. Although Rule 6(E) typically does not require the person filing the probate information form to send a copy of the probate information form to other parties or interested persons, Rule 10(C)(1)(d) requires that, if a person is filing an updated information form reflecting a change to the address or telephone number of a ward, a protected person, or a fiduciary, the person must send a copy of the updated probate information form to the attorney for the ward or protected person, the ward or protected person's guardian ad litem, and all other parties. [Revisit during the discussion of Rule 10.]

Rule 6. Probate Information Form.

(a) Generally. A party who requests the appointment of a fiduciary must file a form that contains the information specified in (c). For purposes of this rule, "fiduciary" is limited to a personal representative, special administrator, guardian, or conservator. The court may request the information listed in this rule, or other information relating to a trust, including information regarding trust beneficiaries, trustees, and trustors.

(b) Exception. A party does not need to provide the information required in (c)(1) if the proposed fiduciary is a licensed fiduciary, a national banking association, a holder of a banking permit under Arizona law, a savings and loan association authorized to conduct trust business in Arizona, a title insurance company qualified to do business in Arizona, or a trust company holding a certificate to engage in trust business from the superintendent of financial institutions. However, if the proposed personal fiduciary is a licensed fiduciary, the fiduciary's license number must be included on the probate information form.

(c) Required Information.

(1) ***About the Proposed Fiduciary.*** The form must include the proposed fiduciary's:

(A) mailing address;

(B) physical address;

(C) home, work, and cell phone numbers, and email address;

(D) date of birth;

(E) social security number;

(F) race, height, weight, eye color, hair color; and sex.

(2) ***About the Person Alleged to Need a Guardian or Conservator.*** The form must include the following information for a person alleged to be in need of a guardian or conservator:

(A) mailing address;

(B) physical address;

(C) home, work, and cell phone numbers, and email address;

(D) date of birth; and

(E) social security number.

(3) ***About a Decedent.*** For appointment of a personal representative of a decedent's estate, the form must include the decedent's date of birth and date of death.

(d) Confidentiality. The court must maintain an information form filed under this rule as a confidential document under Rule 7.

(e) Service. Except as required by Rule 10(C)(1)(d) or by the court, a party who files a form under this rule is not required to provide other parties or interested persons with a copy of the form.

(f) Non-Compliance. The clerk may not reject a petition or application because the filing party failed to provide all the information required by this rule.

COMMENT

For various administrative functions, the court needs certain basic identifying information regarding fiduciaries and their wards and protected persons. The sole purpose of the probate information form is to provide the court with the information it needs to identify accurately the fiduciary and the ward or protected person. In some counties, the data contained in the probate information form will be entered into the court's electronic database and maintained by the clerk of the court or court administration. Each document filed with the court under Title 14 is deemed to include an oath, affirmation, or statement to the effect that the representations in it are true to the best of the knowledge of the person signing the document, and thus each document may subject the person signing or filing it to penalties relating to perjury. A.R.S. § 14-1310. [The TF should consider a mandated statewide form, which would dispense with much of Rule 6 and this comment.]

Pursuant to Rule 10(C) of these rules, court-appointed fiduciaries have a duty to update the information contained in the information form filed pursuant to this rule. Although Rule 6(E) typically does not require the person filing the probate information form to send a copy of the probate information form to other parties or interested persons, Rule 10(C)(1)(d) requires that, if a person is filing an updated information form reflecting a change to the address or telephone number of a ward, a protected person, or a fiduciary, the person must send a copy of the updated probate information form to the attorney for the ward or protected person, the ward or protected person's guardian ad litem, and all other parties. [Revisit during the discussion of Rule 10.]

~~**Rule 11. Telephonic or Electronic Appearances and Testimony.**~~

~~**(a) Generally.** On timely motion or on its own, a judicial officer may allow a telephonic appearance or an appearance by any approved electronic means during any proceeding. If more than one participant has requested a telephonic or electronic appearance, the first party requesting a telephonic appearance must arrange for the conference call at that party's expense, unless the court orders otherwise.~~

~~**(b) Time.** Unless a judicial officer authorizes a shorter time, a motion to allow telephonic testimony or argument via telephonic or other approved electronic means must be filed no later than 30 days before the hearing. However, if the notice setting the hearing provides less than 30 days' notice, the motion must be filed no later than 5 days after receiving the hearing notice. The motion must be served on all parties and on any person who has filed a demand for notice, and must be accompanied by a proposed order.~~

~~**(c) Objection.** A party opposing a motion for telephonic or electronic appearance, or for telephonic or electronic testimony, must file a response no later than 5 days after the motion is served.~~

~~**(d) Transmission Quality.** Telephonic or electronic appearances and testimony must be of such quality that the voices of all parties and counsel are audible to each participant, the judicial officer, and, if applicable, the certified reporter or electronic recording device.~~

~~[**Staff Note:** Consider adopting language substantially like recently restyled Family Law Rule 8, which provides as follows. Among other things, the Family Law rule makes useful distinctions between appearances at non-evidentiary and evidentiary proceedings, and includes provisions for introducing documents.]~~

Rule ~~8~~11. Telephonic ~~Appearances~~ Attendance and Testimony.

(a) Meaning of "Telephonic." When used in this rule, "telephonic" includes an appearance or testimony by telephone, by videoconferencing, or by other available audio or audiovisual ~~and video~~ technology.

~~(b) Appearance of a Party at a Non-Evidentiary Proceeding~~Telephonic Attendance and Testimony. The court may allow a ~~party~~ person to attend or testify ~~appear~~ telephonically at a ~~non-evidentiary~~ proceeding if ~~each~~the person ~~will be audible to~~can be heard by every other person participating in the proceeding, including ~~the judge~~the judicial officer, and, if applicable, ~~to~~ the court reporter or an electronic recording system.~~.~~

(b) ~~**Testimony of a Party or Witness at an Evidentiary Proceeding.** On request of a party or a witness or on its own, and subject to A.R.S. § 25-1256(F), the court may allow a party or witness to testify telephonically~~

~~**(c)** if the court finds it would not substantially prejudice any party and the testifying party or witness:~~

~~**(1)** is not reasonably able to attend the hearing or trial;~~

~~**(2)** would be unduly inconvenienced by attending the hearing or trial in-person; or~~

~~**(3)** would incur a burdensome expense to attend the hearing or trial in-person.~~

~~**(d)**~~**(c)** ~~**Request**~~ **Motion** **to** ~~**Testify by a**~~ **Allow** **Telephonic** ~~**Appearance**~~**Attendance or Testimony.**

(1) ***Time.*** ~~A party must file a request to have a party or witness give telephonic testimony within a time that allows the opposing party a reasonable opportunity to respond.~~Unless a judicial officer authorizes a shorter time, a motion to allow telephonic attendance or testimony must be filed no later than 30 days before the hearing. However, if the notice setting the hearing provides less than 30 days' notice, the motion must be filed no later than 5 days after receiving the hearing notice. The motion must be served on all parties and on any person who has filed a demand for notice, and must be accompanied by a proposed order.

(2) ***Objection.*** A party opposing the motion must file a response no later than 5 days after the motion is served.

~~**(1)**~~

~~**(2)**~~**(1)** ***Reply and Oral Argument~~~~Hearing~~.** The court may rule on the ~~request~~motion without a reply or ~~with or without~~ ~~a hearing~~oral argument.~~.~~

~~**(e)**~~**(d)** **Use of Exhibits** ~~**Introducing Documents**~~ **During Telephonic Testimony.** Before a party may question a person ~~introduce exhibits~~question a person ~~through a party or witness who~~ testify~~ies~~ing telephonically about an exhibit, that party must:~~:~~

(1) have ~~the party calling~~every party questioning ~~the witness~~ ~~person about an exhibit must make a good faith effort to contact the opposing~~all p~~parties~~arty to identify ~~and~~ provide~~d~~ that person and all parties, in advance, with a copy of that exhibit~~s~~ ~~that will be used during the witness's~~ person's ~~testimony~~, marked so that it can be easily identified by that person, ~~any~~all parties, and the court; and, ~~party and the person testifying;~~

~~**(2)** the exhibits must be provided in advance to the party or witness;~~

~~(3)~~(1) ~~the party who introduces the exhibits must affirm~~confirm to the court that the ~~they~~ exhibit provided to the court is ~~are accurate copies o~~identical to~~f~~ the exhibit~~s~~ provided to the ~~party or witness~~person who is ~~appearing~~ testifying telephonically.

(e) Costs of Telephonic Attendance or Testimony~~Responsible Party~~. The ~~party~~ person ~~requesting a~~seeking telephonic attendance or testimony ~~appearance, or who presents a witness's testimony telephonically,~~ must arrange it, and ~~pay the related cost~~, unless the court orders otherwise, pay the related costs.~~]~~

COMMENT

[WKGRP CMT: Workgroup suggests removing the first two paragraphs.]

While telephonic appearance and testimony or argument are encouraged as time and cost-saving methods of addressing probate matters, a number of issues bear consideration. First, courts throughout the state have different telephone technology, some of which is better suited than others for telephonic appearances. For that reason, the judicial officer assigned to the case must approve the request in advance of the hearing.

Second, last-minute requests are discouraged. Judicial officers may not have an opportunity to consider a last-minute request because of the pressure of other court business.

Finally, a party should carefully consider a request to present telephonic testimony or arguments in a contested matter. A witness's demeanor while testifying is an important factor used by the court to assess a witness's credibility. A party who offers a witness by telephone may be at a disadvantage if the testimony is contradicted by a witness who personally appears. Judicial officers may reject an untimely request if it detracts from the court's ability to address other matters on the court's calendar or if it affects the court's ability to judge the demeanor of the witnesses in a contested matter.

~~(f)~~

Rule 11. Telephonic Attendance and Testimony.

(a) Meaning of "Telephonic." When used in this rule, "telephonic" includes an appearance or testimony by telephone, by videoconferencing, or by other available audio or audiovisual technology.

(b) Telephonic Attendance and Testimony. The court may allow a person to attend or testify telephonically at a proceeding if the person can be heard by every other person participating in the proceeding, including the judicial officer, and, if applicable, the court reporter or an electronic recording system.

(c) Motion to Allow Telephonic Attendance or Testimony.

(1) ***Time.*** Unless a judicial officer authorizes a shorter time, a motion to allow telephonic attendance or testimony must be filed no later than 30 days before the hearing. However, if the notice setting the hearing provides less than 30 days' notice, the motion must be filed no later than 5 days after receiving the hearing notice. The motion must be served on all parties and on any person who has filed a demand for notice, and must be accompanied by a proposed order.

(2) ***Objection.*** A party opposing the motion must file a response no later than 5 days after the motion is served.

(3) ***Reply and Oral Argument.*** The court may rule on the motion without a reply or oral argument.

(d) Use of Exhibits During Telephonic Testimony. Before a party may question a person testifying telephonically about an exhibit, that party must:

(1) have provided that person and all parties, in advance, with a copy of that exhibit, marked so that it can be easily identified by that person, all parties, and the court; and,

(2) confirm to the court that the exhibit provided to the court is identical to the exhibit provided to the person who is testifying telephonically.

(e) Costs of Telephonic Attendance or Testimony. The person seeking telephonic attendance or testimony must arrange it, and, unless the court orders otherwise, pay the related costs.

COMMENT

[WKGRP CMT: Workgroup suggests removing the first two paragraphs.]

While telephonic appearance and testimony or argument are encouraged as time and cost-saving methods of addressing probate matters, a number of issues bear consideration. First, courts throughout the state have different telephone technology, some of which is better suited than others for telephonic appearances. For that reason, the judicial officer assigned to the case must approve the request in advance of the hearing.

Second, last-minute requests are discouraged. Judicial officers may not have an opportunity to consider a last-minute request because of the pressure of other court business.

Finally, a party should carefully consider a request to present telephonic testimony or arguments in a contested matter. A witness's demeanor while testifying is an important factor used by the court to assess a witness's credibility. A party who offers a witness by telephone may be at a disadvantage if the testimony is contradicted by a witness who personally appears. Judicial officers may reject an untimely request if it detracts from the court's ability to address other matters on the court's calendar or if it affects the court's ability to judge the demeanor of the witnesses in a contested matter.

Workgroup 3 Catherine Robbins assigned

Rule 20. Affidavit of Proposed Guardian or Conservator.

(a) Generally. Before the court may appoint any person as a temporary or permanent guardian or conservator, the person must complete and file the disclosure affidavit required by A.R.S. § 14-5106. [**Staff Note:** The draft adds "temporary or permanent," which is found in the current comment and in the statute.]

(b) Exception. The disclosure affidavit is not required if the proposed guardian or conservator is a national banking association, a holder of a banking permit under Arizona law, a savings and loan association authorized to conduct trust business in Arizona, a title insurance company qualified to do business in Arizona, a trust company holding a certificate to engage in trust business from the superintendent of financial institutions, or a public fiduciary office.**[Staff Note:** Section (b) is derived from a comment to the current rule.]

~~**COMMENT**~~

~~The disclosure affidavit is required regardless of whether the appointment sought is temporary or permanent. *See* A.R.S. § 14-5106(A). The disclosure affidavit is not required of a national banking association, a holder of a banking permit under Arizona law, a savings and loan association authorized to conduct trust business in Arizona, a title insurance company qualified to do business in Arizona, a trust company holding a certificate to engage in trust business from the superintendent of financial institutions, or a public fiduciary office. *See* A.R.S. §§ 14-5106(A) and -5411(B).~~

Workgroup Note: The workgroup was divided on whether it was necessary to retain this rule.

Workgroup 3 Catherine Robbins assigned

Rule 20. Affidavit of Proposed Guardian or Conservator.

(a) Generally. Before the court may appoint any person as a temporary or permanent guardian or conservator, the person must complete and file the disclosure affidavit required by A.R.S. § 14-5106. [**Staff Note:** The draft adds "temporary or permanent," which is found in the current comment and in the statute.]

(b) Exception. The disclosure affidavit is not required if the proposed guardian or conservator is a national banking association, a holder of a banking permit under Arizona law, a savings and loan association authorized to conduct trust business in Arizona, a title insurance company qualified to do business in Arizona, a trust company holding a certificate to engage in trust business from the superintendent of financial institutions, or a public fiduciary office.**[Staff Note:** Section (b) is derived from a comment to the current rule.]

Workgroup Note: The workgroup was divided on whether it was necessary to retain this rule.

Workgroup 3 Lisa Price assigned

Rule 21. Background Check Requirements.

(a) Appointment of a Non-Relative as Guardian of a Minor. A non-relative ~~who requests appointment~~ asking the court to be appointed as the guardian of a minor must submit to a criminal background investigation under A.R.S. § 14-5206(B).

(b) Court's Authority to Require Fingerprints. In accordance with A.R.S. §§ 14-5304 and -5401 and to enable it to conduct a criminal background investigation, the court may ~~require~~ order any person ~~who requests~~ asking to be appointed ~~appointment~~ as a guardian or conservator to ~~furnish~~ submit to the court a full set of fingerprints. This requirement does not apply to a fiduciary ~~who is~~ licensed under A.R.S. § 14-5651 or an employee of a financial institution.

(c) Procedure for Background Check. As required by law or the court, the person requesting appointment as a guardian or conservator must submit a full set of fingerprints and pay the required fee to the ~~superior~~ court ~~in that county~~. The cost may not exceed the actual cost of obtaining the person's criminal history information. The court will forward the background check application, fingerprint card, inventory sheet, and processing fee directly to the Arizona Department of Public Safety. In emergency circumstances, the court may make a temporary appointment pending receipt of the background check results.

COMMENT

~~A person not related to a minor who wishes to be appointed as guardian for that minor must undergo a criminal background investigation before the hearing on the petition to appoint a guardian. At the court's discretion, other persons seeking appointment must undergo a criminal background investigation before appointment as a guardian or conservator. Licensed fiduciaries undergo background checks in the licensing process. Employees of financial institutions are exempted from these requirements by statute. The[JL1] investigation is designed to assist the court in determining the applicant's suitability to serve as a guardian or conservator. Applicants should contact the court or clerk division assigned to probate matters in the county for information regarding how to obtain a fingerprint card application and inventory sheet (where applicable) and where to be fingerprinted.~~

The Department of Public Safety conducts criminal history records checks pursuant to A.R.S. § 41-1750 and Public Law 92-544. The Department submits the fingerprint card information to the Federal Bureau of Investigation for a national criminal history records check. The Department of Public Safety then forwards the

results of the background check to the court before appointment occurs.

The[li2] criminal background check process may take ~~six to eight~~ several weeks to complete once the Department of Public Safety has received the paperwork from the court or clerk. In most circumstances, the court will not make the appointment until the background check has been completed. ~~In emergency circumstances, the court may make a temporary appointment pending receipt of the background check results.~~

In most counties, the clerk's office is charged with the responsibility for distributing the fingerprint cards and instructions for fingerprinting to applicants for appointment as a guardian or conservator. In Maricopa County, the Probate Court Administrator's Office handles the fingerprinting process.

WORKGROUP NOTE: The workgroup proposes the remaining text of the comment be included in an information sheet provided by the clerk, and that the comment be deleted from the rule.

Workgroup 3 Lisa Price assigned

Rule 21. Background Check Requirements.

(a) Appointment of a Non-Relative as Guardian of a Minor. A non-relative asking the court to be appointed as the guardian of a minor must submit to a criminal background investigation under A.R.S. § 14-5206(B).

(b) Court's Authority to Require Fingerprints. In accordance with A.R.S. §§ 14-5304 and -5401 and to enable it to conduct a criminal background investigation, the court may order any person asking to be appointed as a guardian or conservator to submit to the court a full set of fingerprints. This requirement does not apply to a fiduciary licensed under A.R.S. § 14-5651 or an employee of a financial institution.

(c) Procedure for Background Check. As required by law or the court, the person requesting appointment as a guardian or conservator must submit a full set of fingerprints and pay the required fee to the court. The cost may not exceed the actual cost of obtaining the person's criminal history information. The court will forward the background check application, fingerprint card, inventory sheet, and processing fee directly to the Arizona Department of Public Safety. In emergency circumstances, the court may make a temporary appointment pending receipt of the background check results.

COMMENT

~~A person not related to a minor who wishes to be appointed as guardian for that minor must undergo a criminal background investigation before the hearing on the petition to appoint a guardian. At the court's discretion, other persons seeking appointment must undergo a criminal background investigation before appointment as a guardian or conservator. Licensed fiduciaries undergo background checks in the licensing process. Employees of financial institutions are exempted from these requirements by statute. The~~[li1] ~~investigation is designed to assist the court in determining the applicant's suitability to serve as a guardian or conservator. Applicants should contact the court or clerk division assigned to probate matters in the county for information regarding how to obtain a fingerprint card application and inventory sheet (where applicable) and where to be fingerprinted.~~

The Department of Public Safety conducts criminal history records checks pursuant to A.R.S. § 41-1750 and Public Law 92-544. The Department submits the fingerprint card information to the Federal Bureau of Investigation for a national criminal history records check. The Department of Public Safety then forwards the results of the background check to the court before appointment occurs.

The[li2] criminal background check process may take several weeks to complete once the Department of Public Safety has received the paperwork from the court or clerk. In most circumstances, the court will not make the appointment until the background check has been completed.

In most counties, the clerk's office is charged with the responsibility for distributing the fingerprint cards and instructions for fingerprinting to applicants for appointment as a guardian or conservator. In Maricopa County, the Probate Court Administrator's Office handles the fingerprinting process.

WORKGROUP NOTE: The workgroup proposes the remaining text of the comment be included in an information sheet provided by the clerk, and that the comment be deleted from the rule.

Workgroup 3 Catherine Robbins assigned

Rule 26.1. Request for Findings on Appointment.

~~A person with a higher priority for appointment as a guardian or conservator, and who the court passed over[ro1] by appointing a person with lower priority, may file a request, no later than 10 days after the appointment order's filing, asking the court to make a specific finding and determination of good cause why the higher priority person was not appointed.[ro2]~~

~~New Language Proposed (CRR): No later than 10 days after a guardianship and/or conservatorship appointment order filing date naming a lower priority person over a higher priority person, the higher priority person may file a request asking the court to make a specific finding and determination of good cause as to why the higher priority person was not appointed.~~

[ro3]Workgroup recommends deletion of this rule because the subject is covered by 14-5311(G) and 5410(C).

But consider whether the rule is necessary to deal with priority of a guardian for a minor.

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[ro3]Workgroup recommends deletion of this rule because the subject is covered by 14-5311(G) and 5410(C).

But consider whether the rule is necessary to deal with priority of a guardian for a minor.

Rule 27.1. Training for ~~Fiduciary New Appointment~~Non-Licensed Fiduciaries ~~Probate Training~~.

~~**Generally.** Before the court will issues letters of to serve as a guardian, conservator, or personal representative, and unless the court orders otherwise ordered by the court, the appointed fiduciary must complete a training program approved by the Supreme Court, and file the Certificate of Completion with the court.[li1] [**Staff Note**: Should the rule require the appointed person to file the completion certificate with the court making the : Should the rule require the appointed person to file the completion certificate with the court making the appointment[li2]?]?]~~

(a) ~~New proposed language (CRR):~~A ~~An appointed guardian, conservator, or personal representative~~guardian, conservator, or personal representative must complete prescribed ~~probate~~ training programs approved by the Supreme Court and file a Certificate of Completion with the court before letters of appointment are issued, unless the court orders otherwise.

~~(a)~~**(b) Exceptions.** The requirement in ~~of section~~ (a) does not apply to:

(1) a fiduciary licensed under A.R.S. § 14-5651; or

(2) a financial institution, under A.R.S. §14-5651(K)(2).

~~**(3)** a temporary or emergency appointment **[Staff Note:** The foregoing phrase was used in lieu of language in the current rule which says, "appointment was made pursuant to Sections 14-5310(a), 14-5401.01(a) or 14-5207(c)"], which is subject to the requirements inof section (d).~~

~~**(b) Financial Institution.** For this rule's purposes of this rule, "financial institution" means:~~

~~**(1)** a bank that is insured by the federal deposit insurance corporation and chartered under the laws of the United States or any state;,~~

~~**(2)** a trust company that is owned by a bank holding company that is regulated by the federal reserve board;, or~~

~~**(3)** a trust company that is chartered under the laws of the United States or the this Sstate of Arizona.~~

~~**(c)** **Temporary or~~**~~**or Emergency** **Appointment.**[ro3][ro4] If a fiduciary was appointed on a temporary basis, or because an emergency existed, the fiduciary must complete the~~

~~training program within 30 days of the appointment, or before the permanent appointment of the fiduciary, whichever is earlier. For good cause, T~~the ~~court for good cause may extend the time for the fiduciary to complete the training program.~~

(c) ~~New proposed language (CRR): A person appointed under emergency or~~ Within 30 days after a ~~temporary~~temporary appointment or before a permanent appointment, whichever is earlier, the appointed person must comply with the training requirements, unless the court orders otherwise ~~no later than 30 days after appointment or before the permanent appointment, whichever is earlier~~. ~~(CRR Note: good cause is duplicative, see sub (a) above to this rule.)~~

Rule 27.1. Training for Non-Licensed Fiduciaries.

(a) Generally. A guardian, conservator, or personal representative must complete prescribed training programs approved by the Supreme Court and file a Certificate of Completion with the court before letters of appointment are issued, unless the court orders otherwise.

(b) Exceptions. The requirement in (a) does not apply to:

(1) a fiduciary licensed under A.R.S. § 14-5651; or

(2) a financial institution, under A.R.S. §14-5651(K)(2).

(c) Temporary Appointment.[ro1][ro2] Within 30 days after a temporary appointment or before a permanent appointment, whichever is earlier, the appointed person must comply with the training requirements, unless the court orders otherwise.