Task Force on the Arizona Rules of Probate Procedure

Meeting Agenda

Friday, August 24, 2018
10:00 a.m. to 4:00 p.m.
State Courts Building * 1501 West Washington * Conference Room 230 * Phoenix, AZ

Item no. 1	**Call to Order**	*Hon. Rebecca Berch, Chair*
Item no. 2	**Approval of the July 27, 2018 meeting minutes**	*Justice Berch*
Item no. 3	**Consent agenda:** Rule 11 ("Telephonic and Video Attendance and Testimony") Rule 16 ("Applications in Probate Proceedings") Rule 17 ("Petitions in Probate Proceedings") Rule 22 ("Order Appointing Guardian, etc.") Rule 29 ("Alternative Dispute Resolution")	 *Judge Polk* *Mr. Barron* " " *Mr. Fleming* *Mr. Barron*
Item no. 4	**Workgroup reports and discussion of rules** **Workgroup 1: Rule 9, Rule 12 (revisited), and Rules 12.1-12.5** **Workgroup 2: Rule 28 (partial), and an issue regarding Civil Rule 26(f)** **Workgroup 3: Rules 24 and 36, and Rule 37 (revisited)**	 *Judge Polk* *Mr. Barron* *Mr. Fleming*
Item no. 5	**Roadmap** • **Next meeting: Friday, September 28 [Room 230]** • **Proposed meeting schedule:** o Friday, October 26 [Room 119]**?** o Friday, November 16 [Room 230] o Friday, December 14 [Room 119]	*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: July 27, 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. John Paul Plante, Hon. Jay Polk, Catherine Robbins personally and by her proxy Heidi Harris, Denice Shepherd

Absent: Hon. Robert Carter Olson, Lisa Price, T.J. Ryan, Hon. Wayne Yehling

Guests: Maridel Soileau

AOC Staff: Jodi Jerich, Mark Meltzer, Angela Pennington, Theresa Barrett

1. Call to order; preliminary remarks; approval of meeting minutes. The Chair called the fourth Task Force meeting to order at 10:05 a.m. She introduced a guest, Maridel Soileau, who is the probate registrar for the Superior Court in Maricopa County, and Heidi Harris, a proxy for Ms. Robbins. The Chair then asked members to review draft minutes of the third Task Force meeting.

Motion: A member moved to approve the June 15, 2018 meeting minutes, the motion received a second, and it passed unanimously. **PRTF: 003**

2. Consent agenda. Two rules previously presented to the Task Force were returned to their respective workgroup for consideration of members' comments. These rules were subsequently revised by the workgroups and were placed on today's consent agenda for abbreviated discussion. The Chair assented to Judge Plante's request to remove one of those rules, Rule 16, from the consent agenda to allow a fuller discussion

Rule 6 (currently "Probate Information Form," and as proposed, "Probate Information Form and Notice of Change of Contact Information Form"): Judge Polk advised that Workgroup 1 removed the trust form from the draft and made several other minor changes. After the workgroup meeting, Judge Polk noted that the workgroup had omitted a "duty to correct" provision that had been in the previous draft, and he added that to the revised draft as a new subpart (b)(5). Members were concerned that the duty to correct was overbroad. After discussion and a tied straw vote, they narrowed petitioner's duty to correct only an incorrect date of birth or social security number on a previously filed probate information form. With this revision, members approved the updated draft of Rule 6, including the associated forms.

3. Workgroup 3. The Chair then invited Judge Mackey to present Workgroup 3's rules. Ms. Soileau participated in the discussion of Workgroup 3's Rules 22 and 26, and in Workgroup 2's Rule 16.

Rule 22 (currently, "orders appointing conservators, guardians, and personal representatives; bonds and bond companies; restricted assets," and as proposed, "order appointing guardian, conservator, personal representative, or special administrator"): The Task Force had previously reviewed Rule 22 and returned the rule to the workgroup with comments. Judge Mackey reviewed the workgroup's most recent revisions.

The previous version included Rule 22(b), titled "bonds." The subparts of that provision required a bond to include the name and address of the bonding company's statutory agent and required the company to notify the court if this information changed. The workgroup deleted section (b) because the subject of bonds did not fit well within the scope of Rule 22. (A draft Rule 22.1 titled "bonds" was also deleted.) Moreover, the subject of bonds is covered by statute, and incorrect information concerning the statutory agent's address for service of process is rare in probate cases.

Because of the deletion of section (b), former draft Rule 22(c) ("restrictions on authority and accounts") became the new section (b) ("restrictions on authority"). Judge Mackey explained that the language for restrictions in subpart (b)(1) regarding real property, monetary assets, and guardians are examples. These examples are not all-inclusive, and judges can add other language on a case-by-case basis. Under subparts (b)(2) and (b)(3), a fiduciary is responsible for assuring that proof of a restricted account is filed, and the fiduciary's attorney is responsible for assuring that the account is established and properly titled.

During a discussion of these revisions, members agreed to remove from subpart (b)(1) a sentence that said, "Any such restriction [in an order] must be included, in the same language, in the letters." They did so because Rule 26, which concerns the issuance of the letters, contains a similar provision. Judge Mackey reiterated that the three restrictions in section (b) (regarding real property, monetary assets, and guardians) are suggested language, and the court may modify the language as appropriate in the circumstances. Members discussed whether the restriction example for real property should begin with the words, "no real property," as stated in the draft, or whether it should be rephrased to refer to "all" or "the following" real property (or, "[specified] real property may not be sold, encumbered, or conveyed, etc.") They agreed to the rephrased version, and if the property is specified, it might also be useful when the letters are recorded. Because the restrictions are examples rather than directives, a member suggested relocating them as a comment to Rule 22. Although one member believed that the examples were unnecessary, even in the comment, another member thought it would be helpful to retain these examples to assist the attorneys who prepare appointment orders. Members concurred with the suggestion to move the restrictions to the comment.

Regarding the proof of restricted account in Rule 22(b)(2), a member proposed adding the words "unless the court orders otherwise" after the requirement that proof

must be filed within 30 days. The member noted there are instances where 30 days is not realistic. Members agreed to this change. The member also noted that the Supreme Court has on its website a proof of restricted account form; the member suggested that the rule refer to the form. However, some financial institutions routinely use they own forms. Members agreed to add language that the form that is used must be "substantially similar" to the Court's form.

A final comment addressed bracketed language in draft Rule 22(a)(3), which says in part, "If the court orders a bond [or a bond is required by law], the order must state the bond amount…." It appears that it is the court rather than a statute that sets the bond amount, and sometimes the registrar specifies the amount. Accordingly, members agreed to delete the bracketed language and add the words, "or registrar," after "court."

Rule 26 (currently, "Issuing and Recording of Letters," and as proposed, "Issuing and Recording Letters of Appointment"): Judge Mackey noted the retitling of this rule. The draft rule improves on the current rule by adding titles for each section. The workgroup added a new section (a) concerning "scope" and a new section (b) that provides a definition of "letters of appointment." Section (c) tracks language of the current rule regarding the duration of an appointment. Section (d), "limitation of authority," requires the letters to include language in the order that restricts the fiduciary's authority and ties in to the previously-discussed provisions on restrictions in Rule 22. Sections (e) ("certified copies") and (f) ("recording") also track language of the current rule. Judge Mackey noted that the workgroup discussed adding a list in this rule that described what the clerk must do before issuing letters but decided against it because of the difficulty of making the list all-inclusive, and because clerks maintain their own lists. The workgroup deleted the comment to the current rule.

A member asked what should happen if there is an inconsistency between an order, or a signed minute entry that is effectively an order, and the letters. Members believe these are rare occasions — and the clerk will issue amended letters to conform to the order on those occasions — and agreed that a rule provision that addressed this circumstance was unnecessary. Members also discussed a provision in draft section (c) that requires a conservator to file a copy of recorded letters with the court that appointed the conservator within 30 days. The draft provision did not include a time limit for recording the letters, and members concurred with adding a requirement that the letters be recorded with the County Recorder within 10 judicial days. The members were evenly split on whether the rule should then require the filing of a copy of the recorded letters (one member believed the rule was often ignored), or whether it was sufficient to file a notice of recording rather than a copy of the recording. They concluded that it was the court's responsibility to monitor the conservator's compliance with this requirement, and they retained the requirement of filing a copy of the recorded letters. They increased the time to do this, however, from 30 days to 45 days. Members had no other changes to Rule 26 and they approved the rule with the revisions noted above.

4. Workgroup 2. The Chair requested Workgroup 2 to present its revisions to Rule 16 while Ms. Soileau was still present. Mr. Barron led the presentations on behalf of the workgroup.

Rule 16 (currently, "Applications," and as proposed, "Applications in Probate Proceedings"): There were two residual issues with draft Rule 16, which had been previously presented to the Task Force. One issue concerned the requirement that applications not only be submitted to the clerk, but that they be filed. The other issue revolved around the time the registrar should be allowed to act on an application.

After the previous Task Force meeting, Mr. Nash surveyed several clerks, representing about a fourth of Arizona's counties. He noted that not all clerks are registrars, and in at least one county the registrar is a judge. None of the individuals he contacted believed that acting on the application within two hours, as the draft rule provided, was feasible. On the other hand, they had no objection to the proposed requirement for filing applications. Ms. Soileau advised that the Superior Court in Maricopa County generally receives between 20 and 30 applications daily. She is the only official who can act on the applications, and she can review no more than 22 applications in a single day. She tries to process every application within one or two days, but she needs a third day as a cushion when necessary. Judge Plante added that Yuma clerks don't want the rule to specify a time limit, because if there is a delay in processing an application, there is a reason for it. Maricopa and Yavapai counties mail a declination letter or denial slip to an applicant, but Yuma does not. In the event of a declination, Pima County telephones the applicant, which is quicker than postal mail. In Maricopa County, a rejected application does not receive a case number, nothing is filed, and there is no filing fee.

One member proposed deleting Rule 16(c) ("action upon an application") in its entirety, because the issue it purports to address arises predominantly in Maricopa County. The member added that a better solution to Maricopa's issue might be adding more personnel in the registrar's office. Another member observed that declining an application is an informal process, that functions best when it is flexible, and that the rule should not unduly restrict how the registrar conducts the process. On the matter of filing applications, a member emphasized the benefits of making and preserving a court record.

The Chair then took a straw vote on whether to retain draft Rule 16(c)(2) (action by the registrar, including a requirement that the registrar act promptly and within two business hours.) By a margin of 2:1, members favored retaining the provision, but with the deletion of "but within two business hours." Members also concurred with the filing requirement in Rule 16(c)(1) (action by the clerk), but they agreed to delete the word "immediately" in the phrase "immediately file and retain the application" because "immediately" in subpart (c)(1) did not contrast well with "promptly" in subpart (c)(2).

Finally, members revised draft Rule 16(a)(6), which stated that the registrar "may enter any other order that the registrar is authorized by statute to issue," because the registrar does not enter orders. As revised, the provision states that the registrar may "take any other action authorized by statute."

5. Workgroup 3 (continued). Members then returned to Judge Mackey's presentation of Workgroup 3 rules.

Rule 25 ("Order to Fiduciary"): The workgroup's draft rule adds a new section (a) ("generally,") followed by four sections that respectively concern orders to a personal representative, a guardian, a conservator, and a guardian and conservator. The workgroup deleted the current rule's references to "forms in the Arizona Code of Judicial Administration ['ACJA']" in anticipation that the forms' location might change. The workgroup's draft clarifies that the fiduciary must sign the acknowledgement on the form before the court enters the order. The revised rule includes a reference to Form 3M, which is currently in the ACJA but is not referenced in the current rule. The workgroup found that the current form for guardians of adults also works for guardians of minors, so a new form for the latter was unnecessary. Draft section (a) states that "the court will not issue letters," which is not entirely accurate, and members agreed to change this to say, in the passive voice, "letter will not be issued to a personal representative [etc.]" Also, in that section, members agreed to change "filed an order" to "entered an order." With these revisions, members approved the rule.

Rule 35 (currently, "Civil Arrest Warrants, Orders to Show Cause, and Fiduciary Arrest Warrants," and as proposed, "Enforcement of Court Orders in Probate Cases"): Judge Mackey noted that a new section (a) in this rule clarifies the power of the court to enforce its orders in a probate case. The remaining three sections re-order the provisions of the current rule so orders to show cause follow warrants. Judge Mackey also observed that the draft rule includes certain statutory requirements, notably a requirement for actual notice of an order.

A member suggested, based on a reading of case law, adding the word "inherent" to a phrase in the first sentence of section (a) so that it says, "the court has inherent power to enforce compliance [etc.]" In the second sentence of section (a), the member suggested making "statute" plural in the phrase "the sanctions provided by statute." The last sentence of section (a) says, "This rule does not govern criminal contempt sanctions imposed to punish an offender or to vindicate the authority of the court." The member suggested putting a period after "sanctions" and deleting the remainder of the sentence. Members agreed with all three suggestions.

Rule 37 (currently, "Settlements Involving Minors or Incapacitated Adults," and as proposed, "Settlements Involving Minors or Adults in Need of Protection"): Judge Mackey observed that the workgroup's changes to this rule permit a broader range of investment options and authorize the court to approve those options. The workgroup deleted the comment to the current rule. Mr. Fleming reviewed the workgroup's

significant additions to this rule. New section (c) ("procedure on hearing") allows the court to appoint, if appropriate or necessary to assure that a settlement is fair and just, a guardian ad litem or a Civil Rule 53 master to address four described factors. New section (d) also allows the court to order, after considering specified factors, the establishment of a trust, a 529 account, an ABLE account, or a distribution under the Uniform Transfer to Minors Act, among other things.

One member inquired why section (a) is limited to settlements of personal injury or wrongful death claims. Mr. Fleming responded that the rule could be revised to encompass other claims; it has this limitation for the time being because it is in the current rule. Another member suggested that a conservator could not continue to withhold funds held on behalf of a minor after the individual attains the age of majority, regardless of the individual's lack of good judgment. Mr. Fleming believes that certain investment vehicles such as a trust or a 529 account could nonetheless continue to retain the funds. A member suggested adding a conservator in section (b) as someone who could file a petition under this rule, as well as changing "interested party" in that section to "interested person," and members agreed with these changes. Members made other suggestions that will necessitate the workgroup's further consideration of this rule, including the following:

- Should the rule include a specific reference to structured settlements?
- Are there other investments options that section (d) should include?
- Should the rule exclude minimal claims, i.e., under a certain dollar amount?
- Should the rule be expanded to encompass other claims, for example, claims related to an inheritance or a life insurance policy?
- Should section (a)'s "generally" provision be replicated in the civil rules?
- Using the factors specified in Rule 37, should a judge on a civil assignment have authority to approve settlements? (One member was cautious about this suggestion and would permit civil judges to have this authority only when they were knowledgeable about probate, or after they consulted on the case with a probate judge.)

Members were generally supportive of the concepts in revised Rule 37, but the workgroup will consider the members' suggestions and return the rule to the Task Force with further revisions.

6. **Workgroup 1.** Judge Polk presented Workgroup 1's rules.

Rule 11 ("Telephonic and Video Attendance and Testimony"): This was third meeting at which members considered Rule 11. Judge Polk noted that the workgroup added the words "and video" to the rule's title. The workgroup may in the future propose changing the word "proceeding" in this rule to "court event," but "proceeding" suffices for now. A partial comment to the rule has been preserved.

The primary issue today was consideration of two options in Rule 11(d), "time for making request" for telephonic attendance. Option 1 would require that a request be

made "in a timely manner considering the circumstances at the time the request was made," and identifies several circumstances for the court's consideration. Option 2 would require that a request be made "no later than 30 days before the proceeding." Judge Polk proposed a third option: that the time for making a request be established by local rules.

Members declined local rules as a standalone alternative, but they discussed using it in combination with options 1 and 2. Members also discussed logistical issues; one member suggested using something like California's "court call" system, but this is not something the Task Force could include in its procedural rule. Another member spoke in support of option 2 to avoid the surprise of a last-minute telephonic appearance of a witness. One member proposed a pared-down version of option 1 that would retain the first sentence but eliminate the specified circumstances. And another member suggested adding the words "or not" in the second circumstance, i.e., "whether or not it [the proceeding] is contested or evidentiary," which the members supported. Finally, a member submitted that adoption of option 2 with a local rule alternative would probably result in a dozen rural counties adopting local rules, whereas fewer counties would find a need to adopt local rules under option 1. On a straw vote, and by a margin of 2:1, members favored submitting only option 1, but with the addition of the prefatory words, "unless allowed by local rule."

Rule 12 (currently, "Non-Appearance Hearing," and as proposed, "Initial Hearing on a Petition"): Judge Polk explained that while current Rule 12 refers to a "non-appearance" hearing, the rule does not define it or distinguish it from an appearance hearing. This led the workgroup to draft a Rule XX, which Judge Polk mentioned at the June 15 Task Force meeting, concerning court events. In turn, Rule XX became Rule 12 in today's meeting packet. Judge Polk envisioned a series of Rule 12's (12.1, 12.2, 12.3, etc.), each describing a particular court event, i.e., the initial hearing, conferences, oral argument, settlement conferences, final hearings on petitions, compliance and order to show cause hearings, other hearings, and divisional review, all following the structural model of draft Rule 12. Judge Polk then reviewed draft Rule 12. The draft provides that an initial hearing is an appearance hearing unless it is set as a non-appearance hearing. Rule 12 uses the term "opposition" rather than "objection" to be consistent with Rule 17.

One member thought that Rule 12 was redundant to Rule 17. Another member questioned the merit of adopting several new rules as a supplement to a single existing rule. On the other hand, "non-appearance hearing" is an embedded term, and no one had a more descriptive substitute (although one member proposed "summary disposition.") Judge Polk added that civil rules describing court events aren't adequate in probate cases because they lack information about such matters as providing notice, serving documents, and submitting an opposition. The Chair believed Rule 12 was helpful but noted redundancy in sections (c) and (d) and asked the workgroup to consider consolidating them. Members agreed that the rule should refer to an initial hearing on a petition, but not necessarily define it with the terms "appearance" and "non-

appearance." A member suggested using the word "attendance" rather than "appearance." Members agreed that it is useful to have a court event such as a non-appearance hearing where attorneys do not need to appear if there is no opposition to a petition. Members did not support a rule-by-rule explanation of the other court events proposed by Judge Polk because stakeholders know what these events are, and the terms are not confusing. They especially felt there was no need to refer to a divisional review, which is utilized only in Maricopa County. Judge Polk advised that the workgroup would revise the draft after considering today's discussion and would consider incorporating in the next version certain provisions of Rule 9 regarding notice.

7. **Workgroup 2 (continued).** Mr. Barron made presentations on Rules 17 and 18, which the Task Force had considered at previous meetings, and he made the initial presentations on Rules 27, 28, and 29.

Rule 17 ("Petitions in Probate Proceedings") and Rule 27 ("How a Probate Proceeding Becomes Contested"): Mr. Barron noted that in section (g), the workgroup changed "a petitioner may not file a reply" to "a party may not file a reply." Members agreed with this change but deferred to a later date a discussion about counterpetitions.

At the beginning of section (e) ("response to a petition"), the workgroup added the words, "A proceeding becomes contested when a party opposes a petition as follows." The phrase fits well in the context of Rule 17 and adding it would allow the Task Force to delete current Rule 27. Members agreed with this addition to section (e) and with the abrogation of Rule 27.

Rule 18 ("Motions in Probate Proceedings"): The Task Force previously suggested that the workgroup add a second sentence to this rule, which it did as follows: "Unless required by the Civil Rules, a judicial officer may rule on a motion without a hearing or oral argument." Although workgroup members did not favor retaining this sentence, they asked Task Force members whether it might be helpful for self-represented litigants. One Task Force member proposed abrogating the entirety of Rule 18, but other members agreed that it serves the purpose of contrasting motions with petitions and applications. The definition of a motion therefore belongs in Rule 18 rather than Rule 2.1. Members approved Rule 18 with the additional second sentence.

Rule 28 ("Pretrial Procedures"): This rule was on the agenda for general discussion rather than a discussion of specific text. The workgroup requested this discussion because of civil justice reform amendments to the civil rules that became effective on July 1, 2018. A newly adopted Civil Rule 26.2, establishes a three-tier system for discovery that is primarily based on the dollar value at issue in the case.

Among the questions posed by members during the discussion were the following: Should tiering apply to some but not all probate cases? Are the monetary limits in Rule 26.2 useful in probate litigation, or should some types of probate cases be exempt from the tiering system? Should tiering apply only to ligation involving decedent's

estates? Should the Task Force in a probate rule modify the criteria in Civil Rule 26.2 so they are more applicable to probate? If there are tiering requirements in probate, should parties be allowed to waive them? Should there be a fourth tier solely for probate cases? Should every probate case be exempt from tiering?

Members noted that most probate cases are not contested. In cases that are contested, the court generally requires a proposed scheduling order or a case management order, either of which could provide limits for discovery in the case without reference to a tier. A judge member observed that in civil litigation, parties frequently are of unequal financial means, which can result in a prolonged discovery period. However, this is less common in probate cases. The judge member thought a tiering system might be too rigid for probate, and instead proposed the adoption of a general rule that specified that discovery must be proportional to what was at issue in the case. Finally, a member noted a recent amendment to A.R.S. § 14-1304 (Laws 2018, Chapter 102): "Unless specifically provided to the contrary in this title or unless inconsistent with its provisions, the rules of ~~civil~~ probate procedure ~~including the rules concerning vacation of orders and appellate review~~ govern formal proceedings under this title." Accordingly, the probate rules are primary in formal probate proceedings, although the probate rules can, and do, incorporate the civil rules by reference. This amendment might open the door for the probate rules to be exempt from the civil tiering rules. The workgroup will consider this discussion and present its proposed Rule 28 at a future meeting.

Rule 29 ("Alternative Dispute Resolution"): The workgroup's proposed version of this rule is significantly shorter than the current rule because it omits section (c) ("report to the court") and (d) ("other duties"). The three sections of the proposed rule are titled "generally," "duty to confer and participate," and "arbitration." In the "generally" section, members agreed to remove "mediation" in the phrase "such as mediation, a settlement conference, or [etc.]" and to change the concluding words of the section from "private dispute resolution" to "private mediation or arbitration." Members approved the rule with these changes.

8. Other matters. The Chair deferred a discussion of Rule 38 ("forms") to a future meeting.

The Chair noted that a July 19, 2018 letter signed by 10 Yuma County probate attorneys was distributed to Task Force members. The Chair welcomes comments from stakeholders. The Chair observed that the July 19 letter raises some valid concerns about simplifying forms and other issues. The letter indicated that the attorneys would provide a written proposal, and the Task Force will review this; the Chair requested that their proposal be submitted as soon as practicable. The Chair added that the Task Force is aware of the complexity of certain rules, and it is attempting to simplify them while also assuring that the rules adequately protect the public.

A judge member noted that e-filing could have an impact on the probate rules, but it is not known when e-filing might become available in probate cases.

9. **Roadmap.** Based on a previous staff poll of members, the Chair confirmed Friday, August 24 as the next Task Force meeting date. Other proposed dates, all of which are Fridays, are September 28, October 26, November 16, and December 14. Some members are unavailable on certain proposed dates, but the Chair asked that members schedule these dates on their calendars.

The Chair stated that the Task Force made good progress at today's meeting, but it is not progressing as quickly as initially anticipated. More than half of the rules have not yet been considered by the Task Force, and the petition filing deadline is January 10, 2019. Moreover, a considerable amount of additional work needs to be done before filing, such as preparing the petition and any appendices. It also would be helpful to obtain prefiling vetting of the proposed rules; this allows the Task Force to modify the rules based on issues — large or small — that stakeholders may raise before the petition is filed. In sum, the Task Force needs sufficient lead time to prepare its work product prior to the filing date, and members should be mindful of this as they continue to meet.

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

11. **Adjourn.** The meeting adjourned at 3:47 p.m.

Rule 9. Notice of Initial Hearing on Petition.

(a) Required Content. ~~A~~ The notice ~~for~~ of ~~any~~ an initial hearing on a petition required by Rule 12(b) ~~, including a hearing on a motion,~~ must state:

(1) the title of the ~~matter~~ petition to be heard;

(2) the date, time, and place of the initial hearing; and

~~(3)~~ the name of the judicial officer before whom the ~~matter~~ petition is set for hearing~~; and~~

~~(4)~~(3) ~~whether the hearing is set as an appearance hearing or a non-appearance hearing~~.

~~**Required Warnings.**~~

~~Unless the court has specified that the petitioner and the petitioner's attorney are not required to attend the initial hearing, t~~The notice ~~also~~ must include the following warning:

~~This is a legal notice; your rights may be affected. Éste es un aviso legal. Sus derechos podrían ser afectados.~~

~~The petitioner and the petitioner's attorney are the only persons who are required to attend this hearing. However, if you oppose any of the relief requested in the petition that accompanies this notice, you must file with the court a written response, or a motion under Rule 12 of the Arizona Rules of Civil Procedure, at least 7 days before the hearing date or you or your attorney must attend the hearing. Any written response must comply with Rule 17(c) of the Arizona Rules of Probate Procedure. If you do not file a timely response or attend the hearing:~~

~~The court may grant the relief requested in the petition without further proceedings, and~~

~~You will not receive additional notices of court proceedings relating to the petition unless you file a Demand for Notice pursuant to Title 14, Arizona Revised Statutes.~~

(b) ~~If the court has specified that the petitioner and the petitioner's attorney are not required to attend the initial hearing, t~~The notice ~~also~~ must include the following warning:

This is a legal notice; your rights may be affected. [~~, Éste es un aviso legal. Sus derechos podrían ser afectados.~~ Note: Delete bracketed text?]

~~No person is~~You are not required to attend this hearing. However, ~~I~~if you

Commented [JMP1]: I added "Initial" and "on Petition" to be consistent with the proposed changes to Rule 12 (Initial Hearing on a Petition) and because notices of hearing are only required for the initial hearing on a petition.

Commented [JMP2]: Again, the notice of hearing concept only applies to the initial hearing on a petition.

Commented [JMP3]: I replaced "matter" with "petition" because "matter" is ambiguous. A notice of hearing is only required when an initial hearing is set on a petition.

Commented [JMP4]: In other words, the default will be that a hearing is presumed to be an appearance hearing (but without using that phrase).

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Commented [JMP5]: I made changes here to conform with Workgroup #2's changes to Rule 17, which deals with when objections must be filed (and which changes the terminology from "object" to "oppose" and from "objection" to "response." I also have changed "appear" to "attend" and removed "in person" because the court might allow a telephonic appearance.

Commented [JMP6]: An alternative would be to replace the second sentence in (1) and (2) with the following: "You or your attorney need to attend this hearing only if you oppose any of the relief requested in the petition that accompanies this notice and you have not filed a written response, or a motion under Rule 12 of the Arizona Rules of Civil Procedure, at least 7 days before the hearing date." Only option would be to have a single notice of hearing (regardless of whether the hearing is appearance or non-appearance). To accomplish this, I recommend deleting the first two sentences (beginning with, "The petitioner and the petitioner's attorney . . . .") and replacing it with the sentence I just proposed in this comment as an alternative.

Commented [JMP7]: This paragraph sets forth the warning for what we commonly refer to as a non-appearance hearing (but, under my proposal, the rules no longer will use that label).

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~~object to~~ oppose ~~any part of the petition or motion that~~any of the relief requested in the petition that accompanies this notice, you must file with the court a written ~~objection~~ response~~, or a motion under Rule 12 of the Arizona Rules of Civil Procedure,~~ at least~~describing the legal basis for your objection at least 3~~ 7 days before the hearing date or you or your attorney must ~~appear in person or through an attorney at the time and place set forth in the notice of hearing~~ attend the hearing. ~~-~~Any written response must comply with Rule 17(e) of the Arizona Rules of Probate Procedure. If you do not file a timely response or attend the hearing:

(1) The court may grant the relief requested in the petition without further proceedings, and

(2) You will not receive additional notices of court proceedings relating to the petition unless you file a Demand for Notice pursuant to Title 14, Arizona Revised Statutes.

(c) Required Copy of the Petition or Motion. Except for notices that are published, the notice must be accompanied by a copy of the petition ~~or motion~~ that is the subject of the initial hearing, unless the court orders otherwise or the ~~party~~ person being served waives this requirement. ~~[**Staff Note:** Because of this requirement, can't the petition or motion include in the caption the information required in section (a), so there is one document rather than two?]~~

(d) Petition for the Confirmation of a Sale of Real Estate.

(1) ***Notice of Hearing.*** In addition to the information required by (a) and (b), a~~A~~ notice of ~~the~~ an initial hearing on a petition for the confirmation of a sale of real estate must contain the following information:

(A) the name and telephone number of the petitioner or the petitioner's attorney;

(B) the proposed sales price ~~[**Staff Note:** Wouldn't the proposed price be in the petition?]~~;; and

(C) a statement that the court may consider other bids at the hearing.

(2) ***~~Transmitting~~Providing, Posting, and Publishing the Notice.*** ~~[**JWR Note:** I could be wrong, but I don't think the rule is talking about service. Subsection (e), however, seems to suggest otherwise.]~~

(A) ~~*Transmitting*~~ *Providing the Notice to Interested Persons*. The notice of the hearing must be provided to all interested persons as required by A.R.S. § 14-1401(A), unless the court orders otherwise.

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Commented [JMP8]: Changed "party" to "person" because the person being served is not a "party" until the person actually appears in the action. Also removed "or motion" because notices of hearing don't apply to motions.

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Commented [JMP9]: No. The interested person is entitled to receive a copy of the petition; otherwise, the person won't know what relief is being requested. What staff is suggesting is the equivalent of serving a summons without serving the complaint.

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Commented [JMP10]: I added this clause because the requirements of this subsection are in addition to the other requirements.

Commented [JMP11]: For sales of real property, the notice (but not the petition) is posed on the property and published so we want the proposed sales price in the notice of hearing as well as in the petition.

Commented [JMP12]: I think the word "transmitting" is awkward so I changed it to "providing."

(B) *Posting and Publication.* The court also may require either or both of the following to be done at least 14 days before the hearing:~~:~~

(i) The notice of hearing to be posted on the property to be sold, ~~the posting of a notice of hearing on the property to be sold,~~ and

(ii) The notice of hearing to be published ~~publication of the notice~~ in a newspaper of general circulation in the county in which the property is located ~~at least 14 days before the scheduled hearing~~.

(C) *Placement of Posted Notice.* If the court orders that notice of the hearing be posted on the property, the notice must be posted in a place that is visible from the front of the property and, if the property is a structure, in a place that is visible from outside the structure.

~~(c)~~ **Inapplicability of Civil Procedure Rule 6(c).** The provisions of Rule 6(c), Arizona Rules of Civil Procedure, do not apply to notices of hearing in probate proceedings or notice of proceedings to challenge or enforce the decision of a person authorized to make health care decisions for a patient. ~~[**Staff Note:** Civil Rule 6(c) concerns additional time after service by mail and electronically. Is this provision pertinent to a notice of hearing? [JWR Note: Mailing rule does not apply to notices or orders from the court.] If so, is there a clearer way of stating the concept?] [JWR Note: I'm not sure why this rule kicks in. It doesn't sound like notices are served. And the rule governs response times – how does one response to a notice of hearing?]~~

(c)

~~COMMENT~~

~~Probate proceedings are predicated on interested persons receiving notice of hearings that might affect their rights. This rule is intended to clarify the information that must be provided to interested persons to ensure that their due process rights are protected.~~

~~In rare circumstances, justice may be better served if the petition or motion does not accompany the notice of hearing. For example, in cases in which the incapacitated person suffers from dementia, it may be preferable not to deliver to the incapacitated person a document containing sensitive information that may then become accessible to caregivers or others for whom it was not intended. In such cases, the court may order that the petition or motion not accompany the notice.~~
Workgroup Note: We may need to re-sequence Rules 9 and 12.

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Commented [JMP13]: When this rule was drafted, we had concerns that people would think Civil Rule 6(c) would extend the time for filing an objection to a petition that was "served" by mail per 14-1401.

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Commented [JMP14]: In the spirit of reducing/eliminating comments, I have deleted the first paragraph of this comment. However, I think the remaining paragraph is quite instructive for judicial officers and parties.

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Rule 9. Notice of Initial Hearing on Petition.

(a) Required Content. The notice of an initial hearing on a petition required by Rule 12(b) must state:

(1) the title of the petition to be heard;

(2) the date, time, and place of the initial hearing; and

(3) the name of the judicial officer before whom the petition is set for hearing.

(b) Required Warning. The notice must include the following warning:

> This is a legal notice; your rights may be affected. [~~Éste es un aviso legal. Sus derechos podrían ser afectados.~~ Note: Delete bracketed text?]
>
> You are not required to attend this hearing. However, if you oppose any of the relief requested in the petition that accompanies this notice, you must file with the court a written response at least 7 days before the hearing date or you or your attorney must attend the hearing. Any written response must comply with Rule 17(e) of the Arizona Rules of Probate Procedure. If you do not file a timely response or attend the hearing:
>
> > (1) The court may grant the relief requested in the petition without further proceedings, and
> >
> > (2) You will not receive additional notices of court proceedings relating to the petition unless you file a Demand for Notice pursuant to Title 14, Arizona Revised Statutes.

(c) Required Copy of the Petition or Motion. Except for notices that are published, the notice must be accompanied by a copy of the petition that is the subject of the initial hearing, unless the court orders otherwise or the person being served waives this requirement.

(d) Petition for the Confirmation of a Sale of Real Estate.

(1) ***Notice of Hearing.*** In addition to the information required by (a) and (b), a notice of an initial hearing on a petition for the confirmation of a sale of real estate must contain the following information:

(A) the name and telephone number of the petitioner or the petitioner's attorney;

(B) the proposed sales price; and

(C) a statement that the court may consider other bids at the hearing.

(2) ***Providing, Posting, and Publishing the Notice.***

(A) *Providing the Notice to Interested Persons.* The notice of the hearing must be provided to all interested persons as required by A.R.S. § 14-1401(A), unless the court orders otherwise.

(B) *Posting and Publication.* The court also may require either or both of the following to be done at least 14 days before the hearing:

(i) The notice of hearing to be posted on the property to be sold, and

(ii) The notice of hearing to be published in a newspaper of general circulation in the county in which the property is located.

(C) *Placement of Posted Notice.* If the court orders that notice of the hearing be posted on the property, the notice must be posted in a place that is visible from the front of the property and, if the property is a structure, in a place that is visible from outside the structure.

(e) Inapplicability of Civil Procedure Rule 6(c). The provisions of Rule 6(c), Arizona Rules of Civil Procedure, do not apply to notices of hearing in probate proceedings or notice of proceedings to challenge or enforce the decision of a person authorized to make health care decisions for a patient.

Workgroup Note: We may need to re-sequence Rules 9 and 12.

Rule 11. Telephonic and Video Attendance and Testimony.

(a) Definitions.

(1) "Proceeding." When used in this rule, "proceeding" means a court event at which interested persons or their attorneys have an opportunity to attend. These events include, but are not limited to, a trial, hearing, non-appearance hearing, oral argument, status conference, and scheduling conference.

(2) "Telephonic." When used in this rule, "telephonic" means by telephone, video conferencing, or other available audio or audiovisual technology.

(b) When Permitted. Parties and their attorneys are expected to appear in open court for court proceedings unless the court, in its discretion, permits telephonic attendance under this rule. The court may allow a person to telephonically attend, or testify at, a proceeding if both of the following are true:

(1) that 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; and

(2) no party will be unfairly prejudiced by the telephonic attendance or testimony.

(c) How Requested. Unless otherwise ordered by the court, a person who wishes to telephonically attend, or testify at, a proceeding must either file a written motion or make an oral motion in open court. The request may be for a particular proceeding or for multiple proceedings. A written motion made under this rule must be served on all parties and any person who has filed a demand for written ~~notice, and~~notice and must be accompanied by a proposed order.

~~(d)~~ **Time for Making Request.** ~~–~~Unless otherwise provided by local rule,

(d) ***Option 1:*** ~~A~~ a written or oral motion to allow telephonic attendance or testimony must be made in a timely manner considering the circumstances at the time the request was made, and the court has the discretion to grant or deny the motion. Circumstances may include but are not limited to: (1) the promptness of the party in making the request; (2) the nature of the proceeding, including whether it is contested or evidentiary; (3) whether all other parties agree to the telephonic attendance or testimony; (4) the reason why telephonic attendance or testimony is being requested; and (5) logistical factors.

~~***Option 2:*** A written or oral motion to allow telephonic attendance must be made no later than 30 days before the proceeding at which the telephonic attendance or testimony is requested. However, if the notice setting that proceeding provides less than 30 days'~~

Commented [JP1]: I am suggesting we define "proceeding" for purposes of this rule only because the rest of the Probate Rules use "proceeding" to refer to the claim or cause of action initiated by the filing of a petition or complaint. Thus, we need to distinguish that, for purposes of this rule only, "proceeding" means a court appearance.

Commented [JP2]: My intent here is to allow a person to make a single, blanket request so as to avoid multiple motions for each proceeding in the case.

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~~notice, the motion must be made no later than 5 days after receipt of the notice of the proceeding. The court may modify or waive these time limits.~~

(e) Objection to Request. A party opposing a written motion made under this rule must file a response no later than 5 days after the motion is served. The court may modify or waive this time limit or may rule on the written motion prior to the filing of a response.

(f) Reply and Oral Argument. The court may rule on a written motion made under this rule without a reply or oral argument.

(g) Use of Exhibits During Telephonic Testimony. Unless otherwise ordered by the court, 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.

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

COMMENT

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 testifies in person. Judicial officers may deny 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.

Rule 11. Telephonic and Video Attendance and Testimony.

(a) Definitions.

(1) "Proceeding." When used in this rule, "proceeding" means a court event at which interested persons or their attorneys have an opportunity to attend. These events include, but are not limited to, a trial, hearing, non-appearance hearing, oral argument, status conference, and scheduling conference.

(2) "Telephonic." When used in this rule, "telephonic" means by telephone, video conferencing, or other available audio or audiovisual technology.

(b) When Permitted. Parties and their attorneys are expected to appear in open court for court proceedings unless the court, in its discretion, permits telephonic attendance under this rule. The court may allow a person to telephonically attend, or testify at, a proceeding if both of the following are true:

(1) that 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; and

(2) no party will be unfairly prejudiced by the telephonic attendance or testimony.

(c) How Requested. Unless otherwise ordered by the court, a person who wishes to telephonically attend, or testify at, a proceeding must either file a written motion or make an oral motion in open court. The request may be for a particular proceeding or for multiple proceedings. A written motion made under this rule must be served on all parties and any person who has filed a demand for written notice and must be accompanied by a proposed order.

(d) Time for Making Request. Unless otherwise provided by local rule, a written or oral motion to allow telephonic attendance or testimony must be made in a timely manner considering the circumstances at the time the request was made, and the court has the discretion to grant or deny the motion. Circumstances may include but are not limited to: (1) the promptness of the party in making the request; (2) the nature of the proceeding, including whether it is contested or evidentiary; (3) whether all other parties agree to the telephonic attendance or testimony; (4) the reason why telephonic attendance or testimony is being requested; and (5) logistical factors.

(e) Objection to Request. A party opposing a written motion made under this rule must file a response no later than 5 days after the motion is served. The court may modify or waive this time limit or may rule on the written motion prior to the filing of a response.

(f) Reply and Oral Argument. The court may rule on a written motion made under this rule without a reply or oral argument.

(g) Use of Exhibits During Telephonic Testimony. Unless otherwise ordered by the court, 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.

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

COMMENT

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 testifies in person. Judicial officers may deny 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.

Rule 12. Non-Appearance Hearing.

[**JWR Note:** Is there a need to define what a "non-appearance" hearing is? Or will a pro per be able to intuit what it is from its name?]

(a) Generally. The court may set a petition for a non-appearance hearing if supporting testimony is not required by law. A non-appearance hearing must be set for a specific time on a specific day, but no one is required to appear at a non-appearance hearing.

(b) Objection to Requested Relief.

(1) *Appearance.* An interested person may appear at a non-appearance hearing and object to the relief requested in the petition. Any interested person appearing at such a hearing must:

(A) notify the court of the person's presence and objection, and

(B) promptly pay an appearance fee, if the person has not already done so.

(2) *Proceeding After Objection.* The court must note their objection in the minutes and proceed as these rules specify for contested matters.

COMMENT

Non-appearance hearings serve the interests of judicial economy and efficiency, may minimize attorney and fiduciary fees, and may save time and expense to all involved. Thus, these rules encourage the use of non-appearance hearings. Situations for which non-appearance hearings might be appropriate include hearings on petitions to approve accountings, petitions to appoint a personal representative of an estate, petitions to increase or decrease bond, petitions to release restricted assets, and petitions for formal probate of a will when the original will has been filed with the court and has been properly executed.

Non-appearance hearings are not appropriate for certain matters. For example, due process concerns militate against the use of non-appearance hearings in connection with a petition to appoint a guardian or a conservator. Similarly, petitions to confirm the sale of real property necessarily require an appearance hearing to allow upset bids, and petitions to probate a will when the original of the will cannot be located require an appearance hearing. *See* A.R.S. § 14-3415. In addition, a non-appearance hearing generally is not appropriate if the petitioner expects or knows that a matter will be contested.

Generally, evidence is not presented at a non-appearance hearing. In extraordinary circumstances, however, the court may allow the presentation of evidence at a non-appearance hearing.

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PART XX: TYPES OF COURT EVENTS

Rule 12. Initial Hearing on a Petition

(a) Setting of Initial Hearing. When a petition is filed, the court must set a specific date, time, and place for an initial hearing on the petition.

~~set a specific date, time, and place for an initial hearing on the petition. The hearing may be an appearance hearing or a non-appearance hearing.~~

(b) Notice of Initial Hearing. The petitioner must give notice of the date, time, and location of the hearing as required by A.R.S. Title 14 and Rules 9 and 17(d).

(c) Attendance at ~~Conference~~ the Initial Hearing.

(1) Petitioner and Petitioner's Attorney. Unless the court has specified otherwise, the petitioner ~~and the petitioner's attorney~~ must attend the initial hearing.

(2) Other Interested Persons and Their Attorneys.

(A) No Opposition to Relief Requested in Petition. Unless the court has specified otherwise, an interested person ~~who is not the petitioner and~~ who does not oppose the relief requested in the petition ~~is not required to attend the initial hearing, nor is such interested person's attorney required to attend the initial hearing.~~.

(B) Opposition to Relief Requested in Petition. An interested person who opposes the relief requested in the petition~~, or that interested person's attorney,~~ must attend the initial hearing unless the interested person has filed a written response to the petition at least 7 days before the hearing. If the interested person~~, or the interested person's attorney,~~ attends the initial hearing, the interested person ~~or the interested person's attorney~~ must notify the court of such person's presence and opposition to the petition.

(d) Procedure at Initial Hearing~~an Appearance Hearing~~. ~~An "appearance hearing" is a hearing at which all parties must appear unless the court orders otherwise. Unless the court specifically states that a hearing is set as a non-appearance hearing, the hearing is an appearance hearing.~~

(1) No Opposition. If no interested person has ~~opposes~~opposed the relief requested in the petition as provided in Rule 17, the court may ~~receive evidence at the appearance hearing and~~ decide the issues raised in the petition at the initial hearing without setting any additional court events.

(2) Opposition. If ~~the initial hearing is set as an appearance hearing and~~ an interested person has opposed the requested relief as provided in Rule 17, the court must note the opposition in the minutes and follow the procedures set forth in Rules 27-29 relating to contested matters.

(e) Evidence. Evidence may be presented at the initial hearing unless the court has specified that the petitioner ~~and the petitioner's attorney are~~ is not required to

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Commented [JMP1]: Need to revise Rule 9 to say that if the court has directed that attendance is required, the notice must say *x* but that if the court has directed that attendance is not required, the notice must say *y*.

Commented [JMP2]: Can we get rid of Rule 17(d) and just have Rule 9 include the requirement that a copy of the petition be provided with the notice of hearing and that proof of notice be filed?

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Commented [JMP3]: Much of this paragraph is taken from existing Rule 12(D), except that I added the language about a written objection being filed. As a result of what I have done with this Rule XX, existing Rule 12 can be eliminated in its entirety because all the concepts embodied in Rule 12 are covered by this Rule XX.

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attend the initial hearing, in which case evidence may be presented only upon agreement of the parties.

JMP NOTE: Need to strike definition of "non-appearance hearing" from Rule 2.

~~**(1) No Opposition.** If no person opposes the relief requested in the petition, the court may receive evidence at the appearance hearing and decide the issues raised in the petition.~~

~~**Procedure at a Non-Appearance Hearing.** A "non-appearance hearing" is a hearing at which supporting testimony is not required by law and at which no person, including the petitioner, needs to appear except to make an oral objection.~~

~~**Opposition.** If the initial hearing is set as a non-appearance hearing and a person opposes the requested relief, that person either must file a written response at least 7 days before the hearing or must appear in person at the non-appearance hearing and notify the court of such person's presence and opposition. If a person orally opposes the petition at the non-appearance hearing or has filed a timely written objection before the non-appearance hearing, the court must note the objection in the minutes, and follow the procedures in Rules 27-29 regarding contested matters. If a person orally responds at the non-appearance hearing, the court must order the person to file a written opposition as provided by Rule 17.~~

~~**No Opposition.** If the initial hearing is set as a non-appearance hearing, no person has appeared, and no timely written objection has been filed, the court may grant the relief requested in the petition set for that hearing without setting any further court events.~~

~~OTHER COURT EVENTS:~~

~~Rule 12.1. Conference~~

~~Rule 12.2. Oral Argument~~

~~Rule 12.3. Settlement Conference~~

~~Rule 12.4. Final Hearing on a Petition~~

~~Rule 12.5. Compliance and Order to Show Cause Hearings~~

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Commented [JMP4]: Much of this paragraph is taken from existing Rule 12(D), except that I added the language about a written objection being filed. As a result of what I have done with this Rule XX, existing Rule 12 can be eliminated in its entirety because all the concepts embodied in Rule 12 are covered by this Rule XX.

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~~Rule 12.6. Other Hearings~~

~~Rule 12.7. Division Review~~

Rule 12. Non-Appearance Hearing.

[**JWR Note:** Is there a need to define what a "non-appearance" hearing is? Or will a proper be able to intuit what it is from its name?]

(a) Generally. The court may set a petition for a non-appearance hearing if supporting testimony is not required by law. A non-appearance hearing must be set for a specific time on a specific day, but no one is required to appear at a non-appearance hearing.

(b) Objection to Requested Relief.

(1) ***Appearance.*** An interested person may appear at a non-appearance hearing and object to the relief requested in the petition. Any interested person appearing at such a hearing must:

(A) notify the court of the person's presence and objection, and

(B) promptly pay an appearance fee, if the person has not already done so.

(2) ***Proceeding After Objection.*** The court must note their objection in the minutes and proceed as these rules specify for contested matters.

COMMENT

Non-appearance hearings serve the interests of judicial economy and efficiency, may minimize attorney and fiduciary fees, and may save time and expense to all involved. Thus, these rules encourage the use of non-appearance hearings. Situations for which non-appearance hearings might be appropriate include hearings on petitions to approve accountings, petitions to appoint a personal representative of an estate, petitions to increase or decrease bond, petitions to release restricted assets, and petitions for formal probate of a will when the original will has been filed with the court and has been properly executed.

Non-appearance hearings are not appropriate for certain matters. For example, due process concerns militate against the use of non-appearance hearings in connection with a petition to appoint a guardian or a conservator. Similarly, petitions to confirm the sale of real property necessarily require an appearance hearing to allow upset bids, and petitions to probate a will when the original of the will cannot be located require an appearance hearing. *See* A.R.S. § 14-3415. In addition, a non-appearance hearing generally is not appropriate if the petitioner expects or knows that a matter will be contested.

Generally, evidence is not presented at a non-appearance hearing. In extraordinary circumstances, however, the court may allow the presentation of evidence at a non-appearance hearing.

PART XX: TYPES OF COURT EVENTS

Rule 12. Initial Hearing on a Petition

(a) Setting of Initial Hearing. When a petition is filed, the court must set a specific date, time, and place for an initial hearing on the petition.

(b) Notice of Initial Hearing. The petitioner must give notice of the date, time, and location of the hearing as required by A.R.S. Title 14 and Rules 9 and 17(d).

(c) Attendance at the Initial Hearing.

(1) Petitioner and Petitioner's Attorney. Unless the court has specified otherwise, the petitioner must attend the initial hearing.

(2) Other Interested Persons and Their Attorneys.

(A) No Opposition to Relief Requested in Petition. Unless the court has specified otherwise, an interested person who does not oppose the relief requested in the petition is not required to attend the initial hearing.

(B) Opposition to Relief Requested in Petition. An interested person who opposes the relief requested in the petition must attend the initial hearing unless the interested person has filed a written response to the petition at least 7 days before the hearing. If the interested person attends the initial hearing, the interested person must notify the court of such person's presence and opposition to the petition.

(d) Procedure at Initial Hearing.

(1) No Opposition. If no interested person has opposed the relief requested in the petition as provided in Rule 17, the court may decide the issues raised in the petition at the initial hearing without setting any additional court events.

(2) Opposition. If an interested person has opposed the requested relief as provided in Rule 17, the court must note the opposition in the minutes and follow the procedures set forth in Rules 27-29 relating to contested matters.

(e) Evidence. Evidence may be presented at the initial hearing unless the court has specified that the petitioner is not required to attend the initial hearing, in which case evidence may be presented only upon agreement of the parties.

Rule 12.1. Conference.

(a) Definition. A "conference" is an event on the court's calendar at which the court and the parties discuss the status and scheduling of a court proceeding or any other matter as determined by the court and the parties. "Conference" includes a pretrial conference, a scheduling conference, and a status conference, but not a settlement conference under Rule 12.3.

(b) Setting a Conference. The court may set a conference if requested by a party or on the court's own motion.

(c) Notice of a Conference. The court must notify the parties of the date, time, and place of a conference, but it is not required to provide notice of the conference to an interested person unless the interested person has filed a demand for notice.

(d) Attendance at a Conference. Parties must attend a conference, unless the court orders otherwise.

(e) Evidence. Although the parties may state their positions at a conference, evidence may not be presented.

Rule 12.2. Oral Argument.

(a) Definition. "Oral argument" is an event on the court's calendar at which the parties argue their positions in support of, or in opposition to, a motion.

(b) Setting Oral Argument. The court may set oral argument if requested by a party, or on the court's own motion.

(c) Notice of Oral Argument. The court must notify the parties of the date, time, and place of an oral argument, but it is not required to provide notice to an interested person unless the interested person has filed a demand for notice.

(d) Attendance at Oral Argument. Parties must attend the oral argument unless the court orders otherwise.

(e) Evidence. Evidence may not be presented at an oral argument.

Commented [JMP1]: If the Workgroup believes it is important to emphasize that the court is not obligated to set oral argument even if a party requests it, we could reword this to read: "The court may, but is not required to, to set oral argument on the request of any party. The court also may set oral argument on its own motion." The only potential issues is that if we state it that way for the rule on oral argument, we ought to state it the same way for other court events, such as conferences. E.g., look at Rule 12.1(b).

Rule 12.3. Settlement Conference.

(a) Definition. A "settlement conference" is a court event at which a judicial officer attempts to facilitate a voluntary settlement between the parties and does not decide disputed issues.

(b) Setting a Settlement Conference. The court may set a settlement conference on request of any party or on the court's own motion.

(c) Notice of a Settlement Conference. The court must notify the parties of the date, time, and place of a settlement conference, but it is not required to provide notice to an interested person, even when the interested person has filed a demand for notice

(d) Attendance at a Settlement Conference. All parties and their attorneys must attend a settlement conference unless the court orders otherwise.

(e) Record. Settlement discussions occur off the record. If the parties reach a settlement, the terms of the settlement must either be placed on the record and entered in the minutes or be included in a writing signed by the parties.

(f) Communication with One Party. The judicial officer may communicate with one party during the conference outside the presence of the other parties.

(g) Evidence. Documents or other things may be presented to the judicial officer who is conducting the settlement conference, but those items are not admitted into evidence. ~~unless the parties reach an agreement and those items are necessary to show or explain the terms of the parties' agreements.~~ Testimony may be taken only in support of, or to make a record of, the parties' agreement.

Commented [JMP2]: I think it is important for parties and interest persons (i.e., nonlawyers) to know that settlement conferences occur off-the-record. Does anyone think it is important to place a parallel provision in each of the other court event rules that specifies those events are conducted on the record? Does anyone think we need to define what "on-the-record" means?

Commented [JMP3]: This is derived from proposed Family Rule 67.4.

Commented [JMP4]: This is based on existing Probate Rule 2's definition of "evidence."

Rule 12.4 Evidentiary Hearing.

(a) Definition. A "evidentiary hearing" is a court event, subsequent to an initial hearing, where the parties present evidence to a judicial officer or a jury, who will determine issues of fact. An evidentiary hearing includes a trial.

(b) Setting of an Evidentiary Hearing. If the court does not decide all the issues raised in a petition at the initial hearing, the court must set an evidentiary hearing on the petition.

(c) Notice of an Evidentiary Hearing. Unless the court orders otherwise, the court must notify the parties of the date, time, and place of an evidentiary hearing, but it is not required to provide notice to an interested person unless the interested person has filed a demand for notice.

(d) Procedure at an Evidentiary Hearing. Rule 38 and Rules 39 through 53 of the Arizona Rules of Civil Procedure apply to evidentiary hearings in probate proceedings except as otherwise provided by A.R.S. Title 14. [This was taken from Probate Rule 28(c).

Commented [JMP5]: Trial vs. Hearing: The only references to "trial" in title 14 are in 14-1306 (which deals only with the right to jury trial), 14-5303 (which refers to "trial by jury" in connection with a guardianship), 14-5310 (which refers to "trial by jury" in connection with a temporary guardianship), and -5401.01 (which refers to "trial by jury" in connection with a temporary conservatorship). The rest of title 14 refers only to "hearing."

Rule 12.5 Compliance and Order to Show Cause Hearings.

(a) Compliance Hearing.

(1) Definition. A "compliance hearing" is a court event to determine whether a party has complied with a court order.

(2) Setting of Compliance Hearing. The court may set a compliance hearing whenever the court determines such a hearing is appropriate.

(3) Notice of Compliance Hearing. The court must notify the parties of the date, time, and place of the compliance hearing, but it is not required to provide notice to an interested person unless the interested person has filed a demand for notice.

(4) Attendance at Compliance Hearing. Unless the court orders otherwise, only the person who was ordered to perform the task that is the subject of the compliance hearing, and that person's attorney, must appear at the compliance hearing.

(5) Evidence. The court may receive evidence to determine whether a person has complied with the court's order.

(b) Order to Show Cause Hearing.

(1) Definition. An "order to show cause hearing" is a court event to address a party's or a fiduciary's failure to discharge duties or obligations required by court order, court rule, or statute.

(2) Setting of Order to Show Cause Hearing. The court may set an order to show cause hearing on the filing of an application and affidavit that comply with Rule 7.3, Arizona Rules of Civil Procedure, or on the court's initiative. The court must set a specific date, time, and place for the order to show cause hearing.

(3) Notice of Order to Show Cause Hearing. Notice of an order to show cause hearing must be served in accordance with Rule 7.3, Arizona Rules of Civil Procedure. [**NOTE**: If the Task Force adopts Rule 12.5(b)(2-3), it will need to delete Rule 35(d).]

(4) Evidence. The court may receive evidence at an order to show cause hearing.

Commented [JMP6]: This language is verbatim from existing Probate Rule 35(B), which can be stricken as a result of this new rule.

Commented [JMP7]: The existing Probate Rules address OSC hearings only in Rule 35(B), which merely states that OSCs "are governed by Rule 7.3, Arizona Rules of Civil Procedure, and may be used to address problems arising from another party's or a fiduciary's failure to discharge duties or obligations required by court order, court rule, or statute." The question is whether we want to deviate from Civil Rule 7.3. In Maricopa County, OSC hearings are set by the Court after a compliance hearing without Civil Rule 7.3 being followed. (FYI, Civil Rule 7.3 requires personal service).

Workgroup Notes:

A. Save for rule 29:

(1) "Arbitration" is a voluntary process in which the parties agree to have a neutral person other than a judicial officer decide disputed issues. In an arbitration, the arbitror gives notice to the parties of the time and place for the arbitration.

(2) "Mediation" is a confidential process in which the parties meet with a neutral person to help them resolve disputed issues by mutual agreement. In a mediation, the mediator attempts to facilitate a voluntary settlement between the parties, but the mediator does not decide the issues.

Rule 12.1. Conference.

(a) Definition. A "conference" is an event on the court's calendar at which the court and the parties discuss the status and scheduling of a court proceeding or any other matter as determined by the court and the parties. "Conference" includes a pretrial conference, a scheduling conference, and a status conference, but not a settlement conference under Rule 12.3.

(b) Setting a Conference. The court may set a conference if requested by a party or on the court's own motion.

(c) Notice of a Conference. The court must notify the parties of the date, time, and place of a conference, but it is not required to provide notice of the conference to an interested person unless the interested person has filed a demand for notice.

(d) Attendance at a Conference. Parties must attend a conference, unless the court orders otherwise.

(e) Evidence. Although the parties may state their positions at a conference, evidence may not be presented.

Rule 12.2. Oral Argument.

(a) Definition. "Oral argument" is an event on the court's calendar at which the parties argue their positions in support of, or in opposition to, a motion.

(b) Setting Oral Argument. The court may set oral argument if requested by a party, or on the court's own motion.

(c) Notice of Oral Argument. The court must notify the parties of the date, time, and place of an oral argument, but it is not required to provide notice to an interested person unless the interested person has filed a demand for notice.

(d) Attendance at Oral Argument. Parties must attend the oral argument unless the court orders otherwise.

(e) Evidence. Evidence may not be presented at an oral argument.

Rule 12.3. Settlement Conference.

(a) Definition. A "settlement conference" is a court event at which a judicial officer attempts to facilitate a voluntary settlement between the parties and does not decide disputed issues.

(b) Setting a Settlement Conference. The court may set a settlement conference on request of any party or on the court's own motion.

(c) Notice of a Settlement Conference. The court must notify the parties of the date, time, and place of a settlement conference, but it is not required to provide notice to an interested person, even when the interested person has filed a demand for notice

(d) Attendance at a Settlement Conference. All parties and their attorneys must attend a settlement conference unless the court orders otherwise.

(e) Record. Settlement discussions occur off the record. If the parties reach a settlement, the terms of the settlement must either be placed on the record and entered in the minutes or be included in a writing signed by the parties.

(f) Communication with One Party. The judicial officer may communicate with one party during the conference outside the presence of the other parties.

(g) Evidence. Documents or other things may be presented to the judicial officer who is conducting the settlement conference, but those items are not admitted into evidence. ~~unless the parties reach an agreement and those items are necessary to show or explain the terms of the parties' agreements.~~ Testimony may be taken only in support of, or to make a record of, the parties' agreement.

Rule 12.4 Evidentiary Hearing.

(a) Definition. A "evidentiary hearing" is a court event, subsequent to an initial hearing, where the parties present evidence to a judicial officer or a jury, who will determine issues of fact. An evidentiary hearing includes a trial.

(b) Setting of an Evidentiary Hearing. If the court does not decide all the issues raised in a petition at the initial hearing, the court must set an evidentiary hearing on the petition.

(c) Notice of an Evidentiary Hearing. Unless the court orders otherwise, the court must notify the parties of the date, time, and place of an evidentiary hearing, but it is not required to provide notice to an interested person unless the interested person has filed a demand for notice.

(d) Procedure at an Evidentiary Hearing. Rule 38 and Rules 39 through 53 of the Arizona Rules of Civil Procedure apply to evidentiary hearings in probate proceedings except as otherwise provided by A.R.S. Title 14. [This was taken from Probate Rule 28(c).

Rule 12.5 Compliance and Order to Show Cause Hearings.

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(5) Evidence. The court may receive evidence to determine whether a person has complied with the court's order.

(b) Order to Show Cause Hearing.

(1) Definition. An "order to show cause hearing" is a court event to address a party's or a fiduciary's failure to discharge duties or obligations required by court order, court rule, or statute.

(2) Setting of Order to Show Cause Hearing. The court may set an order to show cause hearing on the filing of an application and affidavit that comply with Rule 7.3, Arizona Rules of Civil Procedure, or on the court's initiative. The court must set a specific date, time, and place for the order to show cause hearing.

(3) Notice of Order to Show Cause Hearing. Notice of an order to show cause hearing must be served in accordance with Rule 7.3, Arizona Rules of Civil Procedure. [**NOTE**: If the Task Force adopts Rule 12.5(b)(2-3), it will need to delete Rule 35(d).]

(4) Evidence. The court may receive evidence at an order to show cause hearing.

Workgroup Notes:

A. Save for rule 29:

(1) "Arbitration" is a voluntary process in which the parties agree to have a neutral person other than a judicial officer decide disputed issues. In an arbitration, the arbitror gives notice to the parties of the time and place for the arbitration.

(2) "Mediation" is a confidential process in which the parties meet with a neutral person to help them resolve disputed issues by mutual agreement. In a mediation, the mediator attempts to facilitate a voluntary settlement between the parties, but the mediator does not decide the issues.

Rule 16. Applications in Probate Proceedings.

Meaning of "Application." "Application" is a written request authorized by statute made to a registrar ~~for an order~~ in a probate proceeding, usually conducted ~~"Application" is a written request to a registrar for an order in an informal probate proceeding, which is usually conducted~~ without advance notice to interested persons.

(a) ~~**Filing.** An interested party may file an application only when requesting the probate registrar to do the following~~such as to:

(1) Informally admit a will to ~~informal~~ probate or informally appoint a personal representative under A.R.S. §§ 14-3301 to -3311;

(2) Informally appoint a special administrator under A.R.S. § 14-3614(1);

(3) Iissue a certificate of discharge under A.R.S. § 14-3937;

(4) ~~appoint~~ Informally appoint a personal representative to administer a later discovered asset under A.R.S. § 14-3938; ~~or~~

(5) ~~grant~~ Grant a conservator the authority to exercise the powers and duties of a personal representative and endorse the conservator's letters under A.R.S. § 14-5425(D); or ~~.~~ ~~[STOP HERE]~~

~~(5)~~(6) Take ~~Enter~~ any other action ~~order that the registrar is~~ authorized by statute ~~to issue~~.~~.~~

~~(b)~~ **Form of Application.** An application must contain statements required by statute~~,~~ and ~~and~~ other statements supporting the requested relief. The statements must be in simple, concise, and direct paragraphs, each of which must be separately numbered. The application also:

~~(1) must contain a short statement of the requested relief;~~

~~(2) may request alternative or different types of relief; and~~

(b) ~~(3) must~~ comply with Rule~~s~~ 5.2~~(b)~~ and Rules 8 through 11 of the Arizona Rules of Civil Procedure, applicable to ~~complaints~~ pleadings and claims for relief.

(c) ~~Probate Registrar's~~ Action upon an Application.

(1) *By the Clerk.* The clerk must ~~immediately~~ file and retain the application, including any original will. ~~.~~ Any amended application or subsequent petition must be filed under the same case number as that assigned to the application.

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(2) *By the Registrar.* The probate registrar must ~~act~~ promptly~~, but within two business hours,~~ approve or ~~deny~~ deny the application~~, or refer it to a judicial officer. , upon a filed application.~~ When the registrar denies an application, the registrar must file a statement with reasons for the denial and provide a copy to the applicant. [Note: WG-2 will consider drafting a statewide form.]

~~(c)~~**(d) ~~Service~~Notice.** The ~~person filing the application~~applicant must provide timely~~serve a copy of the application~~ notice as required by ~~law~~ statute and must file proof of ~~service~~ notice with the ~~probate registrar~~court.

~~**(d)(a) Probate Registrar's Action upon Application.** The probate registrar must act promptly upon a filed application.~~

(e) Objection to Application. Any interested person who opposes the relief requested or granted in an application ~~for informal probate of a will or the appointment of a personal representative~~ must file a petition ~~in accordance with A.R.S. § 14-3401(A) or § 14-3414(A)~~.

CURRENT COMMENT

~~Regarding Rule 16(A). The word "application" is a term of art in probate matters that means a written request to the registrar to issue a statement of informal probate or informal appointment of personal representative under A.R.S. §§ 14-3301 to 3311. *See* A.R.S. § 14-1201(2); *see also* Rule 4(A) of these rules. A.R.S § 14-3614(1) provides that the registrar may appoint a special administrator on the application of any interested person. In addition, A.R.S. § 14-3937 authorizes the filing of an application to obtain a certificate from the registrar that the personal representative appears to have fully administered the estate. A.R.S. § 14-3938 authorizes the filing of an application to appoint a personal representative to administer an asset that is discovered after an estate has been closed. A.R.S. § 14-5425(D) authorizes a conservator to apply to the probate registrar to exercise the powers and duties of personal representative so that the conservator may administer and distribute the protected person's estate without additional or further appointment. Requests to the registrar should be made by application. In some cases, however, the request must be made to a judicial officer and should therefore be made by petition. Thus, a document should be titled "application" only for one of the limited purposes set forth in this rule.~~

~~Although applications usually are presented to the registrar without prior notice to other interested persons, in certain circumstances advance notice of the filing of the application must be given before the registrar acts upon the application. *See,*~~

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~~*e.g.*, A.R.S. §§ 14-3306, -3310. For example, notice must be provided when an interested person has filed a demand for notice or when a personal representative already has been appointed.~~

~~A challenge to an application for informal probate of will or appointment of personal representative may be made only by filing a petition to do any of the following: (i) set aside an informal probate of a will; (ii) probate a will; (iii) prevent the informal probate of a will that is the subject of a pending application; or (iv) determine whether the decedent died intestate. A.R.S. § 14-3401(A); *see also*, A.R.S. § 14-3302 ("Informal probate is conclusive as to all persons until superseded by an order in a formal testacy proceeding."); *In re Estate of Torstenson*, 125 Ariz. 373, 375-76, 609 P.2d 1073, 1075-76 (App. 1980) (holding that the exclusive way to contest an informally probated will is to initiate a formal testacy proceeding). A.R.S. § 14-3414(A) addresses a proceeding to contest the qualification or priority of a person who has been informally appointed as personal representative or whose appointment as personal representative has been requested in an informal proceeding.~~

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Rule 16. Applications in Probate Proceedings.

(a) Meaning of "Application." "Application" is a written request authorized by statute made to a registrar in a probate proceeding, usually conducted without advance notice to interested persons, to:

(1) Informally admit a will to probate or informally appoint a personal representative under A.R.S. §§ 14-3301 to -3311;

(2) Informally appoint a special administrator under A.R.S. § 14-3614(1);

(3) Issue a certificate of discharge under A.R.S. § 14-3937;

(4) Informally appoint a personal representative to administer a later discovered asset under A.R.S. § 14-3938;

(5) Grant a conservator the authority to exercise the powers and duties of a personal representative and endorse the conservator's letters under A.R.S. § 14-5425(D); or

(6) Take any other action authorized by statute.

(b) Form of Application. An application must contain statements required by statute and comply with Rule 5.2 and Rules 8 through 11 of the Arizona Rules of Civil Procedure applicable to pleadings and claims for relief.

(c) Action upon an Application.

(1) *By the Clerk.* The clerk must file and retain the application, including any original will. Any amended application or subsequent petition must be filed under the same case number as that assigned to the application.

(2) *By the Registrar.* The probate registrar must promptly approve or deny the application. When the registrar denies an application, the registrar must file a statement with reasons for the denial and provide a copy to the applicant. [Note: WG-2 will consider drafting a statewide form.]

(d) Notice. The applicant must provide timely notice as required by statute and must file proof of notice with the court.

(e) Objection to Application. Any interested person who opposes the relief requested or granted in an application must file a petition.

CURRENT COMMENT

~~Regarding Rule 16(A). The word "application" is a term of art in probate matters~~

that means a written request to the registrar to issue a statement of informal probate or informal appointment of personal representative under A.R.S. §§ 14-3301 to -3311. *See* A.R.S. § 14-1201(2); *see also* Rule 4(A) of these rules. A.R.S § 14-3614(1) provides that the registrar may appoint a special administrator on the application of any interested person. In addition, A.R.S. § 14-3937 authorizes the filing of an application to obtain a certificate from the registrar that the personal representative appears to have fully administered the estate. A.R.S. § 14-3938 authorizes the filing of an application to appoint a personal representative to administer an asset that is discovered after an estate has been closed. A.R.S. § 14-5425(D) authorizes a conservator to apply to the probate registrar to exercise the powers and duties of personal representative so that the conservator may administer and distribute the protected person's estate without additional or further appointment. Requests to the registrar should be made by application. In some cases, however, the request must be made to a judicial officer and should therefore be made by petition. Thus, a document should be titled "application" only for one of the limited purposes set forth in this rule.

Although applications usually are presented to the registrar without prior notice to other interested persons, in certain circumstances advance notice of the filing of the application must be given before the registrar acts upon the application. *See, e.g.*, A.R.S. §§ 14-3306, -3310. For example, notice must be provided when an interested person has filed a demand for notice or when a personal representative already has been appointed.

A challenge to an application for informal probate of will or appointment of personal representative may be made only by filing a petition to do any of the following: (i) set aside an informal probate of a will; (ii) probate a will; (iii) prevent the informal probate of a will that is the subject of a pending application; or (iv) determine whether the decedent died intestate. A.R.S. § 14-3401(A); *see also* A.R.S. § 14-3302 ("Informal probate is conclusive as to all persons until superseded by an order in a formal testacy proceeding."); *In re Estate of Torstenson*, 125 Ariz. 373, 375-76, 609 P.2d 1073, 1075-76 (App. 1980) (holding that the exclusive way to contest an informally probated will is to initiate a formal testacy proceeding). A.R.S. § 14-3414(A) addresses a proceeding to contest the qualification or priority of a person who has been informally appointed as personal representative or whose appointment as personal representative has been requested in an informal proceeding.

Rule 17. Petitions in Probate Proceedings.

(a) Meaning of "Petition." "Petition" is a written request to a judgedicial officer seeking substantive relief in ~~a formal~~ a probate proceeding, ~~which~~ usually requiresing advance notice to interested persons and a hearing. "Petition" includes a counter petition, cross-petition, and third-party petition.~~[STOP HERE]~~

~~**(a) Filing.** An interested party may file a petition if:~~

~~**(1)** a statute or court rule requires the party to seek the requested relief by filing a petition or in a formal proceeding;~~

~~**(2)** an evidentiary hearing is required before the court may grant the requested relief, or the party seeking relief requests an evidentiary hearing; or~~

~~**(3)** substantive relief, other than relief under Rule 16(a), is requested. [**Staff Note:** Staff added the underlined words to the draft.]~~

(b) Form of Petition. A petition must contain any statements required by statute and comply with Rule 5.2 and Rules 8 through 11 of the Arizona Rules of Civil Procedure applicable to pleadings and claims for relief.

~~**(b) Initial other statements supporting the requested relief. The statements must be in simple, concise, and direct paragraphs, each of which must be separately numbered. The petition also:**~~

~~**(c) must contain a short statement of the requested relief;**~~

~~**(d) may request alternative or different types of relief; and**~~

~~**(e) must comply with Rules 5.2(b) and Rules 8 through 11 of the Arizona Rules of Civil Procedure, applicable to complaints and claims for relief.**~~

~~**(f)**~~**(c) Hearing Date.** ~~When filing a petition, t~~ The petitioner must obtain ~~from the court~~ a date and time for an initial hearing on the petition.

(d) Service. ~~The petitioner~~ **Notice of Hearing on the Petition.** The petitioner must timely provide notice as required by statute, which must include ~~a copy of the petition and~~ a notice of ~~hearing, and~~hearing and a copy of the petition, and must file proof of notice with the court.

~~**(g) must serve a copy of the petition and a notice of the hearing as required by law, and must promptly file proof of service with the probate registrar.**~~

~~**(h)**~~**(e) Objection Response to a Petition.** ~~I~~A proceeding becomes contested when a party opposes a petition as follows:

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(1) ***~~Generally~~Written Response.*** ~~interested person~~party who opposes the relief requested in a petition ~~must may~~should file with the court no later than ~~3~~ 7 days before the hearing an objection to the petition or ~~or~~ a motion ~~authorized by~~under Rule 12 of the Arizona Rules of Civil Procedure. ~~Alternatively, a n interested person may appear at the hearing and orally object to the petition, but must later file a written objection or motion, as the court directs or as the parties agree, setting forth the grounds for the objection.~~

~~***Late-Filed Objections.*** If a person files an objection to the petition or a motion under Rule 12 of the Arizona Rules of Civil Procedure less than 3 days before the hearing date, the objecting party must attend the hearing and inform the court that a written objection or Rule 12 motion was filed.~~

(2) ***~~Oral~~ Oral Response~~objections~~.*** ~~A~~If a~~n~~ ~~interested person~~party does not file a written response 7 or more days before the hearing, the person ~~may~~must orally ~~object~~respond to the petition at the ~~hearing, but~~hearing and ~~must~~ file a written ~~objection or motion~~response~~e~~objection or motion under Rule 12 within 10 days after the hearing~~,~~ or as the court directs~~, stating the reasons for the objection~~. ~~END HERE 5/24 but still working on cl 3~~ ~~[Staff Note: Is this provision necessary?]~~

(3) ***Form of ~~Objection~~Written Response.*** A written objection must comply with Rule~~s~~ 5.2~~(b)~~, and Rules 8 through 11 of the Arizona Rules of Civil Procedure. ~~A written motion must comply with Rule 18 of the Arizona Rules of Probate Procedure~~.

(4) ***~~Servie~~Notice of Response.*** Unless the court orders otherwise, a ~~person~~ party who files a written ~~objection~~ response to a petition must ~~serve~~ notify all ~~interested person~~parties~~s~~ ~~with~~ by providing a copy of the ~~objection~~ response. ~~and must file proof of such service. Service of the objection may be made in any manner A.R.S. § 14-1401(A) allows for serving a notice of hearing.~~

~~(i)~~**(f) Joinder.** Any ~~interested person~~party who agrees that the court should enter the relief requested in the petition may file ~~a statement of such agreement by filing~~ a ~~motion for~~ notice of joinder.

~~(j)~~**(g) Reply.** Unless the court directs otherwise, ~~the petitioner no~~may not file a reply in support of the petition~~may be filed~~a party may not file a reply.

~~**(k) Other Pleadings.** Rules 13 through 15 of the Arizona Rules of Civil Procedure apply to any counter-petition, cross-petition, or third-party petition; to the amendment of any petition, counter-petition, cross-petition, or third-party petition; and to objections to any of these pleadings.~~

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CURRENT COMMENT

~~Regarding Rule 17(A). A petition in a probate proceeding is the equivalent of a complaint in a civil action, and an objection is the equivalent of an answer in a civil action. Therefore, interested persons and the court should treat a petition as a complaint and an objection as an answer, except as otherwise provided by statute or these rules.~~

~~Examples of relief that should be requested by a petition include, but are not limited to, the following:~~

1. ~~formal probate of a will or appointment of a personal representative of an estate, or both, pursuant to A.R.S. §§ 14-3401 and -3402;~~
2. ~~formal appointment of a special administrator pursuant to A.R.S. § 14-3614(2);~~
3. ~~appointment of a guardian or conservator, or both, or entry of any protective order authorized by A.R.S. §§ 14-5101 to -5704;~~
4. ~~appointment a trustee;~~
5. ~~termination of the appointment of or removal of a personal representative, guardian, conservator, or trustee;~~
6. ~~surcharging a personal representative, guardian, conservator, or trustee;~~
7. ~~compelling a personal representative, guardian, conservator, or trustee to perform a certain action, except with regard to any discovery;~~
8. ~~approval of the sale of any property;~~
9. ~~providing instructions or issuing a declaratory judgment;~~
10. ~~approval of an accounting;~~
11. ~~approval of or review of fiduciary fees or the fees of any person employed by a personal representative, guardian, conservator, or trustee;~~
12. ~~ratification, confirmation, or approval of any transaction entered into by a personal representative, guardian, conservator, or trustee, or any settlement agreement relating to a decedent's estate, trust, guardianship, or conservatorship;~~
13. ~~termination of a guardianship (except in the case of the death of the ward), termination of a conservatorship (regardless of the reason for termination), or closing an estate formally in accordance with A.R.S. §§ 14-3931 to -3938;~~
14. ~~requiring the posting of a bond, changing the amount of a bond, or exonerating a bond by a personal representative, guardian, conservator, or trustee; or~~
15. ~~holding someone in contempt of court.~~

~~Regarding Rule 17(D). The judicial officer should be informed at the hearing on a petition whether a party objects to the petition. Thus, to ensure that the judicial officer is timely informed of any objection, a written objection to a petition must be filed at least three days before the hearing on the petition. If a written objection has not been filed at least three days before the hearing, the objecting party should~~

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~~appear at the hearing and make his or her presence and objection known to ensure that the judicial officer is aware of the objection. Rule 28 sets forth the procedure to be followed once an objection to a petition has been made and the proceeding has become contested.~~

Rule 17. Petitions in Probate Proceedings.

(a) Meaning of "Petition." "Petition" is a written request to a judicial officer seeking substantive relief in a probate proceeding, usually requiring advance notice to interested persons and a hearing. "Petition" includes a counter petition, cross-petition, and third-party petition.

(b) Form of Petition. A petition must contain any statements required by statute and comply with Rule 5.2 and Rules 8 through 11 of the Arizona Rules of Civil Procedure applicable to pleadings and claims for relief.

(c) Initial Hearing Date. The petitioner must obtain a date and time for an initial hearing on the petition.

(d) Notice of Hearing on the Petition. The petitioner must timely provide notice as required by statute, which must include a notice of hearing and a copy of the petition, and must file proof of notice with the court.

(e) Response to a Petition. A proceeding becomes contested when a party opposes a petition as follows:

(1) ***Written Response.*** Any party who opposes the relief requested in a petition should file with the court no later than 7 days before the hearing an objection to the petition or a motion under Rule 12 of the Arizona Rules of Civil Procedure.

(2) ***Oral Response.*** If a party does not file a written response 7 or more days before the hearing, the person must orally respond to the petition at the hearing and file a written objection or motion under Rule 12 within 10 days after the hearing or as the court directs.

(3) ***Form of Written Response.*** A written objection must comply with Rule 5.2, and Rules 8 through 11 of the Arizona Rules of Civil Procedure.

(4) ***Notice of Response.*** Unless the court orders otherwise, a party who files a written response to a petition must notify all parties by providing a copy of the response.

(f) Joinder. Any party who agrees that the court should enter the relief requested in the petition may file a notice of joinder.

(g) Reply. Unless the court directs otherwise, a party may not file a reply.

CURRENT COMMENT

~~Regarding Rule 17(A). A petition in a probate proceeding is the equivalent of a~~

~~complaint in a civil action, and an objection is the equivalent of an answer in a civil action. Therefore, interested persons and the court should treat a petition as a complaint and an objection as an answer, except as otherwise provided by statute or these rules.~~

~~Examples of relief that should be requested by a petition include, but are not limited to, the following:~~

1. ~~formal probate of a will or appointment of a personal representative of an estate, or both, pursuant to A.R.S. §§ 14-3401 and -3402;~~
2. ~~formal appointment of a special administrator pursuant to A.R.S. § 14-3614(2);~~
3. ~~appointment of a guardian or conservator, or both, or entry of any protective order authorized by A.R.S. §§ 14-5101 to -5704;~~
4. ~~appointment a trustee;~~
5. ~~termination of the appointment of or removal of a personal representative, guardian, conservator, or trustee;~~
6. ~~surcharging a personal representative, guardian, conservator, or trustee;~~
7. ~~compelling a personal representative, guardian, conservator, or trustee to perform a certain action, except with regard to any discovery;~~
8. ~~approval of the sale of any property;~~
9. ~~providing instructions or issuing a declaratory judgment;~~
10. ~~approval of an accounting;~~
11. ~~approval of or review of fiduciary fees or the fees of any person employed by a personal representative, guardian, conservator, or trustee;~~
12. ~~ratification, confirmation, or approval of any transaction entered into by a personal representative, guardian, conservator, or trustee, or any settlement agreement relating to a decedent's estate, trust, guardianship, or conservatorship;~~
13. ~~termination of a guardianship (except in the case of the death of the ward), termination of a conservatorship (regardless of the reason for termination), or closing an estate formally in accordance with A.R.S. §§ 14-3931 to -3938;~~
14. ~~requiring the posting of a bond, changing the amount of a bond, or exonerating a bond by a personal representative, guardian, conservator, or trustee; or~~
15. ~~holding someone in contempt of court.~~

~~Regarding Rule 17(D). The judicial officer should be informed at the hearing on a petition whether a party objects to the petition. Thus, to ensure that the judicial officer is timely informed of any objection, a written objection to a petition must be filed at least three days before the hearing on the petition. If a written objection has not been filed at least three days before the hearing, the objecting party should appear at the hearing and make his or her presence and objection known to ensure that the judicial officer is aware of the objection. Rule 28 sets forth the procedure to be followed once an objection to a petition has been made and the proceeding~~

~~has become contested.~~

~~Workgroup 3 Aaron Nash assigned~~

Rule 22. Order Appointing ~~Conservator,~~ Guardian, Conservator, ~~or~~ Personal Representative, or Special Administrator.

(a) Orders.

(1) ***Required Warning.*** Every order appointing a ~~conservator,~~ guardian, conservator, ~~or~~ personal representative, or special administrator 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.*** If the court orders a bond [or a bond is required by law], the order must state the bond amount, and ~~Every order appointing a conservator or a personal representative must plainly [**Staff Note:** This rule mentions "plainly state" more than once, but is that any more instructive that simply saying "state?"] state the amount of bond, if any, required. The court will not issue~~ letters must not issue ~~of conservator or letters of personal representative~~ until ~~the~~ the ~~required~~ bond has been filed.

~~**(b) Bonds.**~~

~~**(1)** ***Statutory Agent.*** A fiduciary bond filed with the clerk of court must state on the bond or on an attachment the name and address of the bonding company's statutory agent or other person authorized to accept service of process for the bonding company in Arizona.~~

~~**(2)** ***Change in Statutory Agent or Agent's Address.*** The bonding company must promptly notify the clerk of court of any change in the company's statutory agent or in the statutory agent's address.~~

~~**(c) Restrictions on Authority and Restricted Accounts.**~~

~~**(1)** ***Restrictions on Management Authority.*** **Every order appointing a guardian, conservator or, personal representative, or special administrator, or that authorizes a single transaction or other protective arrangement under A.R.S. § 14-5409, must plainly state any restrictions on the fiduciary's authority to manage the estate's assets.**~~

~~**(2)** ***Restrictions on Financial Authority.*** **If the restriction affects the fiduciary's authority to manage the estate's monetary assets,and, unless the court**~~

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orders otherwise, any letters the court issues must describe the restriction, contain such as the following language: "Funds must be deposited into an interest-bearing, federally insured restricted account at a financial institution engaged in business in Arizona. No withdrawals of principal or interest may be made without a certified order of the superior court. Unless the court orders otherwise, reinvestment may be made without further court order so long as funds remain insured and restricted in this institution at this branch."

(3) *Proof of Restricted Account.* Unless the court orders otherwise, the fiduciary must file proof of any restricted account no later than 30 days after the court first issues enters an temporary or permanent order or letters restricting the account.

[Staff Note: Should the following provision be relocated to Rule 37?]

(4) *Attorney Responsibilities.* Unless the court orders otherwise, an attorney who represents the fiduciary, ward, protected person, or insurance company and who is the recipient of any proceeds to be restricted for the benefit of a minor, incapacitated person, or protected person, must ensure that the restricted account is established and properly titled, and that the restricted funds are safely deposited into the account. The attorney must file a properly executed proof of restricted account form executed by an authorized representative of the financial institution no later than 30 days after letters are issued or a single transaction order is entered.

(d) Restricted Real Property.

(1) *Restrictions on Transactional Authority.* Every order appointing a conservator or a personal representative, or that authorizes a single transaction or other protective arrangement under A.R.S. § 14-5409, must plainly state any restrictions on the authority to sell, lease, encumber, or convey the estate's real property. The court will not issue any letters of conservator or personal representative to any person unless the letters contain the language restricting the fiduciary's authority.

(b) *Restrictions on Management Authority.* If the restriction limits the fiduciary's authority to manage real property, the order appointing the conservator or personal representative, or that authorizes or ratifies the transaction, must contain the following language unless the court orders otherwise: "No realty may be leased for more than one year, sold, encumbered, or conveyed without a prior court order authorizing it"Restrictions on Authority and Restricted Accounts.

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(1) ~~***Restrictions on Authority***~~***Generally.*** Every order appointing a guardian, conservator, personal representative, or special administrator, or that authorizes a single transaction or other protective arrangement, must state any restrictions on the fiduciary's authority to manage the estate's assets. ~~Any such restriction shall must be included, in the same language, in the L~~letters. Examples of restrictions include the following:

(A) *Regarding real property:* ~~***Restrictions on Management Authority.*** If the restriction limits the fiduciary's authority to manage real property, the order appointing the conservator or personal representative, or that authorizes or ratifies the transaction, may contain the following language: ~~"No realty property may be leased for more than one year, sold, encumbered, or conveyed without a prior court order authorizing it."

(B) ~~*Restrictions on Financial Authority*~~*Regarding monetary assets:* ~~*If the restriction affects the fiduciary's authority to manage the estate's monetary assets, the order may be in the following language:*~~ "No withdrawals of principal or interest may be made without a certified order of the superior court. Unless the court orders otherwise, reinvestment may be made without further court order so long as funds remain restricted in this institution at this branch."

(C) *Regarding guardians:* "No authority over placement or movement of the ward's residence, absent an emergency, without prior court approval." Or, "The guardian's authority is limited to the power to make medical decisions."

(2) ***Proof of Restricted Account.*** ~~If a restriction on financial authority has been ordered, t~~The fiduciary is responsible ~~to~~ for ensure~~ing~~ that ~~the must file~~ing proof of any restricted account is filed not later than 30 days after the court enters an order restricting the account.

~~(2)~~(3) ***Attorney Responsibilities.*** Unless the court orders otherwise, an attorney representing a fiduciary who receives any proceeds to be restricted for the benefit of a minor, incapacitated person, or protected person, must ensure that the restricted account is established and properly titled, and that the restricted funds are safely deposited into the account. ~~asen~~ T~~.~~The court may~~,~~ also ~~at the time of entry of the order restricting authority, direct~~order that other parties or counsel ensure that the restrictions are properly ~~effected~~implemented and proof ~~appropriately~~is filed.

~~(3)~~

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COMMENT

~~Generally, a person appointed as a conservator or as a personal representative shall obtain and file a fiduciary bond before letters of appointment are issued. Certain exceptions, however, exist. These exceptions, as well as how the amount of bond is to be calculated, are set by statute. *See* A.R.S. §§ 14-3603 to -3606 (bonds for personal representatives); A.R.S. §§ 14-5411 and -5412 (bonds for conservators).~~

~~This rule is not intended to expand or narrow the circumstances in which a bond is required of a conservator or personal representative. Instead, its purpose is to require that the form of order clearly state whether a bond is required and, if so, the amount of the bond and to clarify that letters should not be issued until any required bond has been filed with the clerk of court.~~

~~Because A.R.S. § 14-1201 defines "personal representative" as including a special administrator, this rule also applies to the appointment of a special administrator.~~

~~**Rule 22.1. Bonds.**~~

~~(4)~~(a) ~~**Statutory Agent.** A bond filed with the court clerk must state on the bond or on an attachment the name and address of the bonding company's statutory agent or other person authorized to accept service of process for the bonding company in Arizona.~~

~~(5)~~(b) ~~**Change in Statutory Agent or Agent's Address.** The bonding company must promptly notify the court clerk of any change in the company's statutory agent or in the statutory agent's address.~~ [This tentative rule derived from Rule 22(b). The workgroup recommends removing the provision.]

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Rule 22. Order Appointing Guardian, Conservator, Personal Representative, or Special Administrator.

(a) Orders.

(1) ***Required Warning.*** Every order appointing a guardian, conservator, personal representative, or special administrator 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.*** If the court orders a bond [or a bond is required by law], the order must state the bond amount, and letters must not issue until the bond has been filed.

(b) Restrictions on Authority.

(1) ***Generally.*** Every order appointing a guardian, conservator, personal representative, or special administrator, or that authorizes a single transaction or other protective arrangement, must state any restrictions on the fiduciary's authority to manage the estate's assets. Examples of restrictions include the following:

(A) *Regarding real property:* "No real property may be leased for more than one year, sold, encumbered, or conveyed without a prior court order authorizing it."

(B) *Regarding monetary assets:* "No withdrawals of principal or interest may be made without a certified order of the superior court. Unless the court orders otherwise, reinvestment may be made without further court order so long as funds remain restricted in this institution at this branch."

(C) *Regarding guardians:* "No authority over placement or movement of the ward's residence, absent an emergency, without prior court approval." Or, "The guardian's authority is limited to the power to make medical decisions."

(2) ***Proof of Restricted Account.*** The fiduciary is responsible for ensuring that proof of any restricted account is filed not later than 30 days after the court enters an order restricting the account.

(3) ***Attorney Responsibilities.*** Unless the court orders otherwise, an attorney representing a fiduciary who receives any proceeds to be restricted for the

benefit of a minor, incapacitated person, or protected person, must ensure that the restricted account is established and properly titled, and that the restricted funds are safely deposited into the account. The court may also order that other parties or counsel ensure that the restrictions are properly implemented and proof is filed.

COMMENT

~~Generally, a person appointed as a conservator or as a personal representative shall obtain and file a fiduciary bond before letters of appointment are issued. Certain exceptions, however, exist. These exceptions, as well as how the amount of bond is to be calculated, are set by statute. *See* A.R.S. §§ 14-3603 to -3606 (bonds for personal representatives); A.R.S. §§ 14-5411 and -5412 (bonds for conservators).~~

~~Because A.R.S. § 14-1201 defines "personal representative" as including a special administrator, this rule also applies to the appointment of a special administrator.~~

~~Rule 22.1. Bonds.~~

(a) ~~Statutory Agent.~~ ~~A bond filed with the court clerk must state on the bond or on an attachment the name and address of the bonding company's statutory agent or other person authorized to accept service of process for the bonding company in Arizona.~~

(b) ~~Change in Statutory Agent or Agent's Address.~~ ~~The bonding company must promptly notify the court clerk of any change in the company's statutory agent or in the statutory agent's address.~~ [This tentative rule derived from Rule 22(b). The workgroup recommends removing the provision.]

~~**Workgroup 3 Judge David Mackey assigned**~~

NOTE: This is a proposed new Part VII of the Probate Rules. The rules in this new part are derived from current Rules 24 and 36.

PART VII. GUARDIANS WITH INPATIENT MENTAL HEALTH AUTHORITY

Rule ~~24~~##. ~~Appointment of~~Order Appointing a Guardian with Inpatient Mental Health Authority.

~~If a~~(a) Generally. The court on clear and convincing evidence may ~~enter~~authorize a~~s an order appointing a~~ guardian ~~and granting the guardian authority~~ to ~~give~~ ~~the ward's~~ consent for the ward to receive ~~for~~ inpatient mental health care and treatment, including placement in an inpatient psychiatric ~~a level one behavioral health~~ facility licensed by the Arizona Department of Health Services.~~,~~

(b) Time Limit. ~~t~~The order must specifically state that the guardian's authority terminates no more than one year from the order's filing date~~, or~~. The order may specify ~~upon clear and convincing evidence~~ a ~~longer~~ period ~~of time specified~~ longer than one year, however, only upon a showing of~~by the court~~ extraordinary cause as specified in the order.~~.~~ If the order specifies a period longer than one year, the reporting requirements of section (c) will still apply.

(c) Report and Review. The guardian must file an annual report, including an evaluation report, as required by A.R.S. § 14-5312.01(P). The court must promptly review the report of every guardian with inpatient mental health authority, and either approve it, set the report for hearing, or modify the prior order by terminating the guardian's authority to consent for the ward to receive inpatient mental health care and treatment. The court must terminate the guardian's authority for failure to timely file an annual report, unless the guardian has requested an extension of time to file it.

~~The court mayunless the court extends the authority by a further subsequent written order.~~

(d) Other Provisions. The ~~court may~~ order may ~~that the guardian's authority terminates sooner than one year from the order's~~ filing ~~date~~include other ~~orders~~provisions concerning the guardian's authority that the court determines are necessary to protect the ward's best interests. ~~T~~But the court ~~shall~~ must limit the guardian's authority to what is reasonably necessary in the least restrictive treatment ~~alternative.~~.alternative. [**Comment from Lisa:** Should the LOA also include language regarding the guardian's mental health authority?]

(e) Acknowledgement. Letters will not issue to the appointed guardian until the guardian has signed an acknowledgment of the guardian's duty to consent for the ward to receive inpatient mental health care and treatment and the court has entered an order substantially similar to Form **.

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(f) Renewal of Authority. The court may order a renewal of the guardian's authority by a subsequent written order as provided in Rule ###.

(g) Temporary Order. The court may temporarily authorize the guardian to consent for the ward to receive inpatient mental health care and treatment as provided by A.R.S. § 14-5310.

Strike the Comment

COMMENT

This rule is intended to aid in ~~the administration of~~ cases where ~~in which~~ a guardian has been granted the general duties of a guardian pursuant to A.R.S. § 14-5312 and the additional authority to consent for the ward to receive inpatient mental health care and treatment in a ~~level one~~ behavioral health facility licensed by the Department of Health Services. ~~The guardian's authority to act for the ward in the underlying guardianship of general duties is not affected by the additional authority to consent to inpatient mental health treatment.~~ By statute, a guardian's authority to consent to inpatient treatment ends if the guardian does not file an evaluation report at the one-year anniversary~~. The~~, but the guardian's other ~~statutory~~ duties do not end after one year. The ~~requirement of the~~ guardian with inpatient mental health authority is required to file a report every year to state that the ward needs ongoing inpatient treatment. The purpose of this report is to provide~~s~~ due process for the ward, ~~and~~ helps to ensure t~~hat t~~he ward is not held in a locked treatment facility if the ward does not require ~~such~~ confinement. ~~See Rule 36 of these rules for the process for renewal of the authority to consent to inpatient treatment.~~

~~Pursuant to~~Under A.R.S. § 14-5312.01(C), the court may limit the duration of a guardian's authority to consent to inpatient mental health care and treatment. ~~Pursuant to~~Under A.R.S. § 14-5312.01(P), the ~~guardian's authority to consent for the ward to receive inpatient mental health care and treatment in a level one behavioral health facility licensed by the Department of Health Services terminates if the guardian does not file the statutorily required annual report of guardian, pursuant to A.R.S. § 14-5315, and an evaluation report. The~~ guardian's authority to consent to the ward's inpatient treatment ~~also~~ terminates if the evaluation report indicates that the ward does not need inpatient mental health care and treatment.

Rule ###. Renewal of a Guardian's Inpatient Mental Health Authority

(a) Required Filings. A guardian who has been authorized to consent for the ward to receive inpatient mental health care and treatment in an inpatient psychiatric facility

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licensed by the Arizona Department of Health Services, and who wants to renew that authority before it expires, must file:

(1) the guardian's annual report required under A.R.S. § 14-5312.01(P);

(2) a psychiatrist's or psychologist's evaluation report required under A.R.S. § 14-5312. 01(P); and

(3) a motion asking the court to renew the guardian's authority to consent to inpatient mental health care and treatment.

(b) Timing. The guardian must file the motion and the other documents no later than 30 days before expiration of the order that grants the guardian the authority to consent for the ward to receive inpatient mental health care and treatment in an inpatient psychiatric facility. If the guardian does not file a motion for renewal before expiration of the order, the guardian must file a petition under Rule XX.

(c) Proposed Order. When the motion, the guardian also must lodge a proposed order that would grant the motion and renew the guardian's authority.

(d) Delivery. The guardian must promptly mail, deliver, or otherwise provide to both the ward and the ward's court-appointed attorney copies of the guardian's annual report, the physician's or psychologist's evaluation report, the motion, and the proposed order.

(e) Objection to Motion for Renewal or Request for Hearing. The ward may file an objection to a motion for renewal or may file a request for a hearing under A.R.S. § 14-5312.01(P). If the ward files either an objection or a request for a hearing, the court must enter an order that extends the guardian's authority to consent for the ward to receive inpatient mental health care and treatment in a behavioral health facility licensed by the Arizona Department of Health Services until the court has ruled on the ward's objection, or conducted a hearing on whether the guardian's authority should be renewed.

(1) ~~complying with Rule 58(a)(2) of the Arizona Rules of Civil Procedure.~~ [Staff ~~Note: Is this the correct cite?~~] [JWR Note: Good question. After looking at the cited rule, I have I have no idea what is being required here]

(c) Renewal Order. Renewal orders are subject to the requirements of Rule XX(a).

~~**Rule ####. Renewal of a Guardian's Inpatient Mental Health Authority by Petition**~~

~~If a guardian's authority to consent for the ward to receive inpatient mental health care and treatment in an inpatient psychiatric facility licensed by the Arizona Department of Health Services has expired, the guardian must file a petition requesting authority under~~

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~~Rule ##. [Staff Note: And what happens if the guardian doesn't file a petition to renew after the authority has expired?]~~

[Staff Note: Even though the guardian's authority to consent for MH treatment has expired under section (c), because the guardianship is still in place, it's not clear why a motion suffices under section (a) but a petition is required under section (c). It's also not clear what effect the expiration of authority has on the ward, who may still be an in-patient.]

[Staff Note: Rule 24 concerns appointment of a guardian with inpatient mental health authority. Consider consolidating Rules 24 and 36 or relocating one of the rules so they are adjacent.]

COMMENT

A.R.S. § 14-5312.01(P) requires a guardian who has been granted the authority to consent for the ward to receive inpatient mental health care and treatment in a level one behavioral health facility to file not only an annual report of guardian that complies with A.R.S. § 14-5315, but also a physician's or psychologist's evaluation report that indicates whether the ward continues to need inpatient mental health care and treatment. If the guardian does not file the evaluation report or if the evaluation report indicates that the ward does not need inpatient mental health care and treatment, the guardian's authority to consent to such treatment automatically ceases. A.R.S. § 14-5312.01(P).

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NOTE: This is a proposed new Part VII of the Probate Rules. The rules in this new part are derived from current Rules 24 and 36.

PART VII. GUARDIANS WITH INPATIENT MENTAL HEALTH AUTHORITY

Rule ##. Order Appointing a Guardian with Inpatient Mental Health Authority.

(a) Generally. The court on clear and convincing evidence may authorize a guardian to consent for the ward to receive inpatient mental health care and treatment, including placement in an inpatient psychiatric facility licensed by the Arizona Department of Health Services.

(b) Time Limit. The order must specifically state that the guardian's authority terminates no more than one year from the order's filing date. The order may specify a period longer than one year, however, only upon a showing of extraordinary cause as specified in the order. If the order specifies a period longer than one year, the reporting requirements of section (c) will still apply.

(c) Report and Review. The guardian must file an annual report, including an evaluation report, as required by A.R.S. § 14-5312.01(P). The court must promptly review the report of every guardian with inpatient mental health authority, and either approve it, set the report for hearing, or modify the prior order by terminating the guardian's authority to consent for the ward to receive inpatient mental health care and treatment. The court must terminate the guardian's authority for failure to timely file an annual report, unless the guardian has requested an extension of time to file it.

(d) Other Provisions. The order may include other provisions concerning the guardian's authority that the court determines are necessary to protect the ward's best interests. But the court must limit the guardian's authority to what is reasonably necessary in the least restrictive treatment alternative. [**Comment from Lisa:** Should the LOA also include language regarding the guardian's mental health authority?]

(e) Acknowledgement. Letters will not issue to the appointed guardian until the guardian has signed an acknowledgment of the guardian's duty to consent for the ward to receive inpatient mental health care and treatment and the court has entered an order substantially similar to Form **.

(f) Renewal of Authority. The court may order a renewal of the guardian's authority by a subsequent written order as provided in Rule ###.

(g) Temporary Order. The court may temporarily authorize the guardian to consent for the ward to receive inpatient mental health care and treatment as provided by A.R.S. § 14-5310.

Strike the Comment

COMMENT

This rule is intended to aid in cases where a guardian has been granted the general duties of a guardian pursuant to A.R.S. § 14-5312 and the additional authority to consent for the ward to receive inpatient mental health care and treatment in a behavioral health facility licensed by the Department of Health Services. By statute, a guardian's authority to consent to inpatient treatment ends if the guardian does not file an evaluation report at the one-year anniversary, but the guardian's other duties do not end after one year. The guardian with inpatient mental health authority is required to file a report every year to state that the ward needs ongoing inpatient treatment. The purpose of this report is to provide due process for the ward, and helps to ensure the ward is not held in a locked treatment facility if the ward does not require confinement.

Under A.R.S. § 14-5312.01(C), the court may limit the duration of a guardian's authority to consent to inpatient mental health care and treatment. Under A.R.S. § 14-5312.01(P), the guardian's authority to consent to the ward's inpatient treatment terminates if the evaluation report indicates that the ward does not need inpatient mental health care and treatment.

Rule ###. Renewal of a Guardian's Inpatient Mental Health Authority

(a) Required Filings. A guardian who has been authorized to consent for the ward to receive inpatient mental health care and treatment in an inpatient psychiatric facility licensed by the Arizona Department of Health Services, and who wants to renew that authority before it expires, must file:

> **(1)** the guardian's annual report required under A.R.S. § 14-5312.01(P);
>
> **(2)** a psychiatrist's or psychologist's evaluation report required under A.R.S. § 14-5312. 01(P); and
>
> **(3)** a motion asking the court to renew the guardian's authority to consent to inpatient mental health care and treatment.

(b) Timing. The guardian must file the motion and the other documents no later than 30 days before expiration of the order that grants the guardian the authority to consent for the ward to receive inpatient mental health care and treatment in an inpatient psychiatric facility. If the guardian does not file a motion for renewal before expiration of the order, the guardian must file a petition under Rule XX.

(c) Proposed Order. When the motion, the guardian also must lodge a proposed order that would grant the motion and renew the guardian's authority.

(d) Delivery. The guardian must promptly mail, deliver, or otherwise provide to both the ward and the ward's court-appointed attorney copies of the guardian's annual report, the physician's or psychologist's evaluation report, the motion, and the proposed order.

(e) Objection to Motion for Renewal or Request for Hearing. The ward may file an objection to a motion for renewal or may file a request for a hearing under A.R.S. § 14-5312.01(P). If the ward files either an objection or a request for a hearing, the court must enter an order that extends the guardian's authority to consent for the ward to receive inpatient mental health care and treatment in a behavioral health facility licensed by the Arizona Department of Health Services until the court has ruled on the ward's objection, or conducted a hearing on whether the guardian's authority should be renewed.

(1) ~~complying with Rule 58(a)(2) of the Arizona Rules of Civil Procedure~~ [Staff ~~Note: Is this the correct cite?] [JWR Note: Good question. After looking at the cited rule, I have I have no idea what is being required here]~~

(c) Renewal Order. Renewal orders are subject to the requirements of Rule XX(a).

~~**Rule ####. Renewal of a Guardian's Inpatient Mental Health Authority by Petition**~~

~~If a guardian's authority to consent for the ward to receive inpatient mental health care and treatment in an inpatient psychiatric facility licensed by the Arizona Department of Health Services has expired, the guardian must file a petition requesting authority under Rule ##. [Staff Note: And what happens if the guardian doesn't file a petition to renew after the authority has expired?]~~

[Staff Note: Even though the guardian's authority to consent for MH treatment has expired under section (c), because the guardianship is still in place, it's not clear why a motion suffices under section (a) but a petition is required under section (c). It's also not clear what effect the expiration of authority has on the ward, who may still be an in-patient.]

[Staff Note: Rule 24 concerns appointment of a guardian with inpatient mental health authority. Consider consolidating Rules 24 and 36 or relocating one of the rules so they are adjacent.]

COMMENT

A.R.S. § 14-5312.01(P) requires a guardian who has been granted the authority to consent for the ward to receive inpatient mental health care and treatment in a level one

behavioral health facility to file not only an annual report of guardian that complies with A.R.S. § 14-5315, but also a physician's or psychologist's evaluation report that indicates whether the ward continues to need inpatient mental health care and treatment. If the guardian does not file the evaluation report or if the evaluation report indicates that the ward does not need inpatient mental health care and treatment, the guardian's authority to consent to such treatment automatically ceases. A.R.S. § 14-5312.01(P).

Rule 28.2. Tiered Limits to Discovery Based on Attributes of Cases

Currentness

<Text of Rule 26.2 effective July 1, 2018. See, also, Rule 26.2 effective until July 1, 2018.>

(a) Generally. This rule explains how much discovery a party may take in their case. The amount of discovery a party may take is limited by the tier to which their case is assigned. This rule explains how and when cases are assigned to one of 4 tiers, each of which has different limits.

(b) Criteria for Assigning Cases to Tiers. Cases should be considered for assignment to a tier by case characteristics, consistent with the factors that define proportional discovery in Rule XX(b)(1). The following sets of characteristics are not exhaustive:

(0) *Tier X. Case Characteristics*. These are *de minimus* contested proceedings, with no expert witnesses but that may include expert reports. There is a minimal amount of documentary evidence and few witnesses and legal issues. Generally, these cases have no more than two sides and can be tried in less than 4 hours. Most petitions for guardianships and conservatorships are Tier X cases.

(1) *Tier 1: Case Characteristics*. These are contested proceedings, with no more than one expert per side. The parties anticipate having no more than 3 fact witnesses and 10 exhibits per side. Generally, these cases have two sides and can be tried in less than one day.

(2) *Tier 2: Case Characteristics*. Cases that do not easily fit within another tier belong here. Generally, these are cases of intermediate complexity.

(3) *Tier 3: Case Characteristics*. These are cases that may require 5 or more days for trial and may include more than one probate proceeding consolidated for trial. Generally, these cases are logistically or legally complex, with voluminous documentary evidence, with numerous pretrial motions raising difficult or novel legal issues and require management of a large number of witnesses or separately represented parties, or which require coordination with related actions pending in other courts.

John Barron

From: Jay Polk <[redacted]>
Sent: Monday, August 13, 2018 9:59 AM
To: Honorable Robert Carter Olson; John Barron
Subject: Probate Rules Task Force--Civil Rule 26(f)

[redacted], one of our commissioners, sits on the Executive Council of the Probate & Trust Law Section of the State Bar. He recently was asked for " Any departmental thoughts as to Rule 26(f), which now prevents the issuance of a subpoena (as well as all other discovery) until a disclosure statement has been issued. Often, in probate, we [practitioners] use subpoenas to get information for the personal representative, even though there is no controversy. The new rule could impair the previously somewhat easy way to gain information to assist in the marshalling of assets." This question got me thinking--should the probate rules expressly allow a court-appointed fiduciary (i.e., guardian, conservator, or personal representative) to use a subpoena to obtain information necessary to fulfill the fiduciary's duty? I'm thinking this is something your workgroup might want to ponder. Even if you conclude the answer is "no," it probably is something that should be clarified/addressed in the probate rules. Thoughts?

--
~Jay

Rule 29. Alternative Dispute Resolution in Probate Proceedings.

~~**Generally.**~~ On a party's motion or on its own, the court may order the parties in a probate proceeding to participate in one or more alternative dispute resolution processes ~~processes~~, such as ~~arbitration, mediation,~~ a settlement conference ~~, or open negotiation,~~ or, if the parties agree, ~~a~~ private mediation or a form of arbitration ~~process~~.

~~(a)~~(1) ***Compulsory Arbitration.*** Unless the parties agree otherwise, they are not subject to compulsory arbitration under Rules 72 through 77 of the Arizona Rules of Civil Procedure.

~~(b)~~ ***Duty to Confer and Participate.*** ~~The parties have a duty to make a good faith effort to agree on an alternative dispute resolution process.~~ The parties must make a good faith effort to agree on an alternative dispute resolution process. If they participate in an alternative dispute resolution process, they must do so in good faith.~~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.~~

~~**(c) 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.~~

~~**(d) 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~~

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~~requirement in one of the initial rules?] The parties also have a duty to report the outcome to the court.~~

~~**(c) 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. 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.~~

~~**COMMENT**~~

~~This rule is not intended to discourage parties or their attorneys from exploring the use of alternative dispute resolution.~~

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Rule 29. Alternative Dispute Resolution in Probate Proceedings.

On a party's motion or on its own, the court may order the parties in a probate proceeding to participate in one or more alternative dispute resolution processes, such as a settlement conference or, if the parties agree, private mediation or a form of arbitration.

(1) ***Compulsory Arbitration*****.** Unless the parties agree otherwise, they are not subject to compulsory arbitration under Rules 72 through 77 of the Arizona Rules of Civil Procedure.

(2) ***Duty to Confer and Participate.*** The parties must make a good faith effort to agree on an alternative dispute resolution process. If they participate in an alternative dispute resolution process, they must do so in good faith.

~~**COMMENT**~~

~~Workgroup 3 Robert Fleming assigned~~

Rule 37. Settlements Involving Minors or ~~Incapacitated~~ Adults in Need of Protection.

(a) Generally.

(1) Settlement of a Minor's Claim for Less than $10,000. If requested, any judicial officer may approve the payment of money or delivery of personal property to a parent or conservator of a minor in an amount not exceeding $10,000 and may authorize the recipient to execute appropriate releases of liability as may be required to conclude a settlement..

(2) Settlement of Personal Injury Claims for More than $10,000. Any settlement of a personal injury or wrongful death claim brought on behalf of a minor or an adult person in need of protection for more than $10,000 must be submitted for approval by a judicial officer assigned to hear matters arising under A.R.S. Title 14, regardless of whether a court has previously appointed a conservator for the minor or person in need of protection.

(3) Payment of Money or Delivery of Property in Other Situations. In circumstances not involving a personal injury or wrongful death claim, a judicial officer assigned to hear matters arising under A.R.S. Title 14 may authorize establishment of a suitable trust or other arrangement to avoid the necessity of continuing court supervision if the judicial officer finds that the best interests of the minor or adult person in need of protection may be satisfied by the alternative arrangement.

(b) Petitioner. ~~Any~~ petition for ~~such~~ approval may be brought by a court-appointed guardian or conservator,~~,~~ a guardian *ad litem*, ~~a next friend~~ or other interested ~~party~~person.~~.~~

(c) ~~Procedure on hearing~~Considerations. If it is appropriate or necessary to assure fairness and justice for a minor, an adult in need of protection or other litigants, the court may appoint a representative pursuant to ARS §14-1408 or a master pursuant to Rule 53, Arizona Rules of Civil Procedure, with specific instructions to address (as may be applicable):

(1) The reasonableness of the settlement proposal,

(2) The attorney fees to be paid from the minor's or adult's settlement proceeds,

(3) The costs of litigation and apportionment of those costs, and

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(4) The proper apportionment of settlement proceeds among the various litigants.

(d) Orders. The court hearing ~~such~~ the petition may enter any appropriate order under the authority of A.R.S. ~~secs.~~ §§14-5408 and 14-5409, including an order authorizing a single transaction to approve such settlement and establishment of a protective arrangement other than a conservatorship. After considering the size and nature of the proceeds from such settlement, the age and sophistication of the minor or person in need of protection, the living arrangements and ongoing needs, the court may do one or more of the following:

(1) appoint a conservator;

(2) ~~-~~order establishment of an appropriate trust, including a special needs trust, with or without continuing court supervision, as authorized by ARS §14-5409(B),

(3) authorize all or a portion of the proceeds to be placed in an account pursuant to

(A) 26 U.S.C. 529 ("qualified tuition programs") ~~or~~,

(B) 26 U.S.C. 529A ("qualified ABLE programs"), ~~or~~

(C) 42 U.S.C. 1396p(d)(4)(C) (a pooled special needs trust), ~~or~~

(D) A.R.S 14-5408(C) (a "dignity account")

~~(~~**(4)** in the case of a minor claimant,~~)~~ distribute~~d~~ the proceeds to a custodian ~~pursuant to~~under A.R.S. §~~ec.~~ 14-7656(B) (the Uniform Transfers to Minors Act); ~~or~~

(5) distribute the proceeds to an appropriate person ~~pursuant to~~under A.R.S. § ~~sec.~~ 14-5103 ("~~F~~facility of payment or delivery") or to a guardian under A.R.S. § 14-5312(A)(4)(b)~~.~~:

(6) approve a structured settlement;

(7) approve a deposit in a restricted account under A.R.S § 14-5411(A); or

(8) enter any other order authorized by statute.

~~Note: Robert will add language to accommodate 5103 transactions; and possibly provisions regarding a GAL or special master.~~

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(a) Settlement of Claims on Behalf of Minors. Except as provided in A.R.S. § 14-5103(A), any settlement of a personal injury or wrongful death claim brought on behalf of or against a minor must be submitted for approval by a judicial officer assigned to hear matters arising under A.R.S. Title 14, regardless of whether a court has appointed a conservator for the minor. [**Staff Note:** Why is it necessary for the court to approve a personal injury claim brought against a minor? An insurance company will indemnify the minor in most of those claims, and the minor will have no personal responsibility to pay. Or at least the minor will be released from any further responsibility to pay. And claims against a minor are not mentioned in the statute.]

(b) Settlement of Claims on Behalf of Incapacitated Adults or Protected Person. Any settlement of a personal injury or wrongful death claim brought on behalf of an incapacitated adult or protected person must be submitted for approval by a judicial officer assigned to hear matters arising under A.R.S. Title 14, regardless of whether a court has appointed a conservator for the incapacitated adult.

COMMENT

This rule is intended to clarify the requirement that whenever a settlement is reached in a civil proceeding brought on behalf of or against a minor or incapacitated adult to recover damages for personal injury or wrongful death, the proposed settlement must be submitted for review and approval to a judicial officer assigned to hear probate matters. In most instances, either a conservatorship or trust will need to be established for the minor or incapacitated adult to receive and manage the funds distributed from the settlement. Because of the minority or incapacity of the recipient of the funds, the court should review the terms of the settlement to ensure that its terms and conditions appear to be in the minor's or incapacitated person's best interests. An exception is recognized pursuant to A.R.S. § 14-5103, which provides that payment or delivery of money or personal property to minors in amounts not exceeding $10,000 per annum may be facilitated without the establishment of a conservatorship estate or other protective proceeding.

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Rule 37. Settlements Involving Minors or Adults in Need of Protection.

(a) Generally.

(1) Settlement of a Minor's Claim for Less than $10,000. If requested, any judicial officer may approve the payment of money or delivery of personal property to a parent or conservator of a minor in an amount not exceeding $10,000 and may authorize the recipient to execute appropriate releases of liability as may be required to conclude a settlement.

(2) Settlement of Personal Injury Claims for More than $10,000. Any settlement of a personal injury or wrongful death claim brought on behalf of a minor or an adult person in need of protection for more than $10,000 must be submitted for approval by a judicial officer assigned to hear matters arising under A.R.S. Title 14, regardless of whether a court has previously appointed a conservator for the minor or person in need of protection.

(3) Payment of Money or Delivery of Property in Other Situations. In circumstances not involving a personal injury or wrongful death claim, a judicial officer assigned to hear matters arising under A.R.S. Title 14 may authorize establishment of a suitable trust or other arrangement to avoid the necessity of continuing court supervision if the judicial officer finds that the best interests of the minor or adult person in need of protection may be satisfied by the alternative arrangement.

(b) Petitioner. A petition for approval may be brought by a court-appointed guardian or conservator, a guardian *ad litem*, or other interested person.

(c) Considerations. If it is appropriate or necessary to assure fairness and justice for a minor, an adult in need of protection or other litigants, the court may appoint a representative pursuant to ARS §14-1408 or a master pursuant to Rule 53, Arizona Rules of Civil Procedure, with specific instructions to address (as may be applicable):

(1) The reasonableness of the settlement proposal,

(2) The attorney fees to be paid from the minor's or adult's settlement proceeds,

(3) The costs of litigation and apportionment of those costs, and

(4) The proper apportionment of settlement proceeds among the various litigants.

(d) Orders. The court hearing the petition may enter any appropriate order under the authority of A.R.S.§§14-5408 and 14-5409, including an order authorizing a single transaction to approve such settlement and establishment of a protective arrangement other than a conservatorship. After considering the size and nature of the proceeds

from such settlement, the age and sophistication of the minor or person in need of protection, the living arrangements and ongoing needs, the court may do one or more of the following:

(1) appoint a conservator;

(2) order establishment of an appropriate trust, including a special needs trust, with or without continuing court supervision, as authorized by ARS §14-5409(B),

(3) authorize all or a portion of the proceeds to be placed in an account pursuant to

(A) 26 U.S.C. 529 ("qualified tuition programs"),

(B) 26 U.S.C. 529A ("qualified ABLE programs"),

(C) 42 U.S.C. 1396p(d)(4)(C) (a pooled special needs trust),

(D) A.R.S 14-5408(C) (a "dignity account")

(4) in the case of a minor claimant, distribute the proceeds to a custodian under A.R.S. §14-7656(B) (the Uniform Transfers to Minors Act);

(5) distribute the proceeds to an appropriate person under A.R.S. § 14-5103 ("facility of payment or delivery") or to a guardian under A.R.S. § 14-5312(A)(4)(b);

(6) approve a structured settlement;

(7) approve a deposit in a restricted account under A.R.S § 14-5411(A); or

(8) enter any other order authorized by statute.