

Task Force on the Arizona Rules of Probate Procedure

Meeting Agenda

Friday, September 28, 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	<i>Hon. Rebecca Berch, Chair</i>
Item no. 2	Approval of the August 24, 2018 meeting minutes	<i>Justice Berch</i>
Item no. 3	Consent agenda: Rule 17 (“Petitions in Probate Proceedings”)	<i>Mr. Barron</i>
Item no. 4	Workgroup reports and discussion of rules Workgroup 1: Rule 14, Rule 15, and Rules 15.1 through 15.5 Workgroup 2: Rule 28, Rule 28.1, and Rule 28.2 Workgroup 3: Rule 30, and abrogation of Rules 30.1, 30.2, 30.3	<i>Judge Polk</i> <i>Judge Olson</i> <i>Judge Mackey</i>
Item no. 5	Roadmap <ul style="list-style-type: none">• Next meeting: Friday, October 26 [Room 119]• Proposed meeting schedule:<ul style="list-style-type: none">○ Friday, November 16 [Room 230]○ Friday, December 14 [Room 119]	<i>Justice Berch</i>
Item no. 6	Call to the Public Adjourn	<i>Justice Berch</i>

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

Please contact Mark Meltzer at (602) 452-3242 with any questions concerning this Agenda. Persons with a disability may request reasonable accommodations by contacting Angela Pennington at (602) 452-3547. Please make requests as early as possible to allow time to arrange accommodations.

**Probate Rules Task Force
State Courts Building, Phoenix
Meeting Minutes: August 24, 2018**

Members attending: Hon. Rebecca Berch (Chair), Marlene Appel, John Barron III, Colleen Cacy, Hon. Julia Connors (by telephone), Robert Fleming, Hon. Andrew Klein, Aaron Nash, Hon. Patricia Norris, Hon. John Paul Plante, Hon. Jay Polk, Catherine Robbins, T.J. Ryan, Denice Shepherd (by telephone)

Absent: Hon. David Mackey, Hon. Robert Carter Olson, Lisa Price, Hon. Wayne Yehling

Guests: None

AOC Staff: Jodi Jerich, Mark Meltzer, Angela Pennington

1. Call to order; preliminary remarks; approval of meeting minutes. The Chair called the fifth Task Force meeting to order at 10:01 a.m. She noted that each workgroup has met at least once since the July 27 meeting, and each workgroup has scheduled another meeting after today. The Chair then asked members to review draft minutes of the fourth Task Force meeting.

Motion: A member moved to approve the July 27, 2018 meeting minutes, the motion received a second, and it passed unanimously. **PRTF: 004**

2. Consent agenda. Five rules that the Task Force previously discussed were returned to their respective workgroups for further modifications and then placed on today's consent agenda for abbreviated discussion.

Rule 11 ("Telephonic and video attendance and testimony"): Judge Polk advised that Workgroup 1 eliminated option 2 (containing a 30-day deadline for making a request) and retained option 2 (permitting a person to make the request in a timely manner considering the specified circumstances). As directed by the Task Force at the July 27 meeting, Workgroup 1 added the introductory words "unless otherwise provided by local rule" at the start of Rule 11(d) ("time for making request"). Members had no further changes to this rule.

Rule 16 ("applications in probate proceedings"): Mr. Barron noted that following input from the Maricopa Probate Registrar at the July 27 meeting, the workgroup deleted a draft phrase in Rule 16(c)(2) that would have required the registrar to act on an application within two business hours. Members concurred with the deletion. Judge Polk had one additional suggestion regarding Rule 16(e). The draft refers to "relief requested or granted in an application." But the registrar does not grant relief. That is done by

court order. Judge Polk requested removal of the words “or granted,” and members agreed with his request.

Rule 17 (“petitions in probate proceedings”): Mr. Barron noted that in Rule 17(a) (“meaning of petition”), the workgroup added a new sentence to clarify that a petition “includes a counter petition, cross-petition, and third-party petition.” The workgroup also added the word “initial” before the word “hearing” in the title and body of section (c).

Section (e) (“response to a petition”) requires anyone who opposes the relief requested in a petition to file a response no later than 7 days before the hearing. By statute, a petition can be served just 14 days before the hearing, and Judge Plante observed that the schedule in section (e) allows only 7 days to file a response. The interested person might be out-of-state, but even if in-state, this schedule requires a person who wishes to use an attorney to locate, meet with, and retain the attorney, and have the attorney file a response, within one week. Judge Plante proposed modifying the rule to permit the filing of a response up to and including the hearing date. The current rule requires the filing of a response 3 days before the hearing. A member suggested changing the proposed 7 days to two days. Another member explained that the Task Force’s rationale for changing the 3-day rule to 7 days was to allow timely processing of a paper response and to assure it would be in the court file on the day of the hearing because the probate court still does not have the benefit of more expeditious electronic filing. Notwithstanding, anyone can still appear on the hearing date, even telephonically, to verbally object and then file a response thereafter. On a straw vote, all but two members preferred to leave the time at 7 days.

Judge Polk added that if the Task Force adopts Workgroup 1’s proposed revisions to Rule 12, Rules 17(c) (“initial hearing date”) and 17(d) (“notice of hearing on the petition”) would be redundant and could be deleted. He also noted that Rule 17 variously uses the terms “response,” “objection,” or “opposition.” Members discussed this and concluded that the usages were appropriate when considered in their context. Mr. Barron observed that a response also could be a joinder, and he advised that Workgroup 2 would review the rule further to assure these terms are used correctly.

Rule 22 (“order appointing guardian, etc.”): Mr. Fleming noted that although Workgroup 3 had not yet incorporated revisions recommended by the Task Force, he was able to address them, specifically:

- In Rule 22(b)(1) (“generally”), he would delete the words “authority to manage the estate’s assets,” and would substitute the word “powers.”
- He would transfer the remainder of subpart (b)(1), including subparts (b)(1)(A), (b)(1)(B), and (b)(1)(C) as a comment to Rule 22.

- He would change the introductory phrase of the comment by adding the words shown with underline: “examples of restrictions might include but are not limited to the following.”

Members agreed to the foregoing modifications. Judge Polk suggested an additional revision to subpart (b)(2) (“proof of restricted account”). The current draft requires that proof be filed within 30 days, but occasionally filing a proof takes more time, or can be accomplished more quickly. Accordingly, Judge Polk proposed adding the following sentence: “For good cause, the court may shorten or enlarge this deadline.” Members agreed to this addition and they approved Rule 22 as modified.

Rule 29 (“alternative dispute resolution”): Mr. Barron explained the workgroup’s recent modification to this rule. The three sections of the previous draft have become two sections. Furthermore, the rule now provides that unless the parties agree, they are not subject to the compulsory arbitration provisions of the civil rules. Finally, the duties to confer and participate are now in separate sentences in the rule. Members had no questions or objections concerning these modifications.

3. Workgroup 1. The Chair then invited Judge Polk to present Workgroup 1 rules.

Rules 12.1 to 12.5 (“Conference; oral argument; settlement conference; evidentiary hearing; compliance and order to show cause hearings”): Without presenting a draft, Judge Polk introduced this series of rules concerning court events at the July 27 Task Force meeting. This is his first presentation of the workgroup’s draft. The series as originally envisioned included two court events, “other hearings” and “divisional review,” which the workgroup eliminated in the draft. Judge Polk asked members to consider these rules as a group. He added that if the Task Force approves this series of rules, they probably should precede Rule 9.

Judge Polk reviewed each of these rules. In Rule 12.1 on conferences, he noted sections containing a definition, how a conference is set, notice of a conference, attendance at a conference, and evidence (“evidence may not be presented.”) Rule 12.2 provides that evidence may not be presented at oral argument. Although evidence is defined in Rule 2.1, members did not want Rule 12.2 to be misconstrued and result in exclusion of exhibits at oral argument that are appended to a motion. Accordingly, members agreed to change this to say that testimony may not be presented at oral argument. Rule 12.4 pertains to an evidentiary hearing, which includes a bench or jury trial. On a straw vote, 8 members favored including Rules 12.1-12.5 in their recommended draft, and 3 opposed inclusion.

Rule 12 (“Initial hearing on a petition”) and Rule 9 (“Notice of initial hearing on petition”): Judge Polk first noted that the revised version of Rule 12 includes short and

simple explanations of setting the hearing, notice, attendance, the procedure, and when evidence may be presented. Unlike the previous draft of this rule, the revised version eliminated the nomenclature of appearance and non-appearance hearings. Instead, and unless the court specifies otherwise, the petitioner must attend; likewise, interested persons who do not object to the requested relief need not attend. But anyone who opposes the requested relief and who has not filed a written objection at least 7 days before the hearing must attend and object. The hearing is denominated the “initial” hearing to recognize that there may be subsequent court events.

Judge Polk proceeded to an explanation of Rule 9 and noted that members should consider Rules 9 and 12 as a package because they interact. Rule 9, like Rule 12, refers to the “initial” hearing. The workgroup eliminated the Spanish translation of the required warning in the Rule 9 notice (“this is a legal notice; your rights may be affected”) because it was only translated a portion of the warning. In the English version of the warning, the workgroup added the new sentence, “you are not required to attend this hearing,” with the additional caveat that attendance is required if the person opposes the relief requested by the petition. To lengthen the permitted time for responding to a petition, one member would remove the word “not” in draft Rule 9(e) (“the provisions of [Civil] Rule 6(c) [that provide additional time for service by mail] do not apply to notices of hearings in probate proceedings....” However, other members disagreed and left the word “not” in the draft.

A member asked whether a party could attend an initial hearing through their attorney, or whether personal attendance was required. Members reviewed the definition of “attend” in Rule 2.1 and concluded that attendance by counsel was sufficient. However, Rule 12(c)(1) specifically refers to the attendance by “petitioner and petitioner’s attorney.” To avoid confusion, members thought the notice of hearing should say whether the petitioner is required to attend, and in addition, the rule should have a provision advising that the notice must include this information. Members instead addressed this by removing the words “and petitioner’s attorney” from the title and body of subpart (c)(1).

Another member questioned whether the revised version of Rule 12 addressed the underlying need to explain the meaning of a non-appearance hearing. Although it often is not a hearing, people still show up. The member proposed modifying current Rule 12 to simply explain that people don’t always need to appear at a non-appearance hearing. In response, a judge member observed that the concept of a non-appearance hearing is troublesome for judicial officers as well as others because a hearing implies a court event. The Chair commented that the proposed rules demystify the process, while also recognizing that the concept of a non-appearance hearing has utility. Commissioner Connors noted that about two-thirds of her docket consists of non-appearance hearings, primarily accountings and guardians’ reports. Does the Task Force need to define the term, or can it, as Workgroup 1 proposed, refer to it as a hearing that people don’t need

to attend? Should a hearing notice explicitly identify a certain hearing as one where attendance isn't necessary? Should the draft rule include a comment advising that a hearing where attendance isn't required was formerly known as a non-appearance hearing?

A judge member observed that regardless of which terms are in the final draft, self-represented persons should understand those terms. Another judge member thought that when a petition is filed, the notice should simply say who needs to attend, and that defining a confusing term will not eliminate confusion. A straw vote on the question showed 4 members would incorporate the term "non-appearance hearing" in the Task Force draft with a definition of the term, and 6 members favored not using that term. The Chair stated that the rule petition would note the split of opinion, but it was unnecessary to include a comment in the rule. A member proposed consolidating draft Rules 9 and 12 into a single rule, but the proposal garnered no support. Members also discussed removal of the Spanish translation in Rule 9. Although only a portion of the warning was translated, members thought this would put the reader on notice to find someone who could translate the remainder; and it was important to leave this language in the notice because it is served by mail, which might not put the recipient on notice of its importance as personal service by a process server would do. By a margin of 2:1, members favored retaining the Spanish translation. Members also supported Rule 9 as revised, but two members opposed the revised draft. Rules 9 and 12 are accordingly approved.

4. Workgroup 2. Mr. Barron led the presentations.

Rule 28 ("Pretrial procedures"): Mr. Barron advised that the workgroup has not yet completed its draft of this rule, and it may modify certain provisions to conform to the recently drafted Rules 12.1-12.5. He read to members a proposed provision (Rule 28.1) on disclosure and discovery that says, "Unless the parties agree or the court orders otherwise, the tiering requirements in Civil Rule 26.2 do not apply to discovery in a probate case. Unless inconsistent with these rules, Rules 26 through 37 of the Arizona Rules of Civil Procedure apply to discovery and disclosure in contested probate proceedings." However, this is only a preliminary draft.

Mr. Barron proceeded to a question recently posed by a Maricopa County probate commissioner about whether the Task Force is going to recommend a probate rule that corresponds with new Civil Rule 26(f). Civil Rule 26(f) ("timing and sequence of discovery") provides that "a party may not seek discovery from any source, including nonparties, before that party serves its initial disclosure statement under Rule 26.1." The commissioner was concerned that a corresponding probate rule could impair the gathering of information that assists in promptly marshalling estate assets. The commissioner also thought the probate rules should expressly allow immediate use of subpoenas by a court-appointed fiduciary to obtain necessary information in furtherance

of the fiduciary's duties. Mr. Barron did not believe the workgroup's proposal would follow the civil rule in this regard, but he requested the members' input.

Members discussed probate case scenarios where subpoenas would be useful early in a case, including cases that were not contested. Most agreed that Civil Rule 26(f) wouldn't work well in probate. A judge member concurred with the commissioner's belief that appointed fiduciaries should be able to subpoena information to perform their duties. But members also recognized that some pre-disclosure discovery is undertaken by aggressive litigators, and that should be curtailed. One member thought the assigned judge should control discovery. Another thought that an early and reasonable request to use discovery could be approved by a judicial officer, but the Chair did not believe judicial approval should be necessary for a routine discovery request. After further discussion, members concluded that the probate rules should not include an analog to Civil Rule 26(f), and Mr. Barron advised that the workgroup would proceed with its draft accordingly.

Mr. Barron then turned to a partial draft concerning pretrial procedures that the workgroup prepared after a discussion at the previous Task Force meeting: proposed Rule 28.2, "Tiered Limits to Discovery Based on Attributes of Cases." Mr. Barron referred to this draft as the workgroup's "thought experiment" on this subject. It generally parallels new Civil Rule 26.2, but its details are tailored for probate proceedings. Furthermore, unlike the 3 tiers in Civil Rule 26.2, draft Probate Rule 28.2 has 4 tiers. Mr. Barron explained that the probate draft contemplates that no previous discovery was undertaken in the case. He explained the characteristics of Tier 1 cases, which have a minimal number of witnesses and could probably be tried in one day; and Tier 3 cases, which are truly complex probate matters requiring 5 or more days of trial. Tier 2 would have cases that did not easily fit into Tiers 1 or 3. The fourth tier was denominated "Tier X." Cases in this tier, such as many guardianship proceedings, would require *de minimis* discovery. Mr. Barron also suggested that the members consider a rule with no discovery tiers or presumptions, and which instead would provide that discovery would be governed by an individualized scheduling order. The Chair opened these proposals for comment.

The first member to comment proposed a third alternative, a generic rule providing that discovery must be proportional to specified factors. The member thought there were too many variables in probate cases for assigning them to tiers and supported the proposal for a scheduling conference. Mr. Barron thought the term "proportional" was amorphous and poorly defined, and that a structured, tiered system of discovery, with discretion to deviate, might work better. Another member proposed a two-tiered system: one tier like XX (but possibly called "Tier P") for simple cases that could be quickly tried, and another tier for all other cases. More than one member observed that probate cases are not well-suited for tiering based on monetary amounts at issue. A judge member observed that guardianships are more analogous to criminal than civil cases because liberty interests are at stake in guardianships, and there should be no discovery

limits for those cases. A member proposed a preface to the probate discovery rule stating that attorneys have a duty to act responsibly in undertaking discovery. A couple members supported the concept of allowing parties to conduct discovery until someone objected, and at that point, the parties would need to speak with the judge, who would make a proportionality determination before allowing further discovery. Similarly, another member proposed initially assigning every case to Tier 2, and the parties would only need to see the judge if that tier was inappropriate. A member noted that there are fee-shifting provisions in Title 14 statutes that might be pertinent. Another member returned to Mr. Barron's proposal about individualized scheduling orders and suggested that there should be no presumptive limits on discovery before the court enters a scheduling order. Finally, a member mentioned that tiering in civil cases became effective on July 1, and it would be helpful if we could wait to see how it's working before finalizing a probate discovery rule. Mr. Barron thanked the members for their comments, which Workgroup 2 will consider further when it reconvenes.

5. **Workgroup 3.** Mr. Fleming presented on the workgroup's behalf.

Rule 37 (now, "Settlements involving minors or adults in need of protection"): Mr. Fleming reviewed changes the workgroup made to this rule after the previous Task Force meeting. He first noted that in subpart (a)(1) ("settlement of a minor's claim for less than \$10,000"), the workgroup added words allowing the court to "authorize the recipient to execute appropriate releases of liability as may be required to conclude a settlement." Executing a release is usually a necessary adjunct of settlement. He then noted a new subpart (a)(3) ("payment of money or delivery of property in other situations"). In circumstances other than a personal injury or wrongful death claim, this new provision allows a judicial officer who is assigned to hear matters under Title 14 to authorize the establishment of a trust or other arrangement, if doing so would be in the best interests of the minor or adult person in need of protection and to avoid the necessity of continuing court supervision. In section (d) ("orders"), newly added language gives the court additional options after a settlement, including appointing a conservator, establishing a special needs trust, or approving a structured settlement. The members removed subpart (d)(7), which would permit approval of a deposit in a restricted account under A.R.S. § 14-5411(A), because that option is already provided by statute. Members supported all these additions.

A member raised the holding in *Gomez v. Maricopa County*, 175 Ariz. 469 (Ariz. App., 1993). In that case, a mother gave a power of attorney to a relative to settle a wrongful death claim on behalf of her and the decedent's children; the relative proceeded to settle the claim. The opinion held that because the court neither appointed a guardian to act on the minors' behalf nor approved the settlement, the settlement agreement did not bar the children's subsequent action. The member's concern was that draft subpart (a)(1), which permits approval of a settlement by a judge who is not assigned to hear Title 14 cases and who therefore might not establish a conservatorship, could conflict with the holding in *Gomez*. The Chair suggested that members note this issue in their rule petition.

A member observed that use of the word “settlement” in this rule is now inappropriate because the addition of subpart (a)(3) would allow the court to approve such things as receipt of an inheritance or a payment under the decedent’s life insurance policy. In the title of the rule, and as applicable in the body of the rule, members therefore changed “settlement” to “financial recovery.” Finally, Judge Polk reminded members that they had previously agreed to recommend an amendment to the civil rules that would add a provision that corresponded to Probate Rule 37. This will abide further Task Force action.

Rule 24 (currently, “Appointment of a guardian with inpatient mental health authority,” and as proposed, “Order appointing a guardian with inpatient mental health authority;” and Rule 36 (“Renewal of guardian’s inpatient mental health authority”): Mr. Fleming provided background for these two rules. Years ago, a guardian appointed under Title 36 for a gravely disabled person could not consent for the ward’s treatment in a level one mental health facility. To remedy this, the Legislature adopted A.R.S. § 14-5312.01. Thereafter, the Court adopted Probate Rules 24 and 36, which align with the statute and provide for due process. The requirements of due process include the appointment of counsel, opinions of a medical expert, and a court hearing. If these requirements were met, the appointed guardian could consent for the ward’s in-patient mental health care.

Rules 24 and 36 were placed apart in the rule book, not proximate to each other, and the workgroup recommended, because of their specialized subject, that they be in their own compartmentalized part of the rules. The workgroup tentatively created a Part VII of the Probate Rules titled “guardians with inpatient mental health authority.” Rules 24 and 36 would need to be renumbered, so for the time being, the workgroup designated them as ## and ###. However, Mr. Fleming noted the possibility of consolidating them into a single rule. The draft rules conform the provisions to current practices and nomenclature, including referring to inpatient mental health facilities licensed by the Arizona Department of Health Services rather than level one facilities. These rules address issues of attorney appointments and the guardian’s authority. Like the current rule, they also provide that if the guardian does not timely renew its authority, the guardian must file a new petition. Members then discussed the draft.

One member had concerns with what constituted an inpatient mental health facility. For example, would a locked group home fit within the scope of the rule? Ms. Jerich reviewed the statutory definition, and members then concluded that while a group home may be licensed, it is not licensed as an inpatient psychiatric facility. Members also discussed the relationship between facilities licensed by statute and those licensed by the Arizona Administrative Code. Some believe the draft rule should accommodate both.

A member then asked about the renewal process, and how the court would be informed that a court order had expired. It appears that the court does not track the expiration dates of these orders and it does not do internal reviews; the motion to renew

is normally the trigger for review, but if none is filed, the court takes no action. Members discussed circumstances where the order expires but the ward continues to be in an inpatient mental health facility. Although the statute and rules are intended to provide a sensible process that meets due process standards, issues remain. The workgroup's draft contemplated orders for longer than one year, but members construed the statute as creating a one-year cycle. This requires new letters, and therefore formal renewal, every year. Any revised rule should accordingly be premised on a one-year cycle. Members also agreed that the letters should show the date the guardian's authority to consent will expire.

Section (a) requires clear and convincing evidence; a member noted that the rule does not answer the question, clear and convincing evidence of what? In section ##(e) ("acknowledgement"), a member suggested that the "duty to consent" should be changed to "power to consent," and members agreed with this change. Members made other grammatical changes to the draft.

The workgroup will work on these rules and return with a revised draft. Members had no objection to the workgroup consolidating both rules into one, if possible.

6. Non-Title 14 cases in probate court. The Chair invited Judge Polk to provide new information on non-Title 14 filings in probate court. Judge Polk confirmed that he is seeing an increase in non-probate civil filings under the probate case number. He acknowledged that these filings are authorized by law, and he does not know if the increase is limited to Maricopa County. Nonetheless, he described issues that are consequences of the increase, including the following:

- Probate court administrators are unable to adequately track the civil filings; for example, their case management system does not establish deadlines for service of a summons.
- Parties who file a new civil case under the probate number aren't required to pay a filing fee as they would if filing at the civil filing counter.
- Different cases aren't differentiated in the probate file by distinct case numbers.
- The probate court is unable to determine whether the civil cases are meeting the Supreme Court's time standards; for data purposes, only the main probate case is tracked.
- The proper procedure for family cases filed in probate is occasionally not followed because filing a separate family court case triggers family-related processes; he provided an example where a respondent to a dissolution petition was served with a notice of hearing rather than a summons and wasn't served with a mandatory preliminary injunction.
- When there are civil cases within a probate case, it complicates who gets notice; sometimes everyone gets notice, which results in parties showing up in court when they don't need to attend, causing expense, and sometimes delay and confusion as well.

- The case-within-a-case complicates who can file a notice of change of judge.
- If a civil case is concluded in probate court, the probate court does not get statistical credit for the adjudication.

Conceptually, Judge Polk would revise Probate Rules 2 and 3 so that filing non-probate actions would be filed in the department in which they ordinarily would be filed. He recognized an exception for civil exploitation cases. Mr. Nash concurred; from the Clerk's perspective, and especially when considering the payment of filing fees and judicial assignments, it's cleaner to file civil cases in the civil department. The Chair asked members to comment.

One member proposed a bankruptcy-type case numbering system, which has a number for the main action and sub-numbers for ancillary actions. But without more sophisticated case management systems, even that would be problematic for tracking cases and computing compliance with time standards. Judge Polk noted that unlike the civil and family law departments, the probate department does not have electronic filing, and this technology offers efficiencies that the probate court lacks. He reiterated that the problem cannot be fully resolved simply by having suffixes on case numbers or different color file folders. Another member recalled that the purpose of allowing civil and family actions in probate court is to have a judge who can see the big picture and maintain a watchful eye. Having such a judge benefits protected persons and estates. Judge Polk responded that it's one thing for a fiduciary to file certain types of claims against a third-party in probate court, and another when the third-party files a garden-variety claim against the fiduciary. Routine collections cases should be handled as civil cases. A member expressed concern with clients having to pay a civil filing fee in addition to a probate filing fee. One member noted the differences between courts in large Arizona counties, which might have specialized departments, and a small county with a single judge or few judges. The member noted that each county might adopt local rules on the issue under discussion. A member asked whether the focus be on how a case is administered, or what the case concerns.

To conclude, Judge Polk noted that some probate cases have become complex because of non-probate litigation within those cases. He emphasized the importance of determining with more specificity the types of cases that are in probate court, and how data should demonstrate what is being accomplished in those cases. The Chair agreed; consideration should be given to the logistical details and ensuring that cases are appropriately monitored and processed. Workgroup 1 may take a further look at this issue and how it might be addressed in Part I of the Probate Rules ("scope of rules, definitions, applicability of other rules").

7. **Roadmap.** The Chair confirmed the next Task Force meeting date of Friday, September 28. Judge Norris will chair the meeting on Friday, October 26. Subsequent meetings are on Friday, November 16, and Friday, December 14.

*Probate Rules Task Force
Draft Minutes: 08.24.2018*

The Chair encouraged members to use their best efforts at workgroup meetings to review the remaining rules. She reminded members of our goal of requesting feedback on the completed draft set of rules from stakeholders before filing a rule petition in January 2019. She added that the Task Force also will need time before January to prepare the rule petition and appendices. She encouraged workgroups to meet as often as necessary to meet these objectives.

8. **Call to the public.** There was no response to a call to the public.
9. **Adjourn.** The meeting adjourned at 3:10 p.m.

SUPREME COURT OF ARIZONA

In the Matter of) Arizona Supreme Court
) No. R-18-0018
RULES 38, 39, 49, 77 AND 84,)
RULES OF CIVIL PROCEDURE)
) **FILED 8/28/2018**
)
)
)
)
_____)

**ORDER ADOPTING AMENDMENTS TO
RULES 38, 39, 49, 77, 84, ARIZONA RULES OF CIVIL PROCEDURE**

A petition having been filed proposing to amend Arizona Rules of Civil Procedure 38, 39, 49, 77, and 84, and comments having been received, upon consideration,

IT IS ORDERED that Rules 38, 39, 49, 77, 84, Arizona Rules of Civil Procedure, be amended in accordance with the attachment hereto, effective January 1, 2019.

DATED this 28th day of August, 2018.

_____/s_____
SCOTT BALES
Chief Justice

TO:

Rule 28 Distribution

Lisa M Panahi

Hon. David L Mackey

Kay Radwanski

ATTACHMENT*

ARIZONA RULES OF CIVIL PROCEDURE

Rule 38. Right to a Jury Trial; Waiver

- (a) **Right Preserved.** The right of trial by jury is preserved to the parties inviolate. On any issue triable of right by a jury, a party need not file a written demand or take any other action in order to preserve its right to trial by jury.
- ~~(b) **Demand.** On any issue triable of right by a jury, a party may obtain a jury trial as follows:~~
- ~~(1) *Non-Medical Malpractice Actions.* In all actions other than a medical malpractice action, a party may obtain a jury trial by filing and serving a written demand at any time after the action is commenced, but no later than the date on which the court sets a trial date or 10 days after the date a Joint Report and Proposed Scheduling Order under Rule 16(b) or a joint report under Rule 16.3(b) are filed, whichever occurs first. The demand may not be combined with any other motion or pleading filed with the court.~~
 - ~~(2) *Medical Malpractice Actions.* In a medical malpractice action, no written demand needs to be filed or served. The parties may affirmatively waive the right to a jury trial by filing a written stipulation, signed by all parties, at any time after the action is commenced, but no later than 30 days before the trial is scheduled to begin. The stipulation may not be combined with any other motion or pleading.~~
- ~~(c) **Specifying Issues.** In its demand, a party may specify the issues that it wishes to have tried by a jury; otherwise, the party is deemed to have demanded a jury trial on all issues triable by jury. If a party has demanded a jury trial on only some issues, any other party may within 10 days after the demand is served or within a shorter time ordered by the court serve a demand for jury trial on any other or all factual issues triable by jury.~~
- ~~(d) **Waiver; Withdrawal.** Except as provided in Rule 38(b)(2), a party waives a jury trial unless its demand is properly filed and served. A proper demand may be withdrawn only if all parties consent.~~
- (b) Waiver.** The parties may be deemed to have waived, under these rules, a right to trial by jury only if they affirmatively waive that right by filing a written stipulation, signed by all parties who appear at trial, at any time after the action is commenced, but no later than 30 days before the trial is scheduled to begin. The stipulation may not be combined with any other motion or pleading. In the stipulation, the parties may specify any issues that

* Changes or additions in rule text are indicated by underscoring, and deletions from text are indicated by ~~strikeouts~~.

they wish to have tried by a jury; otherwise, the parties will be deemed to have waived trial by a jury on all issues. Alternatively—with court approval and subject to such conditions that the court considers proper, including but not limited to the assessment of jury fees—all parties who appear at trial may waive the right to a jury trial later than 30 days before the trial is scheduled to begin either by written stipulation or oral stipulation in open court and entered in the minutes.

Rule 39. Trial by Jury or by the Court

~~(a) **If a Demand Is Made.** If a jury trial is demanded under Rule 38, the action must be designated on the docket as a jury action. The trial on all issues so demanded must be by jury unless:~~

- ~~(1) all parties file a stipulation to a nonjury trial or so stipulate on the record; or~~
- ~~(2) the court, on motion or on its own, finds that there is no right to a jury trial on some or all of those issues.~~

(a) **If No Waiver Is Effected.** If there is no waiver of the right to trial by jury under Rule 38(b), the trial must be by jury unless the court, on motion or on its own, finds that there is no right to a jury trial on some or all issues.

~~(b) **If No Demand Is Made.** The court must try all issues on which a jury trial is not properly demanded. The court may, on motion, order a jury trial on any issue for which a jury might have been demanded.~~

(b) **If a Waiver Is Effected.** If the parties waive the right to trial by jury under Rule 38(b), the court must try all issues.

(c) **If a Limited Waiver Is Effected.** If the parties' waiver to trial by jury under Rule 38(b) specifies certain issues to be tried by a jury, the trial must be by jury on those issues unless the court, on motion or on its own, finds that there is no right to a jury trial on some or all of those issues.

~~(e)~~(d) **Advisory Jury; Jury Trial by Consent.** In an action—or on any issue—not triable of right by a jury, the court, on motion or on its own:

- (1) may try any issue with an advisory jury; or
- (2) may, with the parties' consent, order a jury trial on any issue, and the verdict will have the same effect as if a jury trial had been held as a matter of right.

Rule 49. Special Verdict; General Verdict and Questions; Proceedings on Return of Verdict; Form of Verdict

(a)-(b). [no change in text]

(c) Written Questions in Actions Seeking Equitable Relief. If a jury is ~~demanded~~impaneled in an action seeking equitable relief and more than one material issue of fact is presented, the court may submit written questions to the jury covering all or part of the issues of fact. The questions may be submitted only if the court approves them, and each question must be confined to a single question of fact and framed so that it can be answered yes or no. The jury's answers are advisory only and are not binding on the court.

(d)-(f). [no change in text]

Rule 77. Appeal

(a) Filing a Notice of Appeal. Any party who appears and participates in the arbitration proceedings may appeal an arbitrator's award by filing a notice of appeal with the clerk. The notice of appeal must be entitled "Appeal from Arbitration and Motion for Trial Setting." It must request that the action be set for trial in the superior court, ~~and must state whether a jury trial is demanded,~~ and must state the estimated length of trial, and must state whether there is a right to a jury trial and, if so, whether that right has been waived in whole or part.

(d)-(f). [no change in text]

Rule 84. Forms

Form 11(a). Joint Report: Tier 1 Case

In the Superior Court of Arizona

_____ County

)	
Plaintiffs)	Case number _____
)	
v)	Joint Report
)	
Defendants)	<i>(Tier 1 case)</i>
)	
)	Assigned to:

The parties signing below certify that they have conferred about the matters contained in Rule 16(b)(2) and (c)(3), and they further certify that:

- (a) Every defendant has been served or dismissed, and every defendant who has not been defaulted has filed a responsive pleading;
- (b) There are no third party claims; and
- (c) This case is not subject to the mandatory arbitration provisions of Rule 72.

Optional Summary of Rule 16(b) Early Meeting (not to exceed 4 pages of text), split evenly between separate statements of the parties if they do not agree on the summary's contents:

With regard to matters upon which the parties could not agree, they have set forth their positions separately in item 12 below. The parties are submitting a Proposed Scheduling Order with this Joint Report. Each date in the Joint Report and in the Proposed Scheduling Order includes a calendar month, day, and year.

1. Brief description of the case:

_____.

- If a claimant is seeking other than monetary damages, specify the relief sought:

_____.

2. Settlement: The parties agree to engage in settlement discussions with a settlement judge assigned by the court, or a private mediator.

- The parties will be ready for a settlement conference or a private mediation by _____.
- If the parties will not engage in a settlement conference or a private mediation, state the reason(s): _____.

3. Readiness: This case will be ready for trial by _____.

4. Jury: ~~A trial by jury is demanded. yes no~~

- There is a right to a trial by jury. yes no
- If there is such a right, it has been waived by the parties. yes no

5. Length of trial: The estimated length of trial is ___ days.

6. Summary jury: The parties agree to a summary jury trial. yes no

7. Short cause: A non-jury trial will not exceed one hour. yes no

8. Preference: This case is entitled to preference for trial under this statute or rule:

_____.

9. Special requirements: At a pretrial conference or at trial, a party will require disability accommodations (specify) _____

an interpreter (specify language) _____

10. Scheduling conference: The parties request a Rule 16(d) scheduling conference. yes
no

If requested, the reasons for having a conference are: _____

_____.

11. Other matters: Other matters that the parties wish to bring to the court's attention that may affect management of this case:

_____.

12. Items upon which the parties do not agree: The parties were unable in good faith to agree upon the following items, and the position of each party as to each item is as follows:

_____.

The parties must attach a good faith consultation certificate under Rule 7.1(h) to this Joint Report.

Dated this ___ day of _____, 20 ___.

For Plaintiff

For Defendant

Form 12(a). Joint Report: Tier 2 Case

In the Superior Court of Arizona

_____ County

Plaintiffs

v

Defendants

)

)

)

)

)

)

)

Case number _____

Joint Report

(Tier 2 case)

Assigned to:

The parties signing below certify that they have conferred about the matters set forth in Rule 16(b)(2) and (c)(3), and that this case is not subject to the mandatory arbitration provisions of Rule 72. With regard to matters upon which the parties could not agree, they have set forth their positions separately in item 13 below. The parties are submitting a Proposed Scheduling Order with this Joint Report. Each date in the Joint Report and in the Proposed Scheduling Order includes a calendar month, day, and year.

Optional Summary of Rule 16(b) Early Meeting (not to exceed 4 pages of text), split evenly between separate statements of the parties if they do not agree on the summary's contents:

1. Brief description of the case:

- If a claimant is seeking other than monetary damages, specify the relief sought

_____.

2. Current case status: Every defendant has been served or dismissed. yes no

- Every party who has not been defaulted has filed a responsive pleading. yes no

- Explanation of a “no” response to either of the above statements: _____

_____.

3. Amendments: A party anticipates filing an amendment to a pleading that will add a new party to the case: yes no

4. Settlement: The parties agree to engage in settlement discussions with a settlement judge assigned by the court, or a private mediator.

The parties will be ready for a settlement conference or a private mediation by _____.

If the parties will not engage in a settlement conference or a private mediation, state the reason(s): _____.

5. Readiness: This case will be ready for trial by _____.

6. Jury: ~~A trial by jury is demanded.~~ yes no

- There is a right to a trial by jury. yes no
- If there is such a right, it has been waived by the parties. yes no

7. Length of trial: The estimated length of trial is ___ days.

8. Summary jury: The parties agree to a summary jury trial. yes no

9. Preference: This case is entitled to a preference for trial pursuant to the following statute or rule:

_____.

10. Special requirements: At a pretrial conference or at trial, a party will require disability accommodations (specify) _____

an interpreter (specify language) _____

11. Scheduling conference: The parties request a Rule 16(d) scheduling conference. yes no
If requested, the reasons for having a conference are

_____.

12. Other matters: Other matters that the parties wish to bring to the court’s attention that may affect management of this case:

_____.

13. Items upon which the parties do not agree: The parties were unable in good faith to agree upon the following items, and the position of each party as to each item is as follows:

_____.

The parties must attach a good faith consultation certificate under Rule 7.1(h) to this Joint Report.

Dated this ___ day of _____, 20 ___.

For Plaintiff

For Defendant

Form 13(a). Joint Report: Tier 3 Case

In the Superior Court of Arizona

_____ County

)	
Plaintiffs)	Case number _____
)	
v)	Joint Report
)	
Defendants)	<i>(Tier 3 case)</i>
)	
)	Assigned to:

The parties signing below certify that they have conferred about the matters set forth in Rule 16(b)(2) and (c)(3). With regard to matters upon which the parties could not agree, they have set forth their positions separately in item 13 below. The parties are submitting a Proposed Scheduling Order with this Joint Report. Each date in the Joint Report and in the Proposed Scheduling Order includes a calendar month, day, and year.

Optional Summary of Rule 16(b) Early Meeting (not to exceed 4 pages of text), split evenly between separate statements of the parties if they do not agree on the summary’s contents:

1. Brief description of the case: _____

- If a claimant is seeking other than monetary damages, specify the relief sought

_____.

2. Current case status: Every defendant has been served or dismissed. yes no

- Every party who has not been defaulted has filed a responsive pleading. yes no
- Explanation of a “no” response to either of the above statements: _____

_____.

3. Amendments: A party anticipates filing an amendment to a pleading that will add a new party to the case: yes no

4. Settlement: The parties agree to engage in settlement discussions with a settlement judge assigned by the court, or a private mediator.

The parties will be ready for a settlement conference or a private mediation by _____.

If the parties will not engage in a settlement conference or a private mediation, state the reason(s): _____.

5. Readiness: This case will be ready for trial by _____.

6. Jury: ~~A trial by jury is demanded. yes no~~

- There is a right to a trial by jury. yes no
- If there is such a right, it has been waived by the parties. yes no

7. Length of trial: The estimated length of trial is ___ days.

8. Summary jury: The parties agree to a summary jury trial. yes no

9. Preference: This case is entitled to a preference for trial pursuant to the following statute or rule:

_____.

10. Special requirements: At a pretrial conference or at trial, a party will require disability accommodations (specify) _____

an interpreter (specify language) _____

11. Scheduling conference: The parties request a Rule 16(d) scheduling conference. yes no
If requested, the reasons for having a conference are

_____.

12. Other matters: Other matters that the parties wish to bring to the court's attention that may affect management of this case:

_____.

13. Items upon which the parties do not agree: The parties were unable in good faith to agree upon the following items, and the position of each party as to each item is as follows:

_____.

The parties must attach a good faith consultation certificate under Rule 7.1(h) to this Joint Report.

Dated this ___ day of _____, 20 ___.

For Plaintiff

For Defendant

Form 14(a). Joint Report: Commercial Case

In the Superior Court of Arizona

_____ County

Plaintiffs

v

Defendants

)

)

)

)

)

)

)

Case number _____

Joint Report

(Commercial case)

Assigned to:

The parties signing below certify that they have conferred about the matters set forth in Rules 8.1(f) and 16(b)(2) and (c)(3), and that this case is not subject to the mandatory arbitration provisions of Rule 72. With regard to matters upon which the parties could not agree, they have set forth their positions separately in item 14 below. The parties are submitting a Proposed Scheduling Order with this Joint Report. Each date in the Joint Report and in the Proposed Scheduling Order includes a calendar month, day, and year.

1. Brief description of the case: _____

- If a claimant is seeking other than monetary damages, specify the relief sought

_____.

- This is a commercial case under Rule 8.1 because (refer to the specific provisions of Rule 8.1 that apply):

_____.

2. Current case status: Every defendant has been served or dismissed. yes no

- Every party who has not been defaulted has filed a responsive pleading. yes no
- Explanation of a “no” response to either of the above statements: _____

_____.

3. Amendments: A party anticipates filing an amendment to a pleading that will add a new party to the case: yes no

4. Special case management: Special case management procedures are appropriate: yes no If “yes,” the following case management procedures are appropriate because:_____.

5. Commercial case management [Rule 8.1(f)]:

a. Approximate Amount in Controversy \$_____

b. The commercial court should assign this case to a tier other than Tier 3 for the following reasons:

c. Anticipated Areas of Expert Testimony (not binding):

d. Electronically Stored Information

The parties do not expect electronically stored information to be at issue in this case.

The parties do expect electronically stored information to be at issue in this case.

Have the parties reached an agreement regarding the discovery of electronically stored information? yes no

If yes, have the parties filed a stipulated order? yes no

Do the parties currently have disputes or anticipate particular disputes over electronically stored information? yes no

If yes, please describe the dispute(s):

e. Privilege Issues and Protective Order

Have the parties reached an agreement regarding the inadvertent production of privileged material pursuant to Rule 502 of the Rules of Evidence? yes no

If so, have the parties filed a stipulated order? yes no

Have any issues arisen or do you expect any issues to arise regarding claims of privilege or protection of trial preparation materials pursuant to Rule 26(b)(6) or Rule 26.1(h)? yes no

If so, have the parties filed a stipulated protective order? yes no

6. Settlement: The parties agree to engage in settlement discussions with a settlement judge assigned by the court, or a private mediator.

The parties will be ready for a settlement conference or a private mediation by _____.

If the parties will not engage in a settlement conference or a private mediation, state the reason(s): _____.

7. Readiness: This case will be ready for trial by _____.

8. Jury: ~~A trial by jury is demanded.~~ ~~yes no~~

- There is a right to a trial by jury. ~~yes no~~
- If there is such a right, it has been waived by the parties. ~~yes no~~

9. Length of trial: The estimated length of trial is ___ days.

10. Summary jury: The parties agree to a summary jury trial. ~~yes no~~

11. Preference: This case is entitled to a preference for trial under the following statute or rule:

_____.

12. Special requirements: At a pretrial conference or at trial, a party will require disability accommodations (specify) _____

an interpreter (specify language) _____

13. Other matters: Other matters that the parties wish to bring to the court's attention that may affect management of this case:

_____.

14. Items upon which the parties do not agree: The parties were unable in good faith to agree upon the following items, and the position of each party as to each item is as follows:

_____.

Dated this ____ day of _____, 20 ____.

For Plaintiff

For Defendant

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

In re the Matter of:

JOHL J. KENNEDY, *Petitioner/Appellant*,

v.

CHRISTINE L. WYBENGA, *Respondent/Appellee*.

No. 1 CA-CV 17-0559 FC
FILED 9-11-2018

Appeal from the Superior Court in Maricopa County
No. FC2011-053288
The Honorable Roy C. Whitehead, Judge

REVERSED AND REMANDED

APPEARANCE

Johl. J. Kennedy, Phoenix
Petitioner/Appellant

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MEMORANDUM DECISION

Presiding Judge Jennifer B. Campbell delivered the decision of the Court, in which Judge Randall M. Howe and Judge David D. Weinzwieg joined.

C A M P B E L L, Judge:

¶1 Johl J. Kennedy (“Father”) appeals from several superior court orders that (1) dismissed his petition to modify child support, (2) appointed a guardian ad litem (“GAL”) to determine whether Father could represent himself due to his disability or needed a guardianship, and (3) denied Father’s request for a change of judge. For the reasons stated below, we reverse the dismissal of the petition to modify child support and the order appointing a GAL and remand for reconsideration of Father’s petition to modify child support and request for an accommodation pursuant to the Americans with Disabilities Act (“ADA”). We lack jurisdiction to consider the appeal from the order denying a change of judge.

BACKGROUND

¶2 Father and Christine L. Wybenga (“Mother”) divorced in 2012. In 2014, the superior court granted Mother’s request to relocate to California with the parties’ children. In November 2016, Father petitioned to modify child support, determine arrearages, and grant injunctive relief. Mother argued Arizona no longer had jurisdiction over child support issues because (1) the superior court ordered on July 24, 2015, that “all future hearings shall occur in California, as Arizona no longer has jurisdiction under UCCJEA,”¹ and (2) the California court, on May 16, 2016, registered the Arizona child support order for purposes of modification and subsequently issued a child support order.

¶3 The superior court initially ruled that Arizona had jurisdiction over the child support issues but reversed this decision after a telephonic conference with a California family court judge and a California Department of Child Support Services (“DCSS”) representative.

¹ Uniform Child Custody Jurisdiction and Enforcement Act, *see* Arizona Revised Statutes (“A.R.S.”) §§ 25-1001 to 25-1067.

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¶4 At the conclusion of the telephonic conference, the Arizona superior court addressed Father’s request for accommodations under the ADA to allow a cognitive interpreter. The court set another hearing to determine if Father could represent himself or if the court should appoint a GAL. At the subsequent hearing, the court appointed a GAL to meet with Father and advise the court whether he was capable of representing himself or if a guardianship was necessary.

¶5 Father also requested a change of judge, alleging that the assigned judge appeared biased because he previously worked with Father’s former attorney. The superior court summarily denied the request.

DISCUSSION

¶6 Mother did not file an answering brief. We decline to consider her failure to do so as a confession of error, however, and address the merits of the issues raised on appeal. *See Cardoso v. Soldo*, 230 Ariz. 614, 616, ¶ 4 n.1 (App. 2012).

I. Jurisdiction to Modify Child Support

¶7 After concluding California had jurisdiction over child support issues, the superior court dismissed Father’s petition to modify child support and determine arrearages. The court found that California had “jurisdiction over legal decision making, parenting time, and child support” issues. Father filed notices of appeal from these orders, and we have jurisdiction under Arizona Revised Statutes (“A.R.S.”) section 12-2101(A)(3).

¶8 Father contends that California lacked jurisdiction and improperly registered the child support order for modification in May 2016 because he was at all times an Arizona resident; thus, Arizona never lost continuing, exclusive jurisdiction over child support issues according to the Uniform Interstate Family Support Act (“UIFSA”), A.R.S. §§ 25-1201 to -1362, and the Full Faith and Credit for Child Support Orders Act (“FFCCSOA”), 28 U.S.C. § 1738B. He also argues that his temporary relocation to California did not deprive Arizona of continuing, exclusive jurisdiction because he was residing in Arizona at the time he filed his petition to modify in November 2016. We review the application and interpretation of statutes de novo, *McHale v. McHale*, 210 Ariz. 194, 196, ¶ 7 (App. 2005), but defer to the superior court’s factual findings unless clearly erroneous, *see KPNX-TV Channel 12 v. Stephens*, 236 Ariz. 367, 370, ¶ 7 (App. 2014).

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¶9 The original and modified child support orders were issued in Arizona, where Father resided when he filed his November 2016 petition. The California court issued a child support order in October 2016 that stated “[a]ll orders previously made in this action must remain in full force and effect except as specifically modified below.” The California court then ordered Father to reimburse Mother for specific medical expenses.

¶10 The superior court concluded that the California order controlled because California registered the order for modification. At the UIFSA conference, Judge Whitehead spoke with Judge Santos, the California judge handling the custody and parenting time issues.² Initially both judges were of the opinion that child support jurisdiction remained in Arizona. After learning the Arizona child support order was registered for modification in California, both judges changed their positions and concluded California had jurisdiction over the child support matters.

¶11 Pursuant to A.R.S. § 25-1225(C), if another state has issued a child support order under UIFSA that modified an existing Arizona child support order, the Arizona court “shall” recognize the continuing, exclusive jurisdiction of the other state. But Mother sought enforcement of the Arizona child support order, not modification. In particular, she requested enforcement of the reimbursement provisions for uncovered medical expenses contained in the Arizona order. As a result, the California order simply enforced the reimbursement of medical expenses consistent with the Arizona order. Indeed, the California order specified that all previous orders remained in effect except as specifically modified therein; however, the California order did not modify the Arizona orders. Thus, the California order did not usurp Arizona’s continuing, exclusive jurisdiction. And while Arizona and California courts have both issued child support orders, Arizona retains continuing, exclusive jurisdiction to modify its original child support order because (1) Arizona issued the “controlling” order under A.R.S. § 25-1227(B), and (2) Father lived in Arizona when he petitioned to modify child support and determine arrearages under A.R.S. § 25-1225(A)(1).

¶12 UIFSA’s one-order system supports this result. The state issuing the original child support order:

retains continuing, exclusive jurisdiction over a child support order until another state modifies the order in accordance

² Judge Santos did not handle the child support issues and suggested the conference include a DCSS representative.

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with the pertinent statutory requirements, including registration. *See* [UIFSA] § 205 cmt. (amended 2001) (“Even if all parties and the child no longer reside in the State, the support order continues in existence and is fully enforceable unless and until a modification takes place in accordance with the requirements of Article 6 [including registration requirements].”³); *see also* 28 U.S.C. § 1738B(a)(1), (d), (i) (FFCCSOA, providing state tribunal shall not modify a child support order unless it is registered and issuing court retains continuing, exclusive jurisdiction until another state properly modifies order). Unless the foreign child support order is registered, the issuing state retains exclusive jurisdiction, which means another state lacks jurisdiction to modify the order unless it is registered and other prerequisites are satisfied.

Glover v. Glover, 231 Ariz. 1, 6-7, ¶ 21 (App. 2012) (first alteration in original).

¶13 California could register and enforce the Arizona order, but lacked jurisdiction to modify it unless both parents lived in California and the child no longer lived in Arizona. *See* 28 U.S.C. § 1738B(i); Cal. Fam. Code § 5700.613(a) (authorizing California to modify another state’s child support order if both parents live in California and the child no longer lives in the issuing state); *see also* A.R.S. § 25-1313(A).⁴

³ Revisions to UIFSA § 205 in 2008 made no material changes to this comment.

⁴ Arizona’s statute is comparable and aligns with UIFSA’s policy concerns:

A keystone of UIFSA is that the power *to enforce* the order of the issuing tribunal is not “exclusive” with that tribunal. Rather, on request one or more responding tribunals may also exercise authority to enforce the order of the issuing tribunal. Secondly, under the one-order-at-a-time system, the validity and enforceability of the controlling order continues unabated until it is fully complied with, *unless it is replaced by a modified order issued in accordance with the standards established by Sections 609-616.*

UIFSA § 206 cmt. (2008) (emphasis added).

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¶14 Father’s temporary relocation to California did not affect Arizona’s continuing, exclusive jurisdiction because he was living in Arizona when he filed his petition to modify child support. The comment to UIFSA § 205 (2008) supports this conclusion:

[A]ny interruption of residence of a party between the date of the issuance of the order and the date of filing the request for modification does not affect jurisdiction to modify. . . . If the [original] order is not modified during this time of mutual absence, a return to reside in the issuing state by a party or child immediately identifies the proper forum at the time of filing a proceeding for modification.

We conclude that California can enforce the Arizona child support order because it was properly registered in California. Arizona did not, however, lose continuing, exclusive jurisdiction because California did not modify the Arizona order, despite the confusing “for modification” language in the California caption. Accordingly, the superior court erred in dismissing Father’s petition to modify.

II. Appointing GAL

¶15 At some point in the litigation, Father began working with an aide he characterized as a “support person” under the ADA. *See generally* 42 U.S.C. §§ 12101 to 12213. Father formally requested permission to allow his personal aide to assist him as an ADA accommodation—specifically, to speak on his behalf. The superior court denied this request, explaining that only a licensed attorney could speak for another in a court proceeding. Undeterred, the aide tried to discuss Father’s residence with the court. When the court repeated that it could not hear from the aide, she argued that Father’s motion to allow her to speak as an ADA accommodation was still pending.

¶16 The superior court set a hearing to address Father’s request for ADA accommodations “for the sole purpose of determining if [Father] is ‘unable to represent himself pro se due to his disability’ and thus requiring the Court to determine if the appointment of a [GAL] is

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warranted.”⁵ Although this order did not finally resolve this issue, Father filed a notice of appeal.

¶17 At the hearing to address the accommodation request, Father and his aide explained that Father has difficulty speaking coherently due to cognitive disabilities and PTSD. Father wanted to use a cognitive interpreter for future hearings who was licensed to practice law in New York, but would not appear as his attorney. The superior court expressed concern that this would constitute practicing law in Arizona without a license. Then, the court sua sponte appointed a GAL for Father and ordered the GAL to meet with Father and advise the court “whether he is capable of representing himself in this matter, and whether a guardianship is necessary.” Father filed a timely notice of appeal from these orders.

¶18 These orders are not final because the superior court did not ultimately determine whether Father could represent himself or if a guardianship was necessary.⁶ See A.R.S. § 12-2101(A)(1), (10) (stating that final orders and orders adjudicating a person as incompetent are appealable). Nevertheless, in light of the due process implications, we exercise our discretion to treat Father’s appeal from these orders as a special action and accept jurisdiction. See *Lloyd v. State Farm Mut. Auto. Ins. Co.*, 189 Ariz. 369, 375 (App. 1996); see also *Maricopa Cty. Juv. Action No. JD-6982*, 186 Ariz. 354, 359, n.5 (App. 1996) (“[T]he appointment of a general guardian implicates due process.”).

¶19 The ADA requires reasonable accommodations for a person with a disability to provide “an even playing field,” but does not require

⁵ The court later entered a signed order corresponding to the original, unsigned order.

⁶ Father subsequently moved to remove the GAL and permit his request for a cognitive interpreter as an ADA accommodation, contending the appointment of a GAL violated the ADA. The court denied this request without comment. At a later status conference, Father was ordered to schedule an appointment with the GAL. The court issued repeated orders for Father to meet the GAL, which he has apparently never done. As it previously cautioned Father, the court dismissed Father’s pending petitions relating to spousal maintenance and property issues for failing to meet the GAL as ordered.

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preferential treatment or accommodations of the person's choice. *Goldblatt v. Geiger*, 867 F. Supp. 2d 201, 210 (D.N.H. 2012) (quoting *Felix v. N.Y.C. Transit Auth.*, 324 F.3d 102, 107 (2d Cir. 2003)); see generally 42 U.S.C. §§ 12101 to 12103. The superior court did not expressly deny Father's request for a cognitive interpreter as a reasonable accommodation; instead, the court appointed a GAL to advise whether a guardianship was necessary. Father contends the court lacked authority to appoint a GAL and violated his due process rights by doing so.

¶20 This was a post-decree child support and marital property dispute; it was not a probate or a juvenile court matter. Father has never been found incompetent or incapacitated. The superior court failed to cite any procedural rule or statute authorizing the appointment of a GAL for an adult who has not previously been ruled incompetent or incapacitated in post-decree support and property litigation. This is a family law matter governed by the rules of Family Law Procedure – rules which specifically preclude the court from appointing a guardian to act on behalf of an incompetent person, *except as provided in A.R.S. Title 14*. Ariz. R. Fam. Law P. 10(I).

¶21 In this case, Father has never been found incapacitated or incompetent. Thus, the superior court lacked authority and failed to follow the constitutionally-mandated procedures before appointing a GAL. The appointment of a GAL under these circumstances deprived Father of due process. We vacate the order appointing the GAL and remand for reconsideration of Father's request for an ADA accommodation. The superior court also dismissed several pending motions raising spousal maintenance and property issues because of Father's failure to meet with the GAL. Because we vacate the order appointing the GAL, we also vacate the related order dismissing the pending motions.

III. Request for New Judge

¶22 In his motion to reconsider the order finding California had jurisdiction of child support issues, Father also requested a new judge for cause. The superior court denied the motion without comment. An order denying a request for a change of judge is not appealable and must be reviewed by special action. See *Taliaferro v. Taliaferro*, 186 Ariz. 221, 223 (1986). We decline to treat the appeal as a special action, thus lack jurisdiction to review the order denying Father's request for a change of judge.

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CONCLUSION

¶23 We reverse the superior court's order dismissing Father's petition to modify child support and remand for reconsideration. We vacate the orders appointing a GAL and dismissing the pending motions and remand for reconsideration of Father's request for ADA accommodations. We lack jurisdiction over the appeal from the order denying Father's request for a change of judge.



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

MEMORANDUM

To: Probate Rules Task Force

From: Samuel A. Thumma, Sara J. Agne, Mikel P. Steinfeld

Date: September 19, 2018

Re: Suggestions For the Task Force's Current Draft Suggested Changes to the Arizona Rules of Probate Procedure Addressing the Arizona Rules of Evidence.

We write to make suggestions regarding the Task Force's current draft suggested changes to the Arizona Rules of Probate Procedure. Although we are members of the Advisory Committee on Rules of Evidence, we are not speaking on behalf of that Committee. That Committee's most recent meeting, held Friday, September 14, 2018, included a discussing of draft suggested changes to the Probate Rules, but has not met since that time and has not had an opportunity to formally consider the suggestions in this memorandum.

With that preface, we suggest two general changes to the current draft the Task Force has prepared: (1) to ensure that the exclusion of relevant evidence standard when the Arizona Rules of Evidence do not apply is substantially identical to Ariz. R. Evid. 403 and (2) to restructure draft proposed Probate Rule 3(a)(2) so that it effectuates what appears to be the intent of the Task Force. This memorandum addresses these topics in turn; we would be delighted to discuss these suggested changes and the rationale supporting them at a future Task Force meeting.

I. Using An Evidence Standard That Includes Language Substantively Identical To Ariz. R. Evid. 403.

a. Current Arizona Rules of Probate Procedure Regarding Admissibility Of Evidence.

The current Probate Rules address the admissibility of evidence as follows:

1. The Arizona Rules of Evidence apply in contested probate proceedings. If all parties agree not to have those rules apply and the judicial officer concurs and enters an order to that effect, all relevant evidence is admissible, provided, however, that the court may exclude any relevant evidence

if its probative value is outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, needlessly presenting cumulative evidence or lack of reliability.

2. In uncontested probate proceedings, the Arizona Rules of Evidence shall not apply. All relevant evidence is admissible, provided, however, that the court may exclude any relevant evidence if its probative value is outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, needlessly presenting cumulative evidence or lack of reliability.

Ariz. R. Prob. P. 3(D)(1) & (2). These current Probate Rules provide that, when the Arizona Rules of Evidence do not apply, all relevant evidence is admissible unless the court excludes it under a standard that is similar (but not identical) to Ariz. R. Evid. 403, which reads as follows:

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

Ariz. R. Evid. 403.

b. Proposed Probate Rule 3(a)(2) (May 8, 2018 Draft).

The Task Force's current proposed Probate Rules state:

The court may exclude relevant evidence if its probative value is substantially outweighed by one or more of the following: unfair prejudice, confusing the issues,

misleading the jury, undue delay, wasting time, needlessly presenting cumulative evidence, or lack of reliability.

Proposed Probate Rule 3(a)(2) (May 8, 2018 draft). This language is similar (but not identical) to Ariz. R. Evid. 403.

c. Possible Suggested Changes.

So that the proposed standard is substantively identical to Ariz. R. Evid., we would suggest that Proposed Probate Rule 3(A)(2) (May 8, 2018 draft) be amended to read as follows (redline showing additions):

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

With the exception of the “or lack of reliability” phrase, which is in the current Probate Rules and seems appropriate given the nature of probate proceedings, this change would mean that Proposed Probate Rule 3(a)(2) (May 8, 2018) would read identically to Ariz. R. Evid. 403. This unified standard would further the applicability of case law construing Rule 403 in this context and remove any doubt or resulting litigation about the textual differences. To avoid any uncertainty and the cost of such avoidable litigation, we would ask that the Task Force consider altering Proposed Probate Rule 3(a)(2) to add this phrase “a danger of.”

II. Restructuring Proposed Probate Rule 3(a)(2) (May 8, 2018).

The current May 8, 2018 draft of Proposed Probate Rule 3(a)(2) reads as follows:

(2) **Rules of Evidence.** The court may exclude relevant evidence if its probative value is substantially outweighed by one or more of the following: unfair prejudice, confusing the

issues, misleading the jury, undue delay, wasting time, needlessly presenting cumulative evidence, or lack of reliability.

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

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

As written, this proposal would appear to require the court to use the “exclude relevant evidence” standard regardless of whether the Arizona Rules of Evidence apply, even though (1) that standard is somewhat different than Ariz. R. Evid. 403 (when the Arizona Rules of Evidence apply) and (2) does not address what evidence is admissible (as opposed to excludable) when the Arizona Rules of Evidence do not apply. To clarify, we would suggest that Proposed Probate Rule 3(a)(2) be amended to read as follows (redline showing deletions and additions):

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

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

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

(C) **Admissibility Of Evidence When The Arizona Rules Of Evidence Do Not Apply.** When, under Rule 3(a)(2)(A) or (B) the Arizona Rules of Evidence do not apply, all relevant evidence is admissible, provided, however, that the court may exclude any relevant evidence if its probative value is outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time,

needlessly presenting cumulative evidence, or lack of reliability.

By adding 3(a)(2)(C), and moving the introductory text to that subpart (as modified to reflect the suggestions in Section 1), this suggestion is intended to make plain that the standard applies only when the Arizona Rules of Evidence do not apply under the prior subparts. It also suggests using text that is identical to Ariz. R. Evid. 403 (again, however, including the “or lack of reliability” phrase).

* * * * *

Thank you for considering these suggestions and we would be happy to discuss them, and any resulting questions, with the Task Force.

Rule 14. ~~Verification Acknowledgment~~ of a Consent, Waiver, Renunciation, or Nomination.

~~**Written Verification.** A written verification is a sworn statement acknowledged by a notary public or a court officer who is authorized to administer an oath. A verification is required for any person's signature on the following documents:~~

~~**(a) Acknowledgment Required.** The following documents must be signed before and acknowledged by a person, such as a notary public or a judicial officer, who is legally authorized to verify the identity of the signer:~~

- ~~(1) for self-represented individuals: a consent to, joinder in, or statement of no position ~~to regarding~~ any petition or application;~~
- ~~(2) the waiver of any right, including but not limited to a waiver of notice, waiver of priority for appointment, or waiver of bond;~~
- ~~(3) a renunciation of the right to appointment as a guardian, conservator, personal representative, or trustee; or~~
- ~~(4) the nomination of a person to serve as a guardian, conservator, personal representative, or trustee.~~

~~**(b) Disclaimers.** The requirements of this rule do not apply to a disclaimer of property executed under A.R.S. §§ 14-10001 to -10018. **{JWR Note: What is the convention going to be — citing the statute or the title/chapter? I prefer the former but can live with the latter. Either way, we need to be consistent.}**~~

COMMENT TO 2020 AMENDMENTS

See A.R.S. § 33-511 for persons who may take acknowledgments within the State of Arizona. **COMMENT**

~~This rule relates to consents, waivers, renunciations, and nominations in connection with any probate proceeding, including those filed pursuant to A.R.S. §§ 14-1402 (waiver of notice), 3203 (waiver of priority for appointment of personal representative or renunciation and nomination), 3204 (waiver of demand for notice), 3603 (waiver of bond), and 3719 (renunciation of fees for personal representative). This rule helps protect heirs and devisees with respect to informal probate proceedings by requiring evidence that they have received proper notice and that they have waived their rights. Such waivers are important because there is little court oversight in the informal probate process. As section B makes clear, this~~

Commented [JP1]: Existing Probate Rule 14 only requires the listed documents to be acknowledged by a notary or court officer; it does NOT require the document to be signed as a sworn statement. The original purpose of Rule 14 was simply to verify that the person signing the document is, in fact, who that person purports to be. Personally, I don't think any of these documents need to be made under oath, but I don't feel strongly about adding that requirement. If the Workgroup wants to remove the under oath requirement, we need to change the verbiage of Rule 14.

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~~rule does not apply to disclaimers of property interests, which are addressed in A.R.S. §§ 14-10001 to 10018.~~

~~In keeping with the court's duty to oversee the administration of estates and protect vulnerable individuals, a party filing a consent, waiver, renunciation of right to appointment, or nomination of fiduciary shall provide the court with proof of the identity of the person signing such a document. Generally, a document may be acknowledged by a notary public. However, a judicial officer, clerk of court, or deputy clerk of court may also acknowledge a document. See A.R.S. § 33-511.~~

~~**Staff Note:** Restyled Probate Rule 14 is modeled on restyled Family Rule 14(a), which provides:~~

~~(a) **Written Verification.** A written verification is a sworn statement before a notary public or other officer who is authorized to administer an oath. A verification is required for:~~

- ~~(1) an acceptance or waiver of service under Rule 40(f);~~
- ~~(2) an affidavit submitted in support of an application for a default decree;~~
- ~~(3) a consent decree under Rule 45; or~~
- ~~(4) a stipulation or agreement that substantially changes the terms of a legal decision-making or parenting time order, unless the stipulation is entered in open court or through conciliation services.~~

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Rule 14. Acknowledgment of a Consent, Waiver, Renunciation, or Nomination.

(a) Acknowledgment Required. The following documents must be signed before and acknowledged by a person, such as a notary public or a judicial officer, who is legally authorized to verify the identity of the signer:

- (1)** for self-represented individuals: a consent to, joinder in, or statement of no position regarding any petition or application;
- (2)** the waiver of any right, including but not limited to a waiver of notice, waiver of priority for appointment, or waiver of bond;
- (3)** a renunciation of the right to appointment as a guardian, conservator, personal representative, or trustee; or
- (4)** the nomination of a person to serve as a guardian, conservator, personal representative, or trustee.

(b) Disclaimers. The requirements of this rule do not apply to a disclaimer of property executed under A.R.S. §§ 14-10001 to -10018.

COMMENT TO 2020 AMENDMENTS

See A.R.S. § 33-511 for persons who may take acknowledgments within the State of Arizona.

Rule 15. Proposed Orders, Decrees, and Judgments.

(a) Definition. For purposes of this rule, "order" means an order, a decree, or a judgment.

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(b) Form of Proposed Order. A proposed order must comply with the requirements of Rule 5.1(d)(1), Arizona Rules of Civil Procedure. In addition, if a proposed order that would grants or denies the relief requested in a petition, the proposed order must state the hearing date hearing date of the hearing on that petition immediately below the order's title of the order. [JWR Note: This seemed to me to be a little clearer, but I could be persuaded otherwise.]

Commented [JP1]: Civil Rule 5(d)(2) deals with electronically-submitted proposed orders and judgments. Because e-filing is not available in probate cases yet, that portion of Civil Rule 5(d)(2) doesn't apply. Consequently, I've clarified that Civil Rule 5(d)(1) applies and I've added a separate section on servicing and filing to override Civil Rule 5(d)(2).

(c) Time to Lodge Submit to Court. If a proposed order that would grants or denies deny the relief requested in a petition, An the original proposed order must be lodged with submitted to the assigned judicial officer no later than 5 days before the scheduled hearing on that petition.

Commented [JP2]: Self-represented parties probably won't understand what "lodge" means so I am switching it to "submit." By way of comparison, Civil Rule 5(d)(2) says the proposed order must be "submitted to the court" and does not use the word "lodge."

(d) Service and Filing. A proposed order must be served on all parties at the same time it is submitted to the court. The clerk may not file a proposed order. However, a party may file an unsigned proposed order as an attachment or exhibit to a notice of submission or other filing if directed by the court, required by rule, or done to preserve the record on appeal.

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(e) Pre-Addressed, Stamped-Postage Paid and Addressed Envelopes. The party submitting the proposed order must include with it copies to be conformed and stamped postage paid envelopes addressed to each party who has entered an appearance in the case.

Commented [JP3]: This language is adapted from Civil Rule 5(d)(2) but without the reference to electronically-submitted proposed orders.

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(f) Stipulations and Motions; Proposed Forms of Order.

(1) Stipulations. All written stipulations must be accompanied by a proposed proposed order. If the proposed order is signed and entered, no minute entry need issue.

Commented [JMP4]: This language is substantially similar to the language in Civil Rule 5(j)(2) before that rule was amended in 2017. Former Civil Rule 5(j)(2) is now located in Civil Rule 5.1(d)(3). As a result of the adoption of e-filing in civil cases, current Civil Rule 5.1(d)(3) no longer requires the submission of pre-addressed, stamped envelopes and copies of the order for conforming. However, e-filing is not allowed in probate cases so those items are still needed in probate cases.

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(2) Motions. If a motion is accompanied by a proposed order, no minute entry need issue if the order is signed and entered.

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(e) Effect of Noncompliance. The assigned judicial officer may continue the hearing if the petitioner or movant fails to comply with this rule. [Staff Note: Is this provision helpful? Can't the judicial officer conduct the hearing and enter the order thereafter?]

Commented [JP5]: I have taken this verbatim from Civil Rule 5(d)(3). An alternative would be to replace this language with a simple statement, such as: "Rule 5(d)(3), Arizona Rules of Civil Procedure, applies to written stipulations and motions." However, I'm concerned that just leads to too much back and forth between the Civil Rules and the Probate Rules. Also, I recommend moving this section (f) to section (b) (i.e., right after the definitions).

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Rule 15. Proposed Orders, Decrees, and Judgments.

- (a) **Definition.** For purposes of this rule, “order” means an order, a decree, or a judgment.
- (b) **Form of Proposed Order.** A proposed order must comply with the requirements of Rule 5.1(d)(1), Arizona Rules of Civil Procedure. In addition, a proposed order that would grant or deny the relief requested in a petition must state the hearing date on that petition immediately below the order’s title.
- (c) **Time to Submit to Court.** A proposed order that would grant or deny the relief requested in a petition must be submitted to the assigned judicial officer no later than 5 days before the hearing on that petition.
- (d) **Service and Filing.** A proposed order must be served on all parties at the same time it is submitted to the court. The clerk may not file a proposed order. However, a party may file an unsigned proposed order as an attachment or exhibit to a notice of submission or other filing if directed by the court, required by rule, or done to preserve the record on appeal.
- (e) **Postage Paid and Addressed Envelopes.** The party submitting the proposed order must include with it copies to be conformed and postage paid envelopes addressed to each party who has entered an appearance in the case.
- (f) **Stipulations and Motions; Proposed Forms of Order.**
- (1) **Stipulations.** All written stipulations must be accompanied by a proposed order. If the proposed order is signed and entered, no minute entry need issue.
 - (2) **Motions.** If a motion is accompanied by a proposed order, no minute entry need issue if the order is signed and entered.

Rule 15.1. Appointment of a Guardian Ad Litem.

(a) Generally. ~~The term “guardian ad litem” is synonymous with a “best interests attorney.” On motion or on its own, t~~The court for good cause may appoint an attorney as guardian ad litem for a minor, or for an incapacitated alleged adult ~~incapacitated adult, during pending litigation~~ to advocate for the person’s best interests. A motion requesting the appointment of a guardian ad litem must state why the appointment is necessary or advisable ~~and what, if any, special expertise is required of the guardian ad litem.~~

(b) Order. An order appointing a guardian ad litem must clearly state the reasons for the appointment, the appointment’s scope and duration, any applicable terms of compensation, and rights of access authorized by (c).

(c) Access to the Protected Person and Records. An order under (b) ~~may~~ ~~[must?]~~ must authorize the guardian ad litem to have immediate access to the person for whom the guardian ad litem has been appointed. The order also may authorize the guardian ad litem to have access to medical and financial records pertaining to such person, including records and information that are otherwise privileged or confidential.

(d) Participation. A guardian ad litem appointed under this rule:

- (1) must participate in the proceeding to the same extent as an attorney for any party;
- (2) may not engage in *ex parte* contact with the court except as authorized by law;
- (3) may not be compelled to produce the guardian ad litem’s work product developed during the appointment;
- (4) may not be required to disclose the source of information obtained as a result of the appointment; and
- (5) may not testify.

(e) Recommendations. Any recommendations submitted by the guardian ad litem may be considered by the court as argument but not as evidence.

~~(e) A custodian of records concerning a protected person, when given a copy of the order, must provide the guardian ad litem with access to relevant records.~~

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Rule 15.1. Appointment of a Guardian Ad Litem.

- (a) **Generally.** The term “guardian ad litem” is synonymous with a “best interests attorney.” The court for good cause may appoint an attorney as guardian ad litem for a minor, or for an alleged incapacitated adult, to advocate for the person’s best interests. A motion requesting the appointment of a guardian ad litem must state why the appointment is necessary or advisable.
- (b) **Order.** An order appointing a guardian ad litem must clearly state the reasons for the appointment, the appointment’s scope and duration, any applicable terms of compensation, and rights of access authorized by (c).
- (c) **Access to the Protected Person and Records.** An order under (b) must authorize the guardian ad litem to have immediate access to the person for whom the guardian ad litem has been appointed. The order also may authorize the guardian ad litem to have access to medical and financial records pertaining to such person, including records and information that are otherwise privileged or confidential.
- (d) **Participation.** A guardian ad litem appointed under this rule:
- (1) must participate in the proceeding to the same extent as an attorney for any party;
 - (2) may not engage in *ex parte* contact with the court except as authorized by law;
 - (3) may not be compelled to produce the guardian ad litem’s work product developed during the appointment;
 - (4) may not be required to disclose the source of information obtained as a result of the appointment; and
 - (5) may not testify.
- (e) **Recommendations.** Any recommendations submitted by the guardian ad litem may be considered by the court as argument but not as evidence.

Rule 15.2. Involuntary ~~[Administrative?]~~ Dismissals.

Staff Note: This draft rule is based on current Rule 15.2(D), (E), and (F).

- (a) ~~Generally~~ Dismissal of Petition. ~~If, 2 months after a petition has been filed, an the petitioner within two months after filing the petition has not obtained an initial hearing date on that petition has not been set, the court may can distribute a notice informing the notify party who filed the petitioner — and anyone filing a demand for notice — that the petition will may be dismissed in one month from the date of the court’s notice 45 days unless within that month the prior to that date that party petitioner has obtained a hearing date or an extension of the dismissal date. The court must send a copy of that notice to the party who filed the petition and anyone who has filed a demand for notice. If no action or hearing occurs within 6 months after a case is filed under A.R.S. Title 14 [Staff Note: Add Titles 12 and 36? See the comment to current Rule 1], the court will distribute a notice that the case will be administratively terminated [Staff Note: substitute “dismissed” for “administratively terminated,” which is in the current rule?] in 90 days without hearing, unless before that date the initiating party files with the court a request for action or a status report describing matters remaining for resolution. The court will distribute the notice to all parties, persons entitled to notice of the commencement of the case, and to any person who filed a demand for notice. This rule does not apply if Rules 15.3 or 15.4 provides otherwise.~~

(b) Effect of Dismissal.

(1) ~~No Other Only Petition Filed in the Case.~~ Unless the court orders otherwise, if a petition dismissed under this rule is the An order dismissing the only petition filed in a case only petition filed in the case, the entry of the order dismissing the petition dismisses all pending matters in the case, resulting in complete dismissal of the case is a dismissal without prejudice of the entire case.

(2) Other Petitions Filed in the Case. ~~Unless the court orders otherwise, if a petition dismissed under this rule is not the only petition filed in the case, the entry of an order dismissing a case petition dismisses all pending matters claims raised in that petition in the case without prejudice, but but does not result in a dismissal of the case. When more than one petition has been filed in a case, an order dismissing one petition dismisses only that petition without prejudice. does not dismiss, vacate, or set aside any final order approving accountings or other actions of a person appointed under A.R.S Title 14.~~

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(c) **Dismissal Authority.** The court's authority to issue notices ~~and~~ to dismiss petitions and cases, ~~and terminate appointments~~ under this rule may be performed by court administration or by an appropriate electronic process under the court's supervision.

Rule 15.2. Involuntary [Administrative?] Dismissals.

(a) Dismissal of Petition. If the petitioner within two months after filing the petition has not obtained an initial hearing date, the court can notify petitioner — and anyone filing a demand for notice — that the petition may be dismissed one month from the date of the court’s notice unless within that month the petitioner has obtained a hearing date or an extension of the dismissal date.

(b) Effect of Dismissal.

(1) Only Petition Filed in the Case. An order dismissing the only petition filed in a case is a dismissal without prejudice of the entire case.

(2) Other Petitions Filed in the Case. When more than one petition has been filed in a case, an order dismissing one petition dismisses only that petition without prejudice.

(c) Dismissal Authority. The court’s authority to issue notices and to dismiss petitions and cases under this rule may be performed by court administration or by an appropriate electronic process under the court’s supervision.

Rule 15.3. ~~Involuntary Dismissal of a Probate Case.~~ ~~Involuntary Termination~~ Administrative Closure of a Decedent's Estate and Termination of Appointment Case.

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(a) Meaning of "Closed Estate." For purposes of Rule 15.3(b), a decedent's estate is closed when a closing statement has been filed, the court has entered an order of complete settlement has been entered, or, if the only action taken in the case has been the appointment of a special administrator, an order terminating the special administrator's appointment has been entered.

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Staff Note: This draft rule is based on current Rule 15.2(A), (B), (E), and (F). It merges the provisions in current Rule 15.2(A)(1) and (A)(2), which appear to overlap.

~~No~~ Notice of Dismissal Termination, Generally. **If a decedent's estate has not been closed within two years after its commencement, the court may distribute a notice that the estate will be administratively closed and any fiduciary appointment will be terminated unless one of the following is filed within two months of the court's notice: Two years after the filing date of commencement of a case under A.R.S. Title 14, Chapter 3, for formal or informal probate, appointment of a personal representative, appointment of a special administrator, or other estate administration proceedings, the court will may issue a notice of impending dismissal/termination unless at least one of the following has been filed in the case:**

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A closing statement under A.R.S. § 14-3933;

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An order settling the estate under A.R.S. §§ 14-3931 and -3932;

An order terminating the appointment of the special administrator under A.R.S. § 14-3618; or

(b) An order extending the administration of the estate beyond two years.

Contents of Notice. The notice required by this rule shall state that the estate will be closed administratively and the personal representative's or special administrative's authority will be terminated unless, within 90 days from the date of the notice, one of the following documents has been filed:

(1) a closing statement under A.R.S. § 14-3933;

(2) a petition to settle the estate under A.R.S. §§ 14-3931 and -3932;

(3) a petition to terminate the appointment of the special administrator under A.R.S. § 14-3618;

(4) a request to set the case for hearing or a conference;

(5) a status report describing matters that remain to be resolved; or

(6) a motion to extend ~~the~~ administration of the estate beyond two years.

(c) **Who Is Entitled to Distribution of the Notice.** The clerk or court administrator, as designated by the presiding judge, ~~will~~ must distribute the notice to the following:

~~(a) The clerk or court administrator, as designated by the presiding judge, will distribute the notice to:~~

(1) the parties;

(2) in an intestate estate, every heir whose address is contained in the court's file;

(2)(3) in a testate estate, every ~~heir and~~ devisee whose address is contained in the file; and

(3)(4) any person who ~~has filed a demand for notice, demanded notice of the impending dismissal.~~

(b)(d) **Dismissal, Administrative Closure and Termination of Appointment.**

~~If, 90Ninety days after distribution of the notice, none of the documents described in (b) has been filed, Tthe court, without a hearing, may issue an order closeing the estate administratively dismiss the case without prejudice and terminate-terminating the appointment of the personal representative or special administrator, without a hearingif a document described in section (b) has not been filed within two months after distribution of the notice, unless at least one of the following documents has been filed:~~

~~(1) a closing statement under A.R.S. § 14-3933;~~

~~(2) a petition to settle the estate under A.R.S. §§ 14-3931 and 3932;~~

~~(3) a petition to terminate the appointment of the personal representative or special administrator under A.R.S. § 14-3618; or~~

~~(4) a request to set the case for trial, a hearing, or a conference;~~

~~(5) a status report describing matters that remain to be resolved; or~~

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~~(6) a motion to extend the administration of the estate beyond two years.~~

~~(e)~~**(c) Effect of Dismissal**Administrative Closure. An order closing an estate administrative and terminating ~~termination of~~ the appointment of ~~the a~~ personal representative or special administrator under this rule does not discharge the fiduciary from liability or exonerate any bond.

~~(d) Extension of Time~~. ~~If good cause is shown, the court may extend the periods any period set forth in this rule, but the request must be made before their~~ the period's expiration.

~~(e)~~**(f) Authority**. The court's authority to issue notices, ~~dismiss cases~~administratively close an estate,⁷ and terminate appointments under this rule may be performed by court administration or by an appropriate electronic process under the court's supervision.

Rule 15.3. Administrative Closure of a Decedent's Estate and Termination of Appointment.

(a) **Meaning of "Closed Estate."** For purposes of Rule 15.3(b), a decedent's estate is closed when a closing statement has been filed, the court has entered an order of complete settlement has been entered, or, if the only action taken in the case has been the appointment of a special administrator, an order terminating the special administrator's appointment has been entered.

(b) **Notice. If a decedent's estate has not been closed within two years after its commencement, the court may distribute a notice that the estate will be administratively closed and any fiduciary appointment will be terminated unless one of the following is filed within two months of the court's notice:**

- (1) a closing statement under A.R.S. § 14-3933;
- (2) a petition to settle the estate under A.R.S. §§ 14-3931 and -3932;
- (3) a petition to terminate the appointment of the special administrator under A.R.S. § 14-3618;
- (4) a request to set the case for hearing or a conference;
- (5) a status report describing matters that remain to be resolved; or
- (6) a motion to extend administration of the estate beyond two years.

(c) **Distribution of the Notice.** The clerk or court administrator, as designated by the presiding judge, must distribute the notice to the following:

- (1) the parties;
- (2) in an intestate estate, every heir whose address is contained in the court's file;
- (3) in a testate estate, every devisee whose address is contained in the file; and
- (4) any person who has filed a demand for notice.

(d) **Administrative Closure and Termination of Appointment.** The court, without a hearing, may issue an order closing the estate administratively and terminating the appointment of the personal representative or special administrator if a document described in section (b) has not been filed within two months after distribution of the notice.

- (e) **Effect of Administrative Closure.** An order closing an estate administrative and terminating the appointment of a personal representative or special administrator under this rule does not discharge the fiduciary from liability or exonerate any bond.
- (f) **Authority.** The court's authority to issue notices, administratively close an estate, and terminate appointments under this rule may be performed by court administration or by an appropriate electronic process under the court's supervision.

Rule 15.4. Involuntary Termination of a Minor Guardianship or Closure of a Minor Case Conservatorship Case.

Staff Note: ~~This draft rule is based on current Rule 15.2(B).~~

(a) **Generally.** Consistent with A.R.S. § 14-5210, the clerk or court administrator, as designated by the presiding judge, administratively must close ~~[dismiss?]~~ a minor guardianship case filed under A.R.S. §§ 14-5201 to 14-5212 when the minor reaches the age of majority, or upon the minor’s adoption, marriage, emancipation, or death.

Grounds for an Adult Guardianship. ~~If the court has reason to believe that a minor who is the subject of a guardianship under A.R.S. §§ 14-5201 to 5212 has a disability or impairment that may require the appointment of a guardian after the minor’s eighteenth birthday, and if a petition has not been filed under A.R.S. § 14-5303, the court must may set a status hearing conference no later than 90 days before the minor’s eighteenth birthday to determine whether a petition should be filed for the appointment of an adult guardian for an adult.~~

JMP QUESTION FOR WORKGROUP: Existing Rule 15.2 does not have a provision for involuntary administrative closure of a conservatorship for a minor. Should we create such a rule? In other words, do we want to allow the court to administratively close a minor conservatorship and terminate the conservator’s authority (but not discharge the conservator or exonerate a bond) at some specific point (12 months?) after the minor attains the age of majority?

(b) **Administrative Closure of a Minor Conservatorship Case.** If an order terminating a conservatorship for a minor has not been entered within six months after the minor’s eighteenth birthday, the court may notify the conservator and the former minor that the court may administratively close the conservatorship and terminate the conservator’s appointment unless within three months after the notice, the conservator or the former minor files a petition to terminate the conservatorship and obtains an initial hearing date. An order under this rule that administratively closes a conservatorship and terminates the conservator’s appointment does not discharge the conservator from liability or exonerate the conservator’s bond.

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Rule 15.4. Involuntary Termination of a Minor Guardianship or Closure of a Minor Conservatorship Case.

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~~**Grounds for an Adult Guardianship.** If the court has reason to believe that a minor who is the subject of a guardianship under A.R.S. §§ 14-5201 to 5212 has a disability or impairment that may require the appointment of a guardian after the minor's eighteenth birthday and if a petition has not been filed under A.R.S. § 14-5303, the court may set a status conference no later than 90 days before the minor's eighteenth birthday to determine whether a petition should be filed for the appointment of a guardian for an adult.~~

~~**JMP QUESTION FOR WORKGROUP: Existing Rule 15.2 does not have a provision for involuntary administrative closure of a conservatorship for a minor. Should we create such a rule? In other words, do we want to allow the court to administratively close a minor conservatorship and terminate the conservator's authority (but not discharge the conservator or exonerate a bond) at some specific point (12 months?) after the minor attains the age of majority?**~~

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Rule 15.5. Remedies for Non-Compliance by a Guardian or Conservator for an Adult.

~~[Staff Note: This draft rule is based on current Rule 15.2(C).]~~

If a guardian or conservator fails to comply with requirements of A.R.S. Title 14, court rules, or a court order, the court may enter any order designed to ensure compliance or to protect the best interests of the ward or protected person, including:

- (a) an order to the guardian or conservator to comply by a specified deadline;
- (b) a Rule 35 order requiring the guardian or conservator to show cause why the court should not take appropriate action;
- (c) an order appointing a court investigator to investigate the reasons for the guardian's or conservator's non-compliance and to report to the court regarding the investigator's findings and proposed recommendations;

(ed) an order immediately suspending or terminating the guardian's or conservator's authority to take any further action on behalf of the ward or the estate and appointing a successor or temporary fiduciary;

(de) an order terminating the guardianship or conservatorship proceeding if the court determines that dismissal is appropriate, but the court ~~should~~**must** not terminate a guardianship or conservatorship if the court has reason to believe the ward remains incapacitated or the protected person remains in need of protection, and that person continues to reside in Arizona;

~~(e) an order immediately suspending or terminating the guardian's or conservator's authority to take any further action on behalf of the ward or the estate and appointing a successor or temporary fiduciary;~~

(f) an order initiating proceedings that may result in issuance of a fiduciary arrest warrant under A.R.S. § 14-5701;

(g) an order under Civil Rule 70; or

(gh) other appropriate orders.

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JMP QUESTION FOR WORKGROUP: Isn't this rule more appropriately placed with/near Rule 35?

Rule 15.5. Remedies for Non-Compliance by a Guardian or Conservator for an Adult.

If a guardian or conservator fails to comply with requirements of A.R.S. Title 14, court rules, or a court order, the court may enter any order designed to ensure compliance or to protect the best interests of the ward or protected person, including:

- (a) an order to the guardian or conservator to comply by a specified deadline;
- (b) a Rule 35 order requiring the guardian or conservator to show cause why the court should not take appropriate action;
- (c) an order appointing a court investigator to investigate the reasons for the guardian's or conservator's non-compliance and to report to the court regarding the investigator's findings and proposed recommendations;
- (d) an order immediately suspending or terminating the guardian's or conservator's authority to take any further action on behalf of the ward or the estate and appointing a successor or temporary fiduciary;
- (e) an order terminating the guardianship or conservatorship proceeding if the court determines that dismissal is appropriate, but the court must not terminate a guardianship or conservatorship if the court has reason to believe the ward remains incapacitated or the protected person remains in need of protection, and that person continues to reside in Arizona;
- (f) an order initiating proceedings that may result in issuance of a fiduciary arrest warrant under A.R.S. § 14-5701;
- (g) an order under Civil Rule 70; or
- (h) other appropriate orders.

JMP QUESTION FOR WORKGROUP: Isn't this rule more appropriately placed with/near Rule 35?

Rule 28. Pretrial Procedures Management of a Contested Probate Proceedings.

(a) Generally. If a petition is contested ~~at the initial hearing,~~ the court must either:

- (1) enter a scheduling order; or
- (2) Order the parties to meet and confer, and ~~to set a~~ set a deadline for the parties to file a joint report and proposed scheduling order.

(b) Meet and Confer. Content of Joint Report. ~~At their meeting, the parties should~~ discuss at least:

- (1) agreements that could aid in the just, speedy, and inexpensive resolution of the case. Parties must explore settlement or resolution by means other than litigation.
- (2) Their anticipated disclosures concerning witnesses, including the number of fact witnesses, whether they ~~will seek~~ intend to use expert witnesses, and how much deposition testimony they expect will be necessary.
- (3) Their anticipated disclosures of documents, including any issues already known to them concerning electronically stored information; and
- (4) Motions they expect to file, ~~so that the parties can determine~~ and whether any of the motions can be avoided by stipulations, amendments, or other cooperative activity.

~~Any agreements that could aid in the just, speedy, and inexpensive resolution of the case;~~

(c) Content of the Joint Report. ~~§~~ The joint report must state ~~to the extent practicable~~ the parties' positions on the subjects set forth in Probate Rule 28(b) and (d). The parties must submit a proposed scheduling order with their joint report. In the joint report, the parties are not permitted to discuss details of settlement negotiations, criticize the rejection of proposed agreements, or argue that the other party has taken unreasonable positions. A party's signature, or authorized signature, on the joint report is the party's certification that it conferred in good faith regarding the subjects set forth in Probate Rule 28. ~~he subjects set forth in Civil Rule 16(e)(3)(A)-(L).~~

(e-d) Contents of Content of the Scheduling Order. The proposed scheduling order must specify deadlines for the following by calendar date, month, and year:

- (1) serving initial disclosures under Rule 26.1 if disclosure statements have not already been served or waived;
- (2) identifying areas of expert testimony;
- (3) identifying and disclosing expert witnesses and their opinions under Rule 26.1(d);
- (4) propounding written discovery;

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- (5) disclosing nonexpert witnesses;
- (6) completing depositions;
- (7) completing all discovery other than depositions;
- (8) final supplementation of Rule 26.1 disclosures;
- (9) for a settlement conference or private mediation, if ordered by the court;
- (10) filing dispositive motions;
- (11) a proposed trial date; and
- (12) the anticipated number of days for trial.

[(13) Discuss jury trials under R-18-0018]

The scheduling order also may address other appropriate matters.

The proposed Scheduling Order must specify deadlines for the following by calendar date, month, and year the subjects set forth in Civil Rule 16(c)(3)(A) (L):

(e) **Trial Date.** The scheduling order must set either: (A) a trial date; or (B) a date for a trial-setting conference under Civil Rule 16(e) at which a trial date may be set. ~~The court may not a trial date~~

(f) **Modification of Dates Established by Scheduling Order.** The parties may modify the dates established in a scheduling order only by court order for good cause.

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Initial Procedures in Contested Proceedings.

(1)(2) **Setting a Scheduling Conference.** ~~If the court does not issue a scheduling order, the parties must prepare a joint report and proposed scheduling order, which they must file as ordered by the court. If at the initial hearing a petition is contested, the court must either issue a scheduling order or set a deadline for the parties to file a joint report and proposed scheduling order. At the initial hearing or subsequently, the court also may set a scheduling conference. not unless the parties agree otherwise. Rule 16(d) of the Arizona Rules of Civil Procedure. Unless inconsistent with these rules, Rule 16(d) of the Arizona Rules of Civil Procedure applies to the conduct of the conference. [JWR Note: Is this~~

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necessary? Rule 16(d) merely lists the issues that may be considered at a Scheduling Conference. That seems to be already covered in (a)(3).]

~~(2)(3) **Timing.** The scheduling conference must be set promptly after the date of the initial hearing on the petition, but it also may be held at the time set for the initial hearing on the petition. [Staff Note: Is there a provision that governs the setting of an initial hearing on the petition?]~~

~~(3)(4) **Issues.** The A scheduling conference should address the following issues: [\[ref civil 16b3\]](#)~~

~~(A) the deadline for filing a written objection if one has not already been filed;~~

~~(B) the deadline for filing a joint alternative dispute resolution statement under Rule 29; and~~

~~(C) any other issues the court or the parties deem relevant. [Staff Note: Does this broad provision give the court and parties sufficient flexibility?]~~

~~The proposed scheduling order must specify deadlines for the following by calendar date, month, and year:~~

~~(A) serving initial disclosures under Rule 26.1 if they have not already been served;~~

~~(B) identifying areas of expert testimony;~~

~~(C) identifying and disclosing expert witnesses and their opinions under Rule 26.1(d);~~

~~(D) propounding written discovery;~~

~~(E) disclosing nonexpert witnesses;~~

~~(F) completing depositions;~~

~~(G) completing all discovery other than depositions;~~

~~(H) final supplementation of Rule 26.1 disclosures;~~

~~(I) unless the court orders otherwise for good cause, the deadline to complete alternative dispute resolution or the parties' reasons why it is not appropriate;~~

~~whether a deadline for engaging in alternative dispute resolution is appropriate and if so a deadline to complete it; would be if ordered by the court under Rule 29(a); holding a Rule 16.1 settlement conference or private mediation to occur no more than 15 months after the action commenced, but in no event~~

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later than 60 days after the date discovery is set to complete consistent with the discovery tier to which the case is assigned under Rule 26.2(f):

~~The parties agree to engage in settlement discussions with a settlement judge assigned by a court or a private mediator. The parties will be ready for settlement conference or private mediation by (insert date). If the parties will not engage in a settlement conference or a private mediator, state the reasons;~~

~~(J) filing dispositive motions;~~

~~(K) a proposed trial date; and~~

~~(L) the anticipated number of days for trial.~~

(4)(5) Scheduling Order. The court will enter an order after the scheduling conference that contains deadlines that were determined at the scheduling conference.

Discovery and Disclosure. Unless the parties agree or the court orders otherwise, the tiering requirements in Civil Rule 26.2 do not apply to discovery in a probate case.

Unless inconsistent with these rules, Rules 26 through 37 [~~Staff Note: Note that the current rule says 26 through 37(f). Not clear whether this is intended to exclude Rule 37(g), but the proposed restyling deletes the section reference after Rule 37]~~ of the Arizona Rules of Civil Procedure apply to discovery and disclosure in contested probate proceedings. [JWR Note: How does the rule square with tiering under Rule 26.2? If the intention is to include them, somewhere Rules 16(b) and (c) need to be referenced and incorporated in whole or in part.]

Procedure for Evidentiary Hearings. Except to the extent A.R.S. Title 14 or these rules provide otherwise, Rule 38 and Rules 39 through 53 of the Arizona Rules of Civil Procedure apply to evidentiary hearings [add, "and trials?"] in probate proceedings. Rule 38.1 of the Arizona Rules of Civil Procedure does not apply to contested probate proceedings unless the court orders otherwise.

COMMENT

Parties and their attorneys are encouraged to confer before the initial hearing on the petition or the scheduling conference to agree on various pretrial deadlines. If the parties and their attorneys cannot agree, the parties and attorneys shall follow the Arizona Rules of Civil Procedure, specifically Rule 16(b). Any agreement may be submitted to the court in writing, thereby eliminating the need for the scheduling conference or reducing the scope of the conference, unless the court orders otherwise. The judicial officer may schedule a telephonic conference call in lieu of

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a conference and request that the parties submit a proposed schedule of deadlines.

~~Arizona Rule of Civil Procedure 38.1 deals with motions to set and certificates of readiness, which generally are not used in probate proceedings. Rule 38.1 is therefore inconsistent with these rules and is intentionally excluded.~~

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Rule 28. Management of ~~Contested~~ Probate Proceedings.

(a) Generally. If a petition is contested, the court must either:

- (1) enter a scheduling order; or
- (2) order the parties to meet and confer, and set a deadline for the parties to file a joint report and proposed scheduling order.

(b) Meet and Confer. At their meeting, the parties should discuss:

- (1) agreements that could aid in the just, speedy, and inexpensive resolution of the case. Parties must explore settlement or resolution by means other than litigation.
- (2) their anticipated disclosures concerning witnesses, including the number of fact witnesses, whether they intend to use expert witnesses, and how much deposition testimony they expect will be necessary.
- (3) their anticipated disclosures of documents, including any issues already known to them concerning electronically stored information; and
- (4) motions they expect to file, and whether any of the motions can be avoided by stipulations, amendments, or other cooperative activity.

(c) Content of the Joint Report. The joint report must state--to the extent practicable--the parties' positions on the subjects set forth in Probate Rule 28(b) and (d). The parties must submit a proposed scheduling order with their joint report. In the joint report, the parties are not permitted to discuss details of settlement negotiations, criticize the rejection of proposed agreements, or argue that the other party has taken unreasonable positions. A party's signature, or authorized signature, on the joint report is the party's certification that it conferred in good faith regarding the subjects set forth in Probate Rule 28.

(d) Content of the Scheduling Order. The proposed scheduling order must specify deadlines for the following by calendar date, month, and year:

- (1) serving initial disclosures under Rule 26.1 if disclosure statements have not already been served or waived;
- (2) identifying areas of expert testimony;
- (3) identifying and disclosing expert witnesses and their opinions under Rule 26.1(d);
- (4) propounding written discovery;
- (5) disclosing nonexpert witnesses;
- (6) completing depositions;
- (7) completing all discovery other than depositions;
- (8) final supplementation of Rule 26.1 disclosures;
- (9) for a settlement conference or private mediation, if ordered by the court;

- (10) filing dispositive motions;
- (11) a proposed trial date; and
- (12) the anticipated number of days for trial.

[(13) Discuss jury trials under R-18-0018]

The scheduling order also may address other appropriate matters.

(e) Trial Date. The scheduling order must set either: (A) a trial date; or (B) a date for a trial-setting conference under Civil Rule 16(e) at which a trial date may be set.

(f) Modification of Dates Established by Scheduling Order. The parties may modify the dates established in a scheduling order only by court order for good cause.

Initial Procedures in Contested Proceedings.

- (2) ***Setting a Scheduling Conference.*** ~~If the court does not issue a scheduling order, the parties must prepare a joint report and proposed scheduling order, which they must file as ordered by the court. If at the initial hearing a petition is contested, the court must either issue a scheduling order or set a deadline for the parties to file a joint report and proposed scheduling order. At the initial hearing or subsequently, the court also may set a scheduling conference. 16(d) of the Arizona Rules of Civil Procedure. Unless inconsistent with these rules, Rule 16(d) of the Arizona Rules of Civil Procedure applies to the conduct of the conference. [JWR Note: Is this necessary? Rule 16(d) merely lists the issues that may be considered at a Scheduling Conference. That seems to be already covered in (a)(3).]~~
- (3) ***Timing.*** ~~The scheduling conference must be set promptly after the date of the initial hearing on the petition, but it also may be held at the time set for the initial hearing on the petition. [Staff Note: Is there a provision that governs the setting of an initial hearing on the petition?]~~

(4) ~~Issues.~~ A scheduling conference should address the following issues: [ref civil 16b3]

~~(A) the deadline for filing a written objection if one has not already been filed;~~

~~(B) the deadline for filing a joint alternative dispute resolution statement under Rule 29; and~~

~~(C) any other issues the court or the parties deem relevant. [Staff Note: Does this broad provision give the court and parties sufficient flexibility?]~~

The proposed scheduling order must specify deadlines for the following by calendar date, month, and year:

~~(A) serving initial disclosures under Rule 26.1 if they have not already been served;~~

~~(B) identifying areas of expert testimony;~~

~~(C) identifying and disclosing expert witnesses and their opinions under Rule 26.1(d);~~

~~(D) propounding written discovery;~~

~~(E) disclosing nonexpert witnesses;~~

~~(F) completing depositions;~~

~~(G) completing all discovery other than depositions;~~

~~(H) final supplementation of Rule 26.1 disclosures;~~

~~(I) unless the court orders otherwise for good cause, the deadline to complete alternative dispute resolution or the parties' reasons why it is not appropriate;~~

~~whether a deadline for engaging in alternative dispute resolution is appropriate and if so a deadline to complete it; would be if ordered by the court under Rule 29(a); holding a Rule 16.1 settlement conference or private mediation to occur no more than 15 months after the action commenced, but in no event later than 60 days after the date discovery is set to complete consistent with the discovery tier to which the case is assigned under Rule 26.2(f);~~

~~The parties agree to engage in settlement discussions with a settlement judge assigned by a court or a private mediator. The parties will be ready for settlement conference or private mediation by (insert date). If the parties will not engage in a settlement conference or a private mediator, state the reasons.~~

- (J) filing dispositive motions;
- (K) a proposed trial date; and
- (L) the anticipated number of days for trial.

(5) ~~*Scheduling Order.*~~ The court will enter an order after the scheduling conference that contains deadlines that were determined at the scheduling conference.

~~**Discovery and Disclosure.** Unless the parties agree or the court orders otherwise, the tiering requirements in Civil Rule 26.2 do not apply to discovery in a probate case. Unless inconsistent with these rules, Rules 26 through 37 [**Staff Note:** Note that the current rule says 26 through 37(f). Not clear whether this is intended to exclude Rule 37(g), but the proposed restyling deletes the section reference after Rule 37] of the Arizona Rules of Civil Procedure apply to discovery and disclosure in contested probate proceedings. [JWR Note: How does the rule square with tiering under Rule 26.2? If the intention is to include them, somewhere Rules 16(b) and (c) need to be referenced and incorporated in whole or in part.]~~

~~**Procedure for Evidentiary Hearings.** Except to the extent A.R.S. Title 14 or these rules provide otherwise, Rule 38 and Rules 39 through 53 of the Arizona Rules of Civil Procedure apply to evidentiary hearings [add, “and trials?”] in probate proceedings. Rule 38.1 of the Arizona Rules of Civil Procedure does not apply to contested probate proceedings unless the court orders otherwise.~~

COMMENT

~~Parties and their attorneys are encouraged to confer before the initial hearing on the petition or the scheduling conference to agree on various pretrial deadlines. If the parties and their attorneys cannot agree, the parties and attorneys shall follow the Arizona Rules of Civil Procedure, specifically Rule 16(b). Any agreement may be submitted to the court in writing, thereby eliminating the need for the scheduling conference or reducing the scope of the conference, unless the court orders otherwise. The judicial officer may schedule a telephonic conference call in lieu of a conference and request that the parties submit a proposed schedule of deadlines.~~

~~Arizona Rule of Civil Procedure 38.1 deals with motions to set and certificates of readiness, which generally are not used in probate proceedings. Rule 38.1 is therefore inconsistent with these rules and is intentionally excluded.~~

Rule 28.1. Disclosure and Discovery.

(a) Generally. ~~Unless the parties agree or the court orders otherwise, the tiering requirements in Civil Rule 26.2 do not apply to discovery in a probate case.~~ Unless inconsistent with these rules, Rules 26 through 37, including Rule 26.1, ~~[Staff Note: Note that the current rule says 26 through 37(f). Not clear whether this is intended to exclude Rule 37(g), but the proposed restyling deletes the section reference after Rule 37]~~ of the Arizona Rules of Civil Procedure apply to ~~discovery and disclosure and discovery~~ in contested probate proceedings. ~~However, and unless the parties agree or the court orders otherwise, the provisions of Civil Rule 26(f) and Civil Rule 26.2 do not apply to discovery in a probate proceeding.~~

~~require the parties to meet and confer and file a joint report and proposed scheduling order under Civil Rule 16.~~

(b) Presumptive Limits. Unless the court orders otherwise, each side in a probate proceeding is presumptively limited to the following discovery:

- (1) Interrogatories.** 20 interrogatories, with each subpart of a nonuniform interrogatory counted as a separate interrogatory
- (2) Requests for Admissions.** 10 requests
- (3) Requests for Production.** 10 requests
- (4) Depositions of Fact Witnesses.** 10 hours total
- (5) Depositions of Expert Witnesses.** 4 hours for each expert. For purposes of this rule, a treating physician is an expert witness.

(c) Limits by Court Order. The court on its own or on a party's motion may modify the presumptive limits in section (b).

~~require the parties to meet and confer and file a joint report and proposed scheduling order under Civil Rule 16.~~

(d) Attorney Fee Claims. For purposes of a claim for attorney fees, the fact that a party undertook discovery within the limits of this rule does not establish that the discovery was necessary or that the time expended on that discovery was reasonable.

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Rule 28.1. Disclosure and Discovery.

- (a) **Generally.** Unless inconsistent with these rules, Rules 26 through 37, including Rule 26.1, of the Arizona Rules of Civil Procedure apply to disclosure and discovery in contested probate proceedings. However, and unless the parties agree or the court orders otherwise, the provisions of Civil Rule 26(f) and Civil Rule 26.2 do not apply to discovery in a probate proceeding.
- (b) **Presumptive Limits.** Unless the court orders otherwise, each side in a probate proceeding is presumptively limited to the following discovery:
- (1) *Interrogatories.* 20 interrogatories, with each subpart of a nonuniform interrogatory counted as a separate interrogatory
 - (2) *Requests for Admissions.* 10 requests
 - (3) *Requests for Production.* 10 requests
 - (4) *Depositions of Fact Witnesses.* 10 hours total
 - (5) *Depositions of Expert Witnesses.* 4 hours for each expert. For purposes of this rule, a treating physician is an expert witness.
- (c) **Limits by Court Order.** The court on its own or on a party's motion may modify the presumptive limits in section (b).
- (d) **Attorney Fee Claims.** For purposes of a claim for attorney fees, the fact that a party undertook discovery within the limits of this rule does not establish that the discovery was necessary or that the time expended on that discovery was reasonable.
- (e) **Fiduciary Subpoena Authority.** A licensed fiduciary appointed by the court as a guardian, conservator, or personal representative, or the fiduciary's counsel, may in furtherance of the fiduciary's duties request the court clerk to issue subpoenas to produce materials or permit inspections. The fiduciary may request these subpoenas even when there is no contested matter then-pending and regardless of whether there is another party to the proceeding. The fiduciary must comply with applicable requirements of Civil Rule 45.

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 minimis* 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.

Rule 28.2. Demand for Jury Trial.

(a) Demand. On any issue triable of right by a jury, a party may obtain a jury trial by filing and serving a written demand at any time after the proceeding is commenced, but no later than 30 days after the initial hearing under Rule 12. The demand may not be combined with any other motion or pleading filed with the court.

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(b) Specifying Issues. In its demand, a party may specify the issues for which it requests a jury; otherwise, the party is deemed to have demanded a jury trial on all issues triable by jury. If a party has demanded a jury trial on only some issues, any other party may-- within 10 days after the demand is served or within a shorter time ordered by the court-- serve a demand for jury trial on any other or all factual issues triable by jury.

(c) Waiver; Withdrawal. A party waives a jury trial unless its demand is properly filed and served. A proper demand may be withdrawn only if all parties consent.

(d) If a Demand Is Made. If a jury trial is demanded, the action must be tried by jury unless:

(1) all parties file a stipulation to a nonjury trial or so stipulate on the record; or

(2) the court, on motion or on its own, finds that there is no right to a jury trial on some or all of those issues.

(e) If No Demand Is Made. The court must try all issues on which a jury trial is not properly demanded. The court may, on motion, order a jury trial on any issue for which a jury might have been demanded.

(f) Advisory Jury; Jury Trial by Consent. In an action not triable of right by a jury, the court, on motion or on its own:

(1) may try any issue with an advisory jury; or

(2) may, with the parties' consent, order a jury trial on any issue, and the verdict will have the same effect as if a jury trial had been held as a matter of right.

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Rule 28.2. Demand for Jury Trial.

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(1) all parties file a stipulation to a nonjury trial or so stipulate on the record; or

(2) the court, on motion or on its own, finds that there is no right to a jury trial on some or all of those issues.

(e) If No Demand Is Made. The court must try all issues on which a jury trial is not properly demanded. The court may, on motion, order a jury trial on any issue for which a jury might have been demanded.

(f) Advisory Jury; Jury Trial by Consent. In an action not triable of right by a jury, the court, on motion or on its own:

(1) may try any issue with an advisory jury; or

(2) may, with the parties' consent, order a jury trial on any issue, and the verdict will have the same effect as if a jury trial had been held as a matter of right.

RRule 30. Conservator's Inventory, Budget, and Accounting; Guardian's Report.

(a) Conservator's Inventory,

(1) **Generally.** For purposes of this rule, the conservator's appointment is the date the court first issued letters.

(A) **Timing.** Unless the court orders otherwise, a conservator must file the inventory of a protected person's estate, ~~required under A.R.S. § 14-5418(A),~~ no later than 90 days after the date of the conservator's appointment. ~~after the court issues the conservator's temporary or permanent letters.~~

(B) **Contents.** The inventory must list the value of all property the protected person owned as of the date ~~when the court issued the conservator's letters,~~ and must provide the value of each asset as of the date of the conservator's first appointment of the conservator's appointment.

~~(B)(C) Consumer Credit Report.~~ The credit report, as required by A.R.S. (Section) § 14-5418(A), shall must be filed with the inventory, or the conservator shall must provide an explanation as to why it could not be provided. [discuss with the Task Force] 90 days of the filing date of the inventory, to the inventory at the time of filing.

(2) **Motion for Additional Time.** If the conservator is unable to file the inventory within 90 days ~~after the court issued the conservator's letters,~~ the conservator must file a motion requesting additional time to file the inventory. The conservator must file the motion before the deadline, ~~and~~ state why the conservator needs additional time, ~~and~~ how much additional time ~~he or she needs~~ is needed to file the inventory.

~~(3) Amended Inventory.~~

(A) **Generally.** ~~After filing the inventory but before filing the conservator's first accounting, the conservator must file an amended inventory if the conservator discovers an additional asset or discovers that the value of an asset on the inventory (whether appraised or not) is erroneous or misleading.~~

(B) **If the Asset Is Not Restricted.** ~~If the conservator files an amended inventory because the conservator has discovered an additional asset and if the additional asset is not already subject to a court-ordered restriction, the conservator must file a petition requesting the court to either increase the amount of the conservator's bond or enter an order restricting the additional~~

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asset's sale, conveyance, or encumbrance. The conservator must file the petition at the same time he or she files the amended inventory.

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(3) ~~Later Discovery of an Asset or Change in Value.~~

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(A) ~~Generally.~~ After filing the inventory, but before filing the conservator's first account, the conservator must file an amended inventory if the conservator discovers an additional asset or discovers the value of an asset on the inventory (whether appraised or not) is erroneous or misleading.

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(B) ~~Petition to Increase Bond or Restrict Asset.~~ If the conservator discovers an additional asset or discovers the value of an asset is erroneous or misleading, the conservator must file a petition requesting the court either increase the amount of the conservator's bond, or enter an order restricting the additional asset's sale, conveyance, or encumbrance. The conservator must file the petition at the same time the amended inventory is filed.

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(4) ~~(C) Assets Discovered After Filing the First Account~~ Later Discovered Assets or Change in Value. After a conservator has filed the first accounting, the conservator may not amend the inventory without the court's permission. ~~Unless the court orders otherwise, a conservator may not amend the inventory after filing the first a~~ Unless the court orders otherwise, a conservator may not amend the inventory after the filing of the first account. If the conservator discovers any assets after the filing of the first accounting, or if the conservator discovers that the value of an asset listed on the inventory is erroneous or misleading, the conservator must make appropriate adjustments in the conservator's later accountings.

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(b) Conservator's Budget.

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(1) Generally.

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(A) Timing. Unless the court orders otherwise, the conservator must file the initial budget of a protected person's estate no later than ~~the date the conservator's inventory is due~~ ~~temporary or permanent letters~~. All subsequent budgets will be included on the annual account form.

Commented [li1]: I changed this from 90 days to the date the inventory is due as that is the language in the current rule, and this would address a case where the conservator has filed a motion for an extension in filing the inventory.

(B) Contents. The budget ~~shall~~ **must** include a reasonable estimate of all anticipated income and expenditures related to the protected person's estate. The budget ~~shall~~ **must** cover the same time frame as the conservator's annual ~~first~~ account.

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(2) Amendments. The conservator must file an amended budget no later than 30 days after reasonably projecting the expenditures for any specific category will exceed the budget by a threshold stated as set forth in the instructions for the conservator's budget provided contained in the Arizona Code of Judicial Administration.

(3) Filing a Budget, Objections, and Court Action.

(A) ~~Filing and Presumption~~Presumption; Objection. A timely filed budget is presumed reasonable unless there is an objection. An interested person may file an objection to a budget, or an amendment, but must do so no later than 14 days after the budget's or amendment's was filed. ~~filing date. If an interested person fails to object to a budget item within 14 days after the filing date, the budget is deemed presumptively reasonable.~~ The court may also set a hearing in the absence of an objection.

(B) Hearings and Resolving Objections. The court may ~~overrule all or part of an objections~~ summarily overrule the objection, order the conservator to file a response, or set a hearing on the objection. ~~The court may also set a hearing in the absence of an objection. At a hearing,~~ The conservator has the burden of proving a contested budget item is reasonable, necessary, and in the best interest of the protected person.

(C) Court Action. ~~On its own or on the filing of an objection,~~ If the court reviews the budget, ~~the court must~~ may approve, disapprove, or modify the budget to further the best interests of the protected person. ~~The court may order a budget accepted if no one has filed an objection. I need some help with this paragraph. There is nothing that requires a conservator to seek approval of the initial budget. Most professionals seek approval to have additional protection, but I suspect many pro pers do not.~~

~~(b)~~(c) Conservator's Accounting.

(1) Generally. ~~First Accounting.~~

(A) Contents. Unless the court orders otherwise, the conservator's first accounting must reflect all activity relating to the conservatorship estate through and including the last day of the ninth month after the date when the court issued the conservator's permanent letters.

— Timing. The conservator must file the ~~annual~~ first accounting with the court no later than ~~sixty (60) 60 days from~~ the anniversary date when the court issued

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Commented [li2]: I think including 60 days from the issuance of permanent letters here still works, despite the inventory filing date being calculated by the date of "appointment," as the first account is to include all activity from the date of first appointment (so it will still be the inventory value) through and including the anniversary date of the the perm letters. Note - This may result in a first account being 13-18 months long if there was a temporary appointment.

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the conservator's permanent ~~[permanent]~~ letters. ~~[JWR Note: How does this jive with (6)? No deadline if only a temporary appointment has been made?]~~

~~(B)~~(A)

~~(C)~~(B) *Format.* Unless the court orders otherwise, the conservator's account must conform to the format set forth in the Arizona Code of Judicial Administration.

~~(D)~~(C) *Required Attachments.* For each bank or securities account listed on the ending balance schedule, the conservator must attach ~~to the accounting a copy of~~ the monthly statement that corresponds to the ending balance of such account ~~as reflected in the accounting.~~

(2) *First Account.* Unless the court orders otherwise, the conservator's first account must reflect all activity relating to the conservatorship estate from the date of first appointment through, and including, the last anniversary date of the conservator's permanent ~~permanent~~ letters.

~~(2)~~ *Later Accountings.* Unless the court orders otherwise, all later accounts must reflect all activity relating to the conservatorship estate from the ending date of the most recently filed account through, and including, the anniversary date of the conservator's permanent ~~permanent~~ letters.

(A) *Contents.* Unless the court orders otherwise, all later accountings must reflect all activity relating to the conservatorship estate from the ending date of the most recently filed accounting through and including the last day of the twelfth month after that accounting's ending date.

(B) *Timing.* The conservator must file each later accounting with the court no later than on the anniversary date when the court issued the conservator's permanent letters. ~~[JWR Note: How does this jive with (6)?]~~

(C) *Required Attachments.* For each bank or securities account listed on the ending balance schedule of the account, the conservator must attach to the accounting a copy of the monthly statement that corresponds to the ending balance of such account as reflected in the accounting.

(3) *Format.* Unless the court orders otherwise, the conservator's accounting must conform to the format set forth in the Arizona Code of Judicial Administration.

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(4) **Final Accounting.** Unless the court orders otherwise, and except as provided in A.R.S. § 14-5419(F), a conservator must file a final accounting for a deceased protected person no later than 90 days after the date of the protected person's death.

(5) **Motion for Additional Time.** If the conservator is unable to file an accounting within the time set forth in this rule, the conservator must file a motion requesting additional time to file the accounting. The conservator must file the motion before the deadline, and state why the conservator needs additional time, and how much additional time ~~he or she needs~~ is needed to file the accounting.

~~(6) **Date When Letters Were Issued.** For this rule's purposes, if the conservator's initial appointment was temporary, "the date when the court issued the conservator's letters" means the date when the court first issued the conservator's temporary letters, whether temporary or permanent. Otherwise, "the date when the court issued the conservator's letters" means the date when the court issued the conservator's permanent letters.~~

~~(d) **Court Authority.** For good cause, the court may order a variation of the requirements of this rule for an inventory, budget, or account in a case if the court finds that the variation is consistent with prudent management and oversight of the case.~~

~~(e) **Annual Guardian Reports.**~~

~~(1) **First Report.**~~

~~(A) **Contents.** Unless the court orders otherwise, the guardian's first annual report must reflect all activity relating to the guardianship through and including the last day of the ninth month after the date when the court issued the guardian's permanent letters. **[JWR Note:** Deleted permanent because of subpart (1), which seems to say that the report's deadline can be triggered by the issuance of a temporary letter.~~

~~(B) **Timing.** The guardian must file the first annual report with the court no later than on the anniversary date when the court issued the guardian's permanent letters.~~

~~(2) **Later Reports.**~~

~~(A) **Contents.** Unless the court orders otherwise, each of a guardian's later annual reports must reflect all activity relating to the guardianship from the ending~~

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Commented [li3]: This can be deleted as we have removed reference to the "date letters were issued" so we do not need to define it.

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date of the most recently filed report through and including the last day of the twelfth month after that report's ending date.

(B) Timing. The guardian must file each later report with the court no later than on the anniversary date when the court issued the guardian's permanent letters.
~~[JWR Note: Deleted for the same reason. Otherwise (4) makes no sense.]~~

(3) Motion for Additional Time. If the guardian is unable to file an annual report within the time set forth in this rule, the guardian must file a motion requesting additional time to file the report. The guardian must file the motion before the deadline, and state why the guardian needs additional time and how much additional time he or she needs to file the report.

(4) Date When Letters Were Issued. For this rule's purposes, if the guardian's initial appointment was temporary, "the date when the court issued the guardian's letters" means the date when the court issued the guardian's temporary letters. Otherwise, "the date when the court issued the guardian's letters" means the date when the court issued the guardian's permanent letters.

Staff Note: ~~Would it be more straightforward, and easier to calendar, if the rule provided that the first accounting or report covered a 12-month period after the letters were issued?~~

COMMENT

The statutes provide the substantive reporting requirements relating to inventories, accountings, and annual guardianship reports. See A.R.S. §§ 14-5315, -5418, and -5419. The purpose of this rule is to clarify the time periods to be covered by accountings and guardian reports and when such documents must be filed with the court.

Although the inventory itself is a confidential document, *see* Rule 7(A)(1)(c), the inventory and appraisal cover sheet is not a confidential document. Similarly, the accounting and supporting financial statements, ~~are is~~ a confidential documents, *see* Rule 7(A)(1)(d), while the petition requesting approval and any fee statements are not confidential documents. **LMP NOTE:** ~~Do we need this comment? Rule 7 outlines what is and is not a confidential document.~~

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If a guardian who has been granted the power to consent for the ward to receive inpatient mental health care and treatment in a level one behavioral health facility licensed by the Arizona Department of Health Services wishes to renew such authority before it expires, the time frame set forth in Rule 36(a) of these rules governs the filing of the annual guardian report.

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Rule 30. Conservator's Inventory, Budget, and Account.

(a) Conservator's Inventory.

- (1) **Generally.** For purposes of this rule, the conservator's appointment is the date the court first issued letters.
 - (A) **Timing.** Unless the court orders otherwise, a conservator must file the inventory of a protected person's estate no later than 90 days after the date of the conservator's appointment.
 - (B) **Contents.** The inventory must list the value of all property the protected person owned as of the date of the conservator's appointment.
 - (C) **Consumer Credit Report.** The credit report required by A.R.S. § 14-5418(A) must be filed with the inventory, ~~or the conservator must provide an explanation why it could not be provided.~~ [discuss with the Task Force]
- (2) **Motion for Additional Time.** If the conservator is unable to file the inventory within 90 days, the conservator must file a motion requesting additional time. The conservator must file the motion before the deadline, state why the conservator needs additional time, and how much additional time is needed to file the inventory.
- (3) **~~Discovery of an Asset or Change in Value.~~**
 - (A) **~~Generally.~~** ~~After filing the inventory, but before filing the conservator's first account, the conservator must file an amended inventory if the conservator discovers an additional asset or discovers the value of an asset on the inventory (whether appraised or not) is erroneous or misleading.~~
 - (B) **~~Petition to Increase Bond or Restrict Asset.~~** ~~If the conservator discovers an additional asset or discovers the value of an asset is erroneous or misleading, the conservator must file a petition requesting the court either increase the amount of the conservator's bond, or enter an order restricting the additional asset's sale, conveyance, or encumbrance. The conservator must file the petition at the same time the amended inventory is filed.~~
 - (C) **~~Assets Discovered After Filing the First Account.~~** ~~Unless the court orders otherwise, a conservator may not amend the inventory after filing the first account. If the conservator discovers an assets after filing the first account, or if the conservator discovers the value of an asset listed on the inventory is~~

~~erroneous or misleading, the conservator must make appropriate adjustments in the conservator's later accounts.~~

(b) Conservator's Budget.

(1) Generally.

(A) Timing. Unless the court orders otherwise, the conservator must file the initial budget of a protected person's estate no later than the date the conservator's inventory is due. All subsequent budgets will be included on the annual account form.

(B) Contents. The budget must include a reasonable estimate of all anticipated income and expenditures related to the protected person's estate. The budget must cover the same time frame as the conservator's annual account.

(2) Amendments. The conservator must file an amended budget no later than 30 days after reasonably projecting the expenditures for any specific category will exceed the budget by a threshold stated in the instructions for the conservator's budget contained in the Arizona Code of Judicial Administration.

(3) Filing a Budget, Objections, and Court Action.

(A) Presumption; Objection. A timely filed budget is presumed reasonable unless there is an objection. An interested person may file an objection no later than 14 days after the budget or amendment was filed. The court may set a hearing in the absence of an objection.

(B) Hearings and Resolving Objections. The court may summarily overrule the objection, order the conservator to file a response, or set a hearing on the objection. The conservator has the burden of proving a contested budget item is reasonable, necessary, and in the best interest of the protected person.

(C) Court Action. If the court reviews the budget, it may approve, disapprove, or modify the budget to further the best interest of the protected person.

(c) Conservator's Account.

(1) Generally.

(A) Timing. The conservator must file the annual account no later than 60 days from the anniversary date when the court issued the conservator's letters.

- (B) *Format.* Unless the court orders otherwise, the conservator’s account must conform to the format set forth in the Arizona Code of Judicial Administration.
- (C) *Required Attachments.* For each bank or securities account listed on the ending balance schedule, the conservator must attach the monthly statement that corresponds to the ending balance of such account.
- (2) *First Account.* Unless the court orders otherwise, the conservator’s first account must reflect all activity relating to the conservatorship estate from the date of first appointment through, and including, the anniversary date of the conservator’s letters.
- (3) *Later Accounts.* Unless the court orders otherwise, all later accounts must reflect all activity relating to the conservatorship estate from the ending date of the most recently filed account through, and including, the anniversary date of the conservator’s letters.
- (4) *Final Account.* Unless the court orders otherwise, and except as provided in A.R.S. § 14-5419(F), a conservator must file a final account for a deceased protected person no later than 90 days after the date of the protected person’s death.
- (5) *Motion for Additional Time.* If the conservator is unable to file an account within the time set forth in this rule, the conservator must file a motion requesting additional time to file the account. The conservator must file the motion before the deadline, state why the conservator needs additional time, and how much additional time is needed to file the account.
- (6) ~~*Date Letters Were Issued.* For this rule’s purposes, if the conservator’s initial appointment was temporary, “the date the court issued the conservator’s letters” means the date the court first issued the conservator’s letters, whether temporary or permanent.~~
- (d) **Court Authority.** For good cause, the court may order a variation of the requirements of this rule for an inventory, budget, or account in a case if the court finds that the variation is consistent with prudent management and oversight of the case.

COMMENT

Although the inventory itself is a confidential document, *see* Rule 7(A)(1)(c), the inventory and appraisal cover sheet is not a confidential document. Similarly, the account, and

supporting financial statements, are confidential documents, *see* Rule 7(A)(1)(d), while the petition requesting approval and any fee statements are not confidential documents. **LMP NOTE:** Do we need this comment? Rule 7 outlines what is and is not a confidential document.

Workgroup 3 Lisa Price assigned

Rule 30.1. Financial Order for Conservatorships. [Abrogate]

~~(a) — **Budget.** After the court appoints a conservator for an adult and unless the court orders otherwise, the conservator must establish and follow a budget, as set forth in Rule 30.3. [Staff Note: Because this is provided in Rule 30.3, isn't this Rule 30.1 provision redundant?]~~

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~~(b) **Orders.** The court may enter orders:~~

- ~~(1) — limiting expenditures from the protected person's estate if the court finds those limitations are in the protected person's best interest; and~~
- ~~(2) — requiring the conservator to proceed in any other lawful manner that the court finds is in the protected person's best interest.~~

~~(c) **Discharge and Duties of Attorney.** After the court appoints a conservator for an adult, the court may discharge the protected person's attorney if the court finds that the cost of the attorney's continued representation exceeds the probable benefit to the protected person. But until discharged, the attorney has a continuing duty to review the conservator's inventory, budgets, and accounts, and to notify the court of any objections or concerns about those items.~~

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Rule 30.1. Financial Order for Conservatorships. [Abrogate]

Workgroup 3 Lisa Price assigned

Rule 30.2. Sustainability of a Conservatorship.

~~(a) — Applicability.~~

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~~(1) — Generally. [Staff Note: The following provision derives from section (e) of the current rule.] Unless the court orders otherwise, a conservator must provide the information this rule requires—including the conservator’s assumptions and the e~~

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~~[Abrogate] calculation required in (d)—when filing an inventory, when filing a conservator’s account, and following any material change of circumstances.~~

~~(2) — Exception. [Staff Note: The following provision derives from section (g) of the current rule.] Unless the court orders otherwise, a conservator for a minor is not required to [provide] disclose the information this rule requires.~~

~~(b) — Required Information. The conservator must disclose to [Staff Note: Prefer the phrase “inform” over “disclose”] the court and all parties:~~

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~~(1) — whether the conservatorship’s annual expenses exceed its annual income; and~~

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~~(2) — if so, whether the assets available to the conservator less the estate’s liabilities are sufficient to sustain the conservatorship during the time the protected person needs care or fiduciary services.~~

~~(c) — Format. [Staff Note: The following provision derives from section (f) of the current rule.] Unless the court orders otherwise, sustainability information must conform to the format set forth in the Arizona Code of Judicial Administration.~~

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~~(d) — Calculation. The estate’s sustainability is calculated as follows:~~

~~[Available assets minus liabilities of the estate] *divided by* [Annual expenditures minus annual income] *equals* estate sustainability~~

~~[Staff Note: Aren’t there circumstances where this formula is incorrect, e.g., if the annual income exceeds the annual expenses? Or when income and expenses are equal?]~~

~~(e) — Management Plan. If the assets are not sufficient to sustain the estate, the conservator also must disclose [Staff Note: Prefer “provide” rather than “disclose”] a management plan for the non-sustainable conservatorship.~~

~~(f) — Good Faith Projection. This rule requires the conservator to provide a good faith projection based on information that is reasonably available to the conservator~~

~~concerning the protected person. [Staff Note: Is the next sentence necessary?] The court may consider this information when entering orders.~~

~~COMMENT~~

~~The purpose of the disclosure required by this rule is to provide the court and parties with a general idea as to whether the assets and income of the conservatorship estate are sufficient to pay for the protected person's expenses for the duration of time the protected person needs care and fiduciary services. Thus, the disclosure required by this rule is intended to serve solely as a management tool; The court does not intend that a good faith projection will form the basis for a claim of liability against the conservator.~~

~~The following example describes how the required disclosure is calculated: Assume a protected person's estate consists of \$20,000 in bank accounts and a residence with a fair market value of \$120,000 and a \$65,000 mortgage. Further, assume that same protected person has an annual income of \$20,000 and annual expenses (including~~

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Rule 30.2. Sustainability of a Conservatorship. [Abrogate]

Workgroup 3 Lisa Price assigned

Rule 30.3. Conservatorship Estate Budgets. [Abrogate]

(a) Generally.

(1) ~~*Timing.* Unless the court orders otherwise, the conservator must file:~~

~~(A) an initial budget no later than the date when the inventory is due, and~~

~~(B) later budgets with the filing of each accounting.~~

(2) ~~*Coverage.* The first budget must cover the time from the conservator's initial appointment through the ending date of the conservator's first accounting.~~

(3) ~~*Consultation.* The conservator must consult with the protected person's attorney or guardian ad litem before filing each budget after the first one.~~

~~[Staff Note: Is the budget used to calculate sustainability? If so, shouldn't the rule on development of a budget precede the rule on a sustainability calculation?]~~

~~(b) **Format.** Unless the court orders otherwise, the budget must in the format set forth in the Arizona Code of Judicial Administration.~~

~~(c) **Service.** The conservator must deliver [JWR Note: "serve" is ambiguous; Rule 4 service?]
a copy of each budget to every person entitled to notice of the conservator's accountings under A.R.S. § 14-5419(C).~~

~~(d) **Amendments.** The conservator must file a budget amendment no later than 30 days after reasonably projecting that the expenditures for any specific category will exceed the approved budget by a threshold prescribed by the Arizona Judicial Council, and as set forth in the instructions for the conservator's budget provided in the Arizona Code of Judicial Administration. [Staff Note: Where is the threshold? It does not appear in ACJA 3-302.] The conservator must deliver amendments as provided in (c).~~

(e) Objections and Court Action.

(1) ~~*Filing and Presumption.* An interested person may file an objection to a budget or an amendment, but must do so no later than 14 days after the budget's or amendment's filing date. If an interested person fails to object to a budget item within 14 days after the filing date, the budget item is deemed presumptively reasonable.~~

(2) ~~*Hearings and Resolving Objections.* The court may overrule all or part of an objection, order the conservator to file a response, or set a hearing on the objection. The court also may set a hearing in the absence of an objection. At a~~

~~hearing, the conservator has the burden of proving that a contested budget item is reasonable, necessary, and in the best interest of the protected person.~~

~~(3) *Court Action.* On its own or on the filing of an objection, the court must approve, disapprove, or modify the budget to further the best interests of the protected person. The court may order a budget accepted [approve a budget?] if no one has filed an objection.~~

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Rule 30.3. Conservatorship Estate Budgets. [Abrogate]