Task Force on the Arizona Rules of Probate Procedure

Meeting Agenda

Friday, October 26, 2018
10:00 a.m. to 4:00 p.m.
State Courts Building * 1501 West Washington * Conference Room 119 * Phoenix, AZ

Item no. 1	**Call to Order**	*Hon. Pat Norris, Acting Chair*
Item no. 2	**Approval of the September 28, 2018 meeting minutes**	*Judge Norris*
Item no. 3	**Consent agenda:** **Rule 15.2** ("Administrative Dismissals") **Rule 15.3** ("Administrative Closure of a Decedent's Estate, Etc.") **Rule 17** ("Petition") **Rule 28** ("Management of Contested Probate Proceedings") **Rule 28.1** ("Disclosure and Discovery")	 *Judge Polk* *Judge Polk* *Judge Olson* *Judge Olson* *Judge Olson*
Item no. 4	**Workgroup reports and discussion of rules** **Workgroup 1: Rule 7, Rules 15 and 15.1 revisited** **Workgroup 2: Rule 28.2 revisited** **Workgroup 3: Rule 19 revisited, Rules 23 and 32**	 *Judge Polk* *Judge Olson* *Judge Mackey*
Item no. 5	**Roadmap** • **Next meeting:** Friday, November 16 [Room 230] • **Proposed meeting schedule:** o Friday, November 30 [Room 345] o Friday, December 14 [Room 119]	*Judge Norris*
Item no. 6	**Call to the Public** **Adjourn**	*Judge Norris*

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: September 28, 2018

Members attending: Hon. Rebecca Berch (Chair), John Barron III, Colleen Cacy, Hon. Julia Connors, Robert Fleming, Hon. David Mackey, Aaron Nash, Hon. John Paul Plante, Hon. Jay Polk, Lisa Price, Catherine Robbins, T.J. Ryan, Denice Shepherd

Absent: Marlene Appel, Hon. Andrew Klein, Hon. Robert Carter Olson, Hon. Patricia Norris, 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 sixth Task Force meeting to order at 10:00 a.m. She informed members that workgroups had met seven times after the August 24 Task Force, and she thanked members for their diligence. The Chair then asked members to review draft minutes of the August 24 Task Force meeting. Mr. Nash had advised staff earlier in the week of an error on page 1 regarding Rule 11; the minutes correctly say that the Task Force eliminated option 2, but they should further say that the members retained option 1, not 2. Also, on page 1, regarding Rule 16, Judge Polk requested that the word "registrar" be changed to "application" in the sentence, "but the registrar does not grant relief." Members agreed with these changes.

> **Motion:** A member then moved to approve the August 24, 2018 meeting minutes with the above corrections. The motion received a second and it passed unanimously. **PRTF: 005**

2. Consent agenda. Two rules were on the consent agenda.

Rule 17 ("petitions in probate proceedings"): Judge Polk observed at the August 24 meeting that Rule 17(e) variously uses the terms "response," "objection," or "opposition." The Task Force returned the rule to Workgroup 2 to harmonize this diverse terminology. The workgroup revised the rule thereafter, and now it uniformly refers to a "response." Mr. Barron noted that a "response" includes an "objection." Members agreed with the revisions.

Judge Polk raised two new issues under Rule 17(e). Under the time computation provisions of Civil Rule 6(a)(2), intermediate Saturdays, Sundays, and legal holidays are excluded if the period is less than 11 days. By statute, a petition must be served at least 14 days before a hearing. The draft rule requires the filing of a written response 7 days before the hearing. The 14-day requirement is based on calendar days, but the 7-day rule

requirement would exclude intermediate weekends and holidays, so it could be 10 or 11 calendar days. This narrows the opportunity to respond to as few as 3 days. Another provision in Rule 17 has a 10-day requirement, but this would also exclude intermediate weekends and holidays under Civil Rule 6(a)(2). Members discussed ways of addressing this issue. One way would specify in Rule 17 —and in every other rule that mentions a time requirement — whether the reference is to calendar days or court days. Another would address the issue by instructions in court forms. Mr. Barron proposed that Rule 17(e) specify 7 calendar days for the response, and that the 10-day requirement be changed to 14 days, thereby eliminating the application of Civil Rule 6(a)(2). Members agreed with this proposal and directed staff to modify the draft accordingly.

Judge Polk's second issue asked whether a counter petition or cross-petition requires a new hearing date; he thought draft Rule 17 did not answer this. Members agreed that whether another hearing date is needed probably depends on the timing of the counter petition or cross-petition. If either are filed sufficiently early, they could be considered at the initial hearing along with the original petition. Otherwise, it's the filer's responsibility to assure there is a hearing date. Members saw no need to address this in the rule.

Rule 3 ("applicability of other rules"): Draft Rule 3(a)(2) concerns the applicability of the Arizona Rules of Evidence ("ARE"). Judge Thumma, Judge Agne, and Mikel Steinfeld submitted a memo (the "Thumma memo") to the Task Force with proposed changes to Rule 3(a)(2). To be consistent with the ARE, they suggested that Rule 3(a)(2) refer to "a danger of" such things as unfair prejudice or confusing the jury. They also proposed organizational changes and a new subpart concerning the admissibility of evidence when the ARE do not apply.

Members favored adding to the Probate Rules a provision from the Family Law Rules that requires a party who wants to invoke the ARE to do so in advance of a proceeding. One member suggested that whether a party will invoke the rules should be on the list of items discussed at the initial hearing. But regardless and as a practical matter, doesn't the court admit most of what is offered by a self-represented litigant? Members also agreed that the Probate Rules should address, like a family law rule, whether reports prepared at the court's direction, such as a physician's or investigator's report, should be admitted automatically. The Chair asked Workgroup 2 to further review the Thumma memo and its suggested changes, and to report back to the Task Force at a future meeting.

The Chair then requested reports from the workgroups.

3. **<u>Workgroup 1.</u>** Judge Polk presented rules on behalf of Workgroup 1.

Rule 14 (currently, "consents, waivers, renunciations, and nominations," and as proposed, "acknowledgment of a consent, waiver, renunciation, or nomination"): Judge

Polk observed that this rule intends to permit either a notary or a person such as a notary to verify the identity of the signer of specified documents. A brief new comment to this rule refers to A.R.S. § 33-511, which details who in Arizona may take acknowledgments. One member noted that it is often difficult to locate a notary, and even if one of the specified documents is notarized, a party may still object to its authenticity. Another member responded that the rule is designed to reduce instances of fraud, and is some states, the notary process may be digitized. Most members approved the rule and its requirement that a person such as a notary verify the identity of the signer.

Rule 15 (currently, "proposed orders," and as presented, "proposed orders, decrees, and judgments"): Judge Polk believes that certain provisions in Civil Rule 5.1 ("filing pleadings and other documents"), including a section on proposed orders, are not applicable in probate because probate does not yet have electronic filing. Workgroup 1's proposed Rule 15 tailors the submission of orders for probate cases. A new section (a) clarifies that the word "order" includes a decree or a judgment. Section (b) would require the filer to include in the order's caption the hearing date to which the order pertains. The workgroup removed a provision in current Rule 15(B) that allows the court to continue a hearing if the petitioner fails to comply with the rule.

The members' discussion focused on two aspects of the draft. Section (b) would require submission of a proposed order at least 5 days before the hearing. Pima County members did not believe their local practice required such a rigid lodging deadline. One member thought it would not be necessary to continue a hearing simply because an order was untimely submitted; and if needed, the court could conduct the hearing and take the matter under advisement to provide parties sufficient time to file objections to the form of order. Members also posed questions about the process for a party to submit a proposed order during, or after, a hearing, which wasn't covered by the draft. The other aspect of the draft that caused members concern was section (e)'s requirement that the party submitting the proposed order provide the court with copies to be conformed and postage-paid addressed envelopes. Although Maricopa County's probate division utilizes the copies-and-envelopes process, Pima and Yuma counties do not. Members began to revise section (e) to provide an alternative that would place on the party submitting the order a duty to distribute the signed order to other parties within a specified time after entry of the order. However, the members were unable to effectively resolve the timing and process for submission of proposed orders, and distribution of signed orders. The Chair returned the rule to the workgroup for further consideration.

Rule 15.1 ("appointment of a guardian ad litem"): Judge Polk introduced this rule but recognized that it required further study. The rule originated several years ago in Justice Timmer's committee. Workgroup 1 was divided on what the revised rule should say, and Judge Polk acknowledged that he disagreed with the draft included in today's meeting materials. (A recent memo decision, *Kennedy v. Wybenga*, 1-CA-CV 17-0559 FC, 9-11-2018, also was included in the materials. The decision discussed the propriety of appointing a guardian ad litem ("GAL") in a family case.) Judge Polk outlined the

distinctions for appointing a GAL in various case types (family, civil, probate), and he distinguished cases in which capacity was not an issue and those in which it was. The workgroup concluded that a GAL was a best interests attorney ("BIA"), and it expressed this conclusion in its draft rule; but it used both terms rather than just the latter one because GAL was embedded in local nomenclature. Judge Polk believed that GALs were overused in Maricopa County probate proceedings because they overlap with information already provided to the court by a physician and a court investigator. Judge Mackey noted that the Task Force has already referred to a GAL in Rule 37. Judge Plante and other members noted that a BIA is not defined by statute or a current rule, that appointment of a BIA in a probate proceeding might be questionable on constitutional grounds, and that a judicial officer rather than a BIA should determine what is in the person's best interests. Mr. Ryan cited A.R.S. § 14-1408, which provides for a statutory representative and replaces a former statutory provision concerning GALs.

Judge Polk's workgroup will consider today's comments and review the rule further.

Rule 15.2 (currently, involuntary termination of appointment; other remedies for non-compliance; dismissal; sanctions," and as proposed, "involuntary [administrative] dismissals"): Judge Polk noted that proposed Rules 15.2 through 15.5 all derived from portions of current Rule 15.2. Rule 15.2 also originated in Justice Timmer's committee and arose from concerns that some probate files were never closed. Restyled Rule 15.2 retained the substance of current Rule 15.2(D). Under the restyled rule, the case is subject to dismissal if the petitioner does not obtain a hearing date within 3 months after filing a petition. Rule 15.2(b) distinguishes the dismissal order in a case where only a single petition was filed, from a dismissal order in a case when more than one petition was filed. Judge Olson requested that the workgroup revise this section to differentiate the dismissal of probate and non-probate cases, and the workgroup will do so. Members preferred "administrative dismissal" as the title of this rule, rather than "involuntary dismissal."

Rule 15.3 ("Administrative Closure of a Decedent's Estate and Termination of Appointment"): The draft rule, which derives from current Rule 15.2(A), includes a new provision that explains the meaning of a closed estate. Subsequent sections provide for the court's issuance and distribution of a notice regarding pending administrative closure. Judge Polk explained that if the required action is not taken, the case is not dismissed. Rather, the estate is administratively closed, and the personal representative's appointment is terminated.

Members questioned a provision that "a decedent's estate is closed when a closing statement has been filed." The filing of a closing statement does not close the estate; it is closed a year thereafter. Members had other suggestions to improve the accuracy of the rule's provisions and its terminology. They also preferred the structure of current Rule

15.2(A). The workgroup will make changes to its draft and present the rule again at a future meeting.

Rule 15.4 ("involuntary termination of a minor guardianship or closure or a minor conservatorship case"): The workgroup's draft was based on current Rule 15.2(B), which concerns termination of a minor guardianship; but it added new provisions concerning the closure of a minor conservatorship. Some members thought the new provisions were unnecessary for closure of a minor conservatorship. They also expressed concerns about closure of a conservatorship if funds remained in a restricted account, whether the restrictions on the account would continue to be effective if the conservatorship was closed, and the undesirability of escheating the account.

Most members declined a suggestion to delete the conservatorship portion of this rule. Members shared anecdotal information about banks releasing funds without an order before the minor turned 18 or releasing funds to an 18-year-old but without a court order. Members nonetheless requested certain modifications to the draft. The provision originally required administrative closure six months after the minor became 18; they changed this to two years. They also added that administrative closure of a conservatorship did not release the depository from restrictions, authorize the release of funds, or exonerate the bond. Finally, members asked the workgroup to revise Form 10. They wanted the form to include language that by opening the account, the financial institution agrees to submit to the court's jurisdiction, and that the court may require it to provide account information and confirm that funds remain on deposit.

Rule 15.5 ("remedies for non-compliance by a guardian or conservator"): This draft rule corresponds with current Rule 15.2(C). The list of orders in the draft mirrors the list in the current rule, except terminating the guardian/conservator's authority has been moved up in the list of options, and the list now includes "an order under Civil Rule 70," which concerns enforcing a judgment for a specific act. With regard to terminating the guardian or conservator's authority, the draft specified that the court may enter "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." Members discussed this provision and agreed that in real life, circumstances can arise that warrant terminating a guardianship or conservatorship, even when the ward remains incapacitated. Members then agreed to truncate this provision by ending it with the word "appropriate."

Another provision in the draft rule permits the entry of an order "appointing a court investigator to investigate the reasons for…noncompliance…." A member asked whether the term "investigator" has a generic meaning, or whether the court must appoint its in-house investigator. To permit the court to appoint someone other than a

court investigator, and while recognizing the definition of "investigator" in A.R.S. § 14-5307, members agreed to change this term to "person." Finally, Judge Polk suggested that this rule should be relocated in Part VII of the rules ("post-appointment procedures") but he added that doing so can be deferred until the Task Force has a complete draft of the probate rules.

4. **Workgroup 3.** Judge Mackey led the presentations.

Rule 30 ("Conservator's Inventory, Budget, and Account"): Judge Mackey reviewed the organization and content of the draft restyling. Workgroup members agreed that the consumer credit report required in section (a) has marginal value, but they left this requirement in the rule pending a legislative change. The workgroup recommended abolishing the requirement for an amended inventory upon late discovery of an asset, reasoning that the inventory is a snapshot of what is initially in the estate, and later-discovered assets will be adequately reflected in a subsequent accounting. Furthermore, the workgroup found the terms "erroneous and misleading," which are in the current rule, to be vague and uncertain. A Task Force member suggested that rather than focus on a new asset, or whether the asset makes a significant difference in the value of the estate, the rule should require the conservator to notify the court if the conservator discovers that the initial bond amount is inadequate. A member responded that "inadequate" is also a vague term. The Chair asked the workgroup to consider ways to address this issue.

Judge Mackey proceeded to discuss section (b) of the rule concerning a budget. He noted that the section on budgets does not require a request for approval, and if there is no objection, a budget may be presumed reasonable. Judge Olson would like the rule to add that the court could consider the lack of an objection in determining reasonableness. Another member thought that budgets served no purpose in many cases, and he would like to abrogate the requirement. Judge Mackey noted proposed Rule 30(d) ("court authority"), which would permit the court for good cause to order a variation of Rule 30's requirements if doing so would be consistent with prudent management and oversight of the case. A member suggested relocating this provision to the beginning of the rule, rather than keeping it at the end. Judge Plante suggested that the rule provide that a budget is not required unless the court orders otherwise. Another member recommended adding a preface to section (b) stating, "if the court requires a budget…" A budget is not required for a simple estate, but the default for most cases is the complex set of forms, which does have this requirement. The workgroup will reexamine these suggestions, with the recognition that revisions to Rule 30 will probably require revisions to Rule 38 forms.

Judge Mackey turned to Rule 30(c) on the conservator's account. The workgroup preferred doing away with the current requirement for filing the first account for a period covering only nine months; as proposed, the rule would require the first accounting to

cover the period from the conservator's appointment (defined as the date the court first issued letters) through and including the anniversary date of the conservator's letters, which would be a full year. Later accountings would reflect activity from the end date of the previous account through the anniversary date of the letters. The rule allows the court flexibility in selecting shorter or different dates, and members added the phrase, "unless the court orders otherwise" at the beginning of Rule 30(c)(1)(A) ("timing").

Rule 30.1 (currently, "financial order"): This rule's provisions are duplicated in other rules or statutes, and the workgroup recommended its abrogation. Members agreed.

Rule 30.2 (currently, "sustainability of conservatorship"): Judge Olson observed that adding the concept of sustainability to the rules on conservatorships was a significant achievement of Justice Timmer's committee. It requires an analysis of the resources of a conservatorship estate and determining what the protected person would do if the person had full rational capacity. Judge Olson observed that this is a discipline every prudent person should follow in their private lives and especially should be required for those who make decisions on behalf of a protected person. Members noted other reasons why a sustainability calculation was useful, including calculating a "burn rate" in anticipation of an application for long-term care, and advising heirs of what their potential inheritance might be. (Another member suggested adding language in the budget provisions of Role 30(b) about spending down assets.) The workgroup noted that sustainability is incorporated within the forms, and the calculation would be completed if the court orders use of the forms, although the workgroup recommended abrogating Rule 30.2 concerning sustainability. After further discussion, members recommended that if Rule 30.2 is abrogated, the workgroup should consider adding a sustainability provision for conservatorships in Rule 30.

Rule 30.3 ("conservatorship estate budget"): Judge Mackey noted that the substance of this rule was incorporated in the draft of Rule 30 and the workgroup accordingly recommended its abrogation.

Rule 31 ("annual guardian reports"): The draft includes a change that mirrors revisions to Rule 30 on when the report is due, but this rule is otherwise straightforward, and the Task Force approved it as presented.

5. **Workgroup 2.** Judge Olson presented Workgroup 2's rules. Judge Olson noted that the foundational concepts of Rule 28 had been presented at previous Task Force meetings and had generated considerable discussion. But today was the initial presentation of draft Rules 28, 28.1, and 28.2.

Rule 28 (currently, "pretrial procedures," and as proposed, "management of contested probate proceedings"): Judge Olson reviewed each of the sections of this draft rule, including a new section on a meet-and-confer requirement. The draft also includes

provisions on the content of the joint report and the content of the proposed scheduling order. Judge Olson noted that section (a) ("generally") contemplates a scheduling order entered by the court at the initial hearing on a petition, or a scheduling order submitted by the parties after a meet-and-confer. The former would be appropriate for most simple cases, but in more complex cases, parties would need to meet and jointly prepare a report and proposed scheduling order. Judge Olson acknowledged that the draft rule should state this more clearly. Judge Polk also suggested adding a provision about whether the parties will invoke the rules of evidence.

Rule 28.1 ("disclosure and discovery"): One of the most significant issues members discussed at previous meetings was whether the Probate Rules should be congruent with the new Civil Rules on tiered discovery. Judge Olson introduced new Rule 28.1 by noting that section (a) expressly provides that Civil Rule 26.2 ("tiered limits to discovery based on attributes of case") would not apply to discovery in a probate proceeding. Section (a) also provides that Civil Rule 26(f), which permits discovery only after exchanging disclosure statements, would not apply in probate proceedings. However, Civil Rules 26 through 37, including Rule 26.1 concerning disclosure, would apply to discovery in contested probate proceedings.

Section (b) of the draft rule also has presumptive discovery limits: 20 interrogatories, 10 requests for admission, 10 requests for production, 10 hours of fact witness deposition, and four hours for an expert's deposition. Section (c) allows the court on its own or on a party's motion to modify these limits. Section (d) provides that the fact that a party took discovery within these limits does not establish a presumption that an attorney's fee claim for the discovery was reasonable or necessary.

Section (e) is titled "fiduciary subpoena authority." It would allow a licensed fiduciary appointed by the court as a guardian, conservator, or personal representative, or their counsel, to request document subpoenas even when there are no other parties to the proceeding or there is no contested matter then-pending. Members had questions concerning this rule. Why is the rule limited to licensed fiduciaries if the fiduciary is court-appointed? Can an unlicensed fiduciary request subpoenas without limitation? If there are no other parties in the proceeding, who serves as a check and balance on the fiduciary's subpoena requests? Who should receive notice of a subpoena request? The workgroup will discuss these concerns and continue its study of the proposed provision.

Rule 28.2 ("demand for jury trial"): The workgroup prepared this rule in response to the Court's recent Order in R-18-0018. The Order amends the Civil Rules and provides an automatic right to a jury, effective January 1, 2019, rather than a jury that under the current rules is only provided on demand. The workgroup wants to revert the restyled Probate Rules to what the civil rules currently provide. A judge member noted that a civil jury has a constitutional basis, whereas the right to a jury in a probate proceeding derives from statute, and this might be a valid basis for the Probate Rules deviating from the R-18-0018 amendments. Another member suggested modifying the Probate Rules to

allow a party to have only an advisory jury. Members will consider this issue further at a future meeting.

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

The Chair again encouraged workgroups to meet as often as possible. There are 12 rules that have not yet been presented to the Task Force, and several rules that were presented at today's meeting were returned to workgroups or not finalized. Even if the Task Force has no time to do prefiling vetting of the rules on a large scale, before filing a rule petition in January the Chair still would like members to seek input from stakeholders who have expressed interest in this restyling project. The Task Force will discuss a draft rule petition at its December meeting.

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

8. **Adjourn.** The meeting adjourned at 4:03 p.m.

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~~a petition in a probate proceeding 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 probate ~~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.~~.~~

~~(b)~~(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 mattersclaims 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 probate 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. Administrative Dismissals.

(a) Dismissal of Petition. If the petitioner within two months after filing a petition in a probate proceeding 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 probate 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 probate 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~~.

~~Meaning of "Closed Estate."~~ ~~Unless a closing statement has been filed, and one year has elapsed, 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.~~

~~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 Impending Administrative Closure**~~tice of Dismissal~~~~Termination, Generally~~. **Two years after a decedent's estate is commenced, the court may issue a notice of impending administrative closure of the estate unless at least one of the following has occurred:** ~~**If a decedent's estate has not been closed within two years after itts 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 dismissaltermination unless at least one of the following has been filed in the case:**~~

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

~~**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**~~

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

~~one year has elapsed since the filing of .~~ ~~**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:~~

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(1) a closing statement under A.R.S. § 14-3933 and no proceedings involving the personal representative or special administrator remain pending;

(2) a petition to settle the estate under A.R.S. §§ 14-3931 and -3932 has been filed and an initial hearing on that petition has been set;

(3) a petition to terminate the appointment of the special administrator under A.R.S. § 14-3618 has been filed and an initial hearing on that petition has been set; or;

(4) the court has entered an order setting a future hearing or conference or extending the administration of the estate beyond two years.

(b) Contents of Notice. The notice must inform the parties and all persons who have filed a demand for notice that the estate will be administratively closed and any fiduciary appointment will be terminated without a discharge and release from liability unless:

(1) One of the circumstances in section (a) has occurred;

(2) A request for hearing or conference has been filed;

(3) A petition to terminate the appointment of the personal representative or the special administrator has been filed; or

(4) A status report describing the matters to be resolved has been filed.

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

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

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

~~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

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~~(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,~~ 90~~Ninety 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 hearin~~if none of the events ~~gif a document~~ described in section (b~~b~~) has occurred~~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~~

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

~~(c)~~(e) **Effect of ~~Dismissal~~Administrative Closure.** An order closing an estate administratively and terminating~~y 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,~~,~~ and terminate appointments under this rule may be performed by court administration or by an appropriate electronic process under the court's supervision.

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

(a) Notice **of Impending Administrative Closure**. **Two years after a decedent's estate is commenced, the court may issue a notice of impending administrative closure of the estate unless at least one of the following has occurred:**

(1) one year has elapsed since the filing of a closing statement under A.R.S. § 14-3933 and no proceedings involving the personal representative or special administrator remain pending;

(2) a petition to settle the estate under A.R.S. §§ 14-3931 and -3932 has been filed and an initial hearing on that petition has been set;

(3) a petition to terminate the appointment of the special administrator under A.R.S. § 14-3618 has been filed and an initial hearing on that petition has been set; or

(4) the court has entered an order setting a future hearing or conference or extending the administration of the estate beyond two years.

(b) Contents of Notice. The notice must inform the parties and all persons who have filed a demand for notice that the estate will be administratively closed and any fiduciary appointment will be terminated without a discharge and release from liability unless:

(1) One of the circumstances in section (a) has occurred;

(2) A request for hearing or conference has been filed;

(3) A petition to terminate the appointment of the personal representative or the special administrator has been filed; or

(4) A status report describing the matters to be resolved has been filed.

(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 none of the events described in section (b) has occurred within two months after distribution of the notice.

(e) Effect of Administrative Closure. An order closing an estate administratively 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 17. Petitions in Probate Proceedings. [WORKGROUP 1 RECOMMENDS MOVING THE DEFINITIONS IN RULES 16, 17, AND 18 TO RULE 2.1][WORKGROUP 2 SUGGESTS LEAVING DEFINITIONS WHERE THEY ARE AND ADDING INDEX ENTRIES INTO RULE 2.1. E.G., THE DEFINITION OF PETITION IS IN RULE 17, OR PETITION HAS THE MEANING DEFINED IN RULE 17. STAFF WILL DO THIS.]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) ***~~Oral~~ Oral Responseobjections.*** ~~A~~If a~~n interested person~~party does not timely file a written response ~~7 or more days~~ before the hearing, the person ~~may~~must orally ~~object~~respond to the petition at the ~~hearing, but~~hearing and ~~must~~ file a written ~~objection or motion~~responseobjection response that objects to the petition, or a motion under Rule 12, within ~~140~~ days after the hearing~~,~~ or as the court directs~~, stating the reasons for the objection.~~ ~~END HERE 5/24 but still working on e1-2~~ ~~[Staff Note: Is this provision necessary?]~~

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

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

~~(i)~~(f) **Joinder or Statement of No Position.** Any ~~interested person~~party who agrees that the court should ~~enter~~ grant the relief requested in the petition may file a notice of joinder. Any party who takes no position concerning the requested relief ~~may file a statement of such agreement by filing a motion for joinder~~may file a statement of no

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position. A notice of joinder or statement of no position should be made in open court or filed within the times and in the manner provided by section (e).~~.~~

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~~(j)~~(g) **Reply.** Unless the court directs otherwise, ~~the petitioner~~ ~~nomay not file a reply in support of the petitionmay be filed~~a party may not file a reply.

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

CURRENT COMMENT

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

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

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

closing an estate formally in accordance with A.R.S. §§ 14-3931 to -3938;

14. requiring the posting of a bond, changing the amount of a bond, or exonerating a bond by a personal representative, guardian, conservator, or trustee; or

15. holding someone in contempt of court.

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

Rule 17. Petitions in Probate Proceedings. [WORKGROUP 1 RECOMMENDS MOVING THE DEFINITIONS IN RULES 16, 17, AND 18 TO RULE 2.1][WORKGROUP 2 SUGGESTS LEAVING DEFINITIONS WHERE THEY ARE AND ADDING INDEX ENTRIES INTO RULE 2.1. E.G., THE DEFINITION OF PETITION IS IN RULE 17, OR PETITION HAS THE MEANING DEFINED IN RULE 17. STAFF WILL DO THIS.]

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

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

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

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

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

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

(2) ***Oral Response.*** If a party does not timely file a written response before the hearing, the person must orally respond to the petition at the hearing and file a written ~~objection~~ response that objects to the petition, or a motion under Rule 12, within 14 days after the hearing or as the court directs.

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

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

(f) Joinder or Statement of No Position. Any party who agrees that the court should ~~enter~~ grant the relief requested in the petition may file a notice of joinder. Any party who takes no position concerning the requested relief may file a statement of no position. A notice of joinder or statement of no position should be made in open court or filed within the times and in the manner provided by section (e).

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

CURRENT COMMENT

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

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

~~trustee; or~~

~~15. holding someone in contempt of court.~~

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

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

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

(1) enter an ~~scheduling~~ order setting litigation deadlines; or

(2) ~~O~~order the parties to meet and confer, and ~~to set~~ aset a deadline for the parties to file a joint report and proposed scheduling order.

(b) Meet and Confer. ~~Content of Joint Report. T~~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) ~~T~~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) ~~T~~their anticipated disclosures of documents, including any issues already known to them concerning electronically stored information; and

(4) ~~M~~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. ~~t~~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(c)(3)(A) (L).~~

~~(c)~~(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~~

~~**(b)**~~ **(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. 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).]~~

(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.*** 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.

(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.

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Rule 28. Management of Contested Probate Proceedings.

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

(1) enter an order setting litigation deadlines; 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.

(1) ~~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.

(2) A party may not seek discovery from any source, including nonparties, unless

(A) a petition is pending before the court;

(B) authorized by section (e) of this rule;

(C) authorized by statute; or

(D) the court orders otherwise.

~~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 t~~t~~o 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).

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~~(a) 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.

(e) **Fiduciary Subpoena Authority.** A licensed fiduciary appointed by the court as a guardian, conservator, or personal representative, any the fiduciary's counsel, or an unlicensed fiduciary expressly authorized by the court, 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.

~~(f) **Fiduciary Subpoena Authority.**~~

~~(1) **Meaning of "fiduciary."** For purposes of this section, means a guardian, conservator, personal representative, or special administrator appointed by the court in the probate case in which a subpoena under this section is requested.~~

~~(2) **Generally.** Unless the court orders otherwise, at any time while a probate case is open, a fiduciary, in furtherance of the fiduciary's duties, may request the court clerk to issue subpoenas to produce materials or permit inspections. The fiduciary must comply with applicable requirements of Civil Rule 45.~~

~~(3) **Sanctions.** The court may impose an appropriate sanction, including any order under Civil Rule 16(h), against a fiduciary or the fiduciary's attorney if the court finds that such person engaged in unreasonable, groundless, abusive, or obstructionist conduct in the exercise of the fiduciary's authority under this section.~~

~~**(a)** [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.]~~

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I modeled this subsection 3 (sanctions) on Civil Rule 26(h). I realize that repeating Civil Rule 26(h) here is not necessary; however, I think doing so addresses any concerns that lay fiduciaries might abuse the subpoena power granted by this rule.

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Rule 28.1. Disclosure and Discovery.

(a) Generally.

(1) 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.

(2) A party may not seek discovery from any source, including nonparties, unless

(A) a petition is pending before the court;

(B) authorized by section (e) of this rule;

(C) authorized by statute; or

(D) the court orders otherwise.

(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, any ~~the~~ fiduciary's counsel, or an

unlicensed fiduciary expressly authorized by the court, 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.

(f) ~~**Fiduciary Subpoena Authority.**~~

(1) ~~**Meaning of "fiduciary."** For purposes of this section, means a guardian, conservator, personal representative, or special administrator appointed by the court in the probate case in which a subpoena under this section is requested.~~

(2) ~~**Generally.** Unless the court orders otherwise, at any time while a probate case is open, a fiduciary, in furtherance of the fiduciary's duties, may request the court clerk to issue subpoenas to produce materials or permit inspections. The fiduciary must comply with applicable requirements of Civil Rule 45.~~

(3) ~~**Sanctions.** The court may impose an appropriate sanction, including any order under Civil Rule 16(h), against a fiduciary or the fiduciary's attorney if the court finds that such person engaged in unreasonable, groundless, abusive, or obstructionist conduct in the exercise of the fiduciary's authority under this section.~~

Rule 7. Confidential Documents and Information.

(a) Definitions.

(1) "Confidential document" means:

(A) the information form filed under Rule 6;

(B) medical reports and records that are filed in connection with proceedings under A.R.S. §§ 14-5303, -5310, -5401.01, or -5407, or A.R.S. § 36-3206, or as required by A.R.S. §§ 14-5312.01 and -5312.02; ~~[JMP: Judge Plante, why did you delete old C, D, E, and F, which deal with budgets, inventories, accountings, and credit reports?]~~

(C) budgets filed under Rule~~s~~ 30~~.2 and 30.3~~;

(D) inventories and appraisements filed under A.R.S. § 14-5418(A);

(E) accountings filed under A.R.S. Title 14;

(F) a credit report; or

(G) any other document that the court orders ~~filed or maintained~~filed as a confidential document under this rule.

(2) "Confidential information" means:

(A) a social security number of a living person;

(B) ~~any~~ any financial account number ~~for a financial account~~, unless limited to the last four digits only; or

(C) any other information the court determines is confidential.

(3) "Financial account" includes bank, credit card, debit card, and ~~and~~ brokerage accounts;~~,~~ pensions, profit-sharing, or retirement and similar benefit plans; and an insurance policy or an annuity contract.

(4) "Redact" means to edit or obscure text in a document in a manner that prevents it from being read. Redaction must be accomplished so that the redacted information cannot be identified in either paper or electronic formats.

~~**B.** The clerk of court shall comply with court rules and the Arizona Code of Judicial Administration for the security of electronically filed or transmitted confidential documents and information and the maintenance of confidential documents and information. [**Staff Note:** Is this necessary? The clerk must comply with ACJA requirements regardless of whether it's mentioned in this rule.]~~

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Commented [JMP1]: I agree that this section can be stricken because it is unnecessary.

(b) Access to Confidential Documents.

(1) Generally. Confidential documents are not part of the public record of a probate case.

(2) Probate Information Form. Only the following persons may access the Rule 6 information form:

(A) an attorney or a statutory representative appointed by the court to represent the person who is the subject of a guardianship or conservatorship proceeding in which the document has been filed;

(B) a court investigator appointed for the probate case in which the information form has been filed;

(C) judicial officers, court administrative staff, and other court personnel whose official duties require access to confidential information for processing and managing probate cases;

(D) any person authorized by the court, on a showing of good cause, to view or obtain a copy of the confidential document; and

(E) staff from the Administrative Office of the Courts who are conducting a compliance audit of a fiduciary, or an investigation into alleged misconduct by a licensed fiduciary, under Arizona Code of Judicial Administration § 7-201.

(3) Other Confidential Documents. Only the following persons may access other confidential documents:

(A) the persons described in subparts (b)(2)(A) through (E);

(B) a party to the probate case in which the document has been filed and that party's attorney or other legal representative; and

(C) a person appointed as a medical professional, psychologist, registered nurse, or accountant for the probate case in which the document has been filed.

~~(b)~~(c) ~~**Maintaining**~~ **Filing Paper Confidential** ~~**Documents and Information**~~**Documents.** A~~When a~~ party filinges a paper confidential document ~~, the party~~ must place it in an envelope marked with the case name, the case number, the name of the document being filed, the name of the party filing the document, and the words "Confidential Document." A confidential document filed as an exhibit to a pleading or motion must state on the envelope the title of that pleading or motion and identify the exhibit number. A party must use a separate envelope for each confidential document. The clerk is not required to review a document to determine

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Commented [JMP4]: I am striking "guardian ad litem" because, as a result of the change to Rule 15.1, we no longer are going to be using guardians ad litem. In addition, the term "other legal representative" is broad enough to cover GALs and statutory representatives (plus, in Rule 15.1, we specifically state that a statutory representative is a party).

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whether it is a confidential document.~~The clerk must not maintain a confidential document or confidential information as part of the public record of a probate case.~~

~~(1) ***Electronic Documents.*** In counties in which the clerk maintains an authorized electronic court record, the clerk must process the probate information form [**Staff Note:** Why is this limited to the form?] confidential documents in a manner that is consistent with the processing of confidential documents in other case types.~~

~~(2) ***Paper Documents.*** When a party files a confidential document in paper form, the party must place the original [**Staff Note:** Why limit this to originals?] document in an envelope that is marked with the case name and number, the name of the document being filed, the name of the party filing the document, and the words "Confidential Document." A party must use a separate envelope for each confidential document.~~

(d) Prohibition on Filing Confidential Information.

(1) Generally. Other than in a confidential document, a person must refrain from including confidential information in any document the person files with the court, whether filed electronically or in paper, unless otherwise ordered by the court or as prescribed by law.~~Documents filed with the court, other than confidential documents and arrest warrants, must not contain confidential information.~~

(2) Responsibility with Filer. The responsibility for not including or redacting confidential information rests solely with the person filing a document. The clerk and the court are not required to review documents for compliance with this rule, or to seal or redact documents that contain confidential information.

~~(c)~~

~~(d)~~**(e) Motions Concerning Confidential Documents and Information.**

(1) ***Available Orders.*** On its own or on a party's motion, ~~and regardless of whether a document has already been filed,~~ the court may order that:

(A) a document ~~must~~ be filed as a confidential document;

~~(A)~~**(B)** a document not be filed as a confidential document;~~or~~

(C) confidential information contained in a non-confidential document ~~must~~ be redacted and, in instances where the document has not yet been filed, the ~~originator~~ filing party ~~of the document must~~ perform the redaction;~~.~~ or

Commented [JMP5]: I don't recall why. I've asked the Maricopa County Clerk's office for input and will report back.

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~~(B)~~(D) a filed document be replaced with an identical document with confidential information redacted or removed.

(2) ***Motion's Requirements.*** A party ~~who files~~filing a motion to have a document or information deemed confidential must include in the motion:

(A) the title of the document to which the motion pertains;

(B) the date the document was filed; and

(C) why information should be ~~redacted~~redacted, or the document should be filed as a confidential document.

~~**(c) Disclosure of Confidential Documents by the Clerk.** Except for the Rule 6 information form, the clerk may disclose confidential documents and confidential information only to the following persons:~~

~~**(1)** an attorney or guardian ad litem appointed by the court to represent the person who is the subject of a guardianship or conservatorship proceeding in which the document has been filed [**Staff Note:** Does this duplicate (2) below?];~~

~~**(2)** a party to the probate case in which the document has been filed and that party's attorney, guardian ad litem, or other legal representative;~~

~~a professional person consulted by any party;~~

~~**(3)** a person appointed as a court investigator, medical professional, psychologist, registered nurse, or accountant for the probate case in which the document has been filed;~~

~~**(4)** judicial officers, court administrative staff, and other court personnel whose official duties require access to confidential information for processing and managing probate cases;~~

~~**(5)** any person authorized by the court, on a showing of good cause, to view or obtain a copy of such document or information; and~~

~~**(6)** staff from the Administrative Office of the Courts who are conducting a compliance audit of a fiduciary, or an investigation into alleged misconduct by a licensed fiduciary, under Arizona Code of Judicial Administration § 7-201.~~

~~**(f) Disclosure of the Rule 6 Form by the Clerk.** The clerk may disclose the Rule 6 information form only to the following persons:~~

~~**(1)** an attorney or guardian ad litem or a statutory representative appointed by the court to represent the person who is the subject of a guardianship or conservatorship proceeding in which the document has been filed;~~

Commented [JMP6]: I agree that the next subsection (dealing with parties and their attorneys and other legal representatives) already covers what's in (1).

Commented [JMP7]: I am striking "guardian ad litem" because, as a result of the change to Rule 15.1, we no longer are going to be using guardians ad litem. In addition, the term "other legal representative" is broad enough to cover GALs and statutory representatives (plus, in Rule 15.1, we specifically state that a statutory representative is a party).

Commented [JMP8]: I would strike this because it is too broad. Plus, we are talking about to whom the CLERK may disclose a confidential document. The clerk will not be able to determine who a "professional person" is or whether a party consulted with this person. Keep mind that nothing in this rule precludes a PARTY from providing a confidential document to someone else. Thus, absent a gag order, a party may always provide an expert witness, etc., with a copy of a confidential document.

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Commented [JMP9]: This change is made to conform to the amendment to Rule 15.1.

~~a person appointed as a court investigator, medical professional, psychologist, registered nurse, or accountant for the probate case in which the document has been filed;~~

~~a party to the probate case in which the document has been filed and that party's attorney, guardian ad litem, or other legal representative;~~

~~(2) a person appointed as a court investigator for the probate case in which the document has been filed;~~

~~(3) judicial officers, court administrative staff, and other court personnel whose official duties require access to confidential information for processing and managing probate cases;~~

~~(4) any person authorized by the court, on a showing of good cause, to view or obtain a copy of such document or information; and~~

~~(5) staff from the Administrative Office of the Courts who are conducting a compliance audit of a fiduciary, or an investigation into alleged misconduct by a licensed fiduciary, under Arizona Code of Judicial Administration § 7-201.~~

(f) Confidential Documents as Hearing Exhibits. ~~This rule does not preclude use of a~~A confidential document may be used as an exhibit, or a part of an exhibit, at any hearing in the probate case in which the confidential document was filed. The party submitting the exhibit for the clerk to mark must identify the document as being, or including, a confidential document, and the clerk must mark it as such. ~~If a confidential~~Any exhibit that is, or includes, a confidential document and that is ~~is admitted~~offered into evidence ~~as an exhibit,~~ is governed by ~~the clerk shall maintain the exhibit as confidential under~~section (b). ~~[**Staff Note:** Should the rule require the clerk to continue to maintain these exhibits as confidential under section (b)?]~~

(g) Sanctions. The court may impose appropriate sanctions on a person who violates this rule.

~~COMMENT~~

~~(e) Sensitive Data.~~

~~(1) Generally. A person must refrain from including the following sensitive data in any document the person files with the court, whether filed electronically or in paper, unless otherwise ordered by the court or as prescribed by law:~~

~~(A) Social Security Numbers. If an individual's social security number must be included in a document, only the last 4 digits of that number may be used.~~

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Commented [JMP10]: I'm not sure why Judge Plante is proposing adding this language, nor am I sure why a court-appointed medical professional, psychologist, or accountant would need the information contained in the probate information form. Thus, I propose striking those categories and going back to the original version of this subsection.

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Commented [JMP11]: When the Probate Rules were first promulgated, we intentionally excluded the parties from being able to obtain the probate information form because we don't necessarily want everyone to know where the ward is or the ward's date of birth or social security number. Often an financial exploiter will be a party to the case. Thus, I proposing striking this paragraph in its entirety.

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Commented [JMP12]: I believe the Staff's comment is well-taken so I added one sentence to address the issue.

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~~(B) Financial Account Numbers. If financial account numbers are relevant or set forth in a document, only the last 4 digits of these numbers may be used.~~

~~(2) Responsibility with Filer. The responsibility for not including or redacting sensitive data rests solely with the person making a filing with the court. The clerk and the court are not required to review documents for compliance with this rule, or to seal or redact documents that contain sensitive data.~~

~~(3) Request for Relief. If a document is subject to availability by remote electronic access under Arizona Supreme Court Rule 123, any party or the party's attorney may ask the court to order, or the court may order on its own, that the document be sealed and/or replaced with an identical document with the sensitive data redacted or removed.~~

~~(4) Sanctions. If this rule is violated, the court may impose sanctions against the responsible counsel or party to ensure future compliance.~~

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~~Generally, court records are presumed to be open to any member of the public for inspection or copying during regular office hours at the office having custody of the records. In view of the possible countervailing interests of confidentiality, privacy, or the best interests of the state or parties, however, public access to some court records may be restricted. *See* Ariz. R. Sup. Ct. 123(e)(1).~~

~~The purposes of this rule are to preserve any medical professional patient privilege and confidentiality and to protect against identity theft and financial exploitation. Thus, the rule identifies documents that are to be considered confidential and not kept as part of the court file and it provides a mechanism for filing such confidential documents. The rule is based, in part, upon former Rule 129, Rules of the Supreme Court, which dealt with confidentiality of medical records in guardianship and conservatorship cases, and Rule 123(c)(3), Rules of the Supreme Court, which deals with confidentiality of personal financial information. Unredacted versions of the probate information form or a financial statement are confidential. If a party redacts account numbers or social security numbers from a confidential form, the form then may be made available for public viewing.~~

~~Although these documents and information may be confidential, the fiduciary must observe and abide by all requirements imposed by statute, law, controlling document, or court order requiring provision of the documents and information to any interested party.~~

~~Arizona Code of Judicial Administration § 1-506(E)(4) prohibits the court from accepting confidential or sealed documents by electronic filing. As technology and case management systems advance, court rules and the Code of Judicial Administration will address~~

~~electronic filing security issues.~~

~~Section A(1)(c) and (d) apply only to budgets and inventories filed in connection with conservatorship estates. Because protected persons are typically vulnerable to exploitation, budgets and inventories in such cases are maintained as confidential documents to safeguard the financial information from those who might take advantage of the vulnerable adults. These same considerations do not apply in decedents' estates; therefore, inventories for decedents' estates do not fall within the definition of "confidential document." As to budgets and inventories in conservatorship cases, only the budget and inventory themselves should be treated as confidential; any cover sheet should not be treated as confidential. Thus, only the budget and inventory, including any appraisals or financial documents, should be filed as confidential.~~

~~For purposes of section A(1)(e), the accounting itself should be treated as confidential; the petition requesting approval of the accounting, however, should not be treated as confidential. Thus, only the accounting, including any schedules and supporting financial documents, should be filed as confidential. The petition requesting approval of the accounting, including the fiduciary's and attorney's fee statements required by Rule 33 of these rules, should be separately filed and are not confidential documents.~~

~~For purposes of section G(2) of this rule, a legal representative of a party, such as a guardian or conservator or like fiduciary of a party, or the agent under a valid power of attorney may request release of confidential documents on behalf of the party; the mere existence of a fiduciary, however, should not prevent even an incapacitated party from making a request in his or her own name.~~

Rule 7. Confidential Documents and Information.

(a) Definitions.

(1) "Confidential document" means:

(A) the information form filed under Rule 6;

(B) medical reports and records that are filed in connection with proceedings under A.R.S. §§ 14-5303, -5310, -5401.01, or -5407, or A.R.S. § 36-3206, or as required by A.R.S. §§ 14-5312.01 and -5312.02;

(C) budgets filed under Rule 30;

(D) inventories and appraisements filed under A.R.S. § 14-5418(A);

(E) accountings filed under A.R.S. Title 14;

(F) a credit report; or

(G) any other document that the court orders filed as a confidential document under this rule.

(2) "Confidential information" means:

(A) a social security number of a living person;

(B) any financial account number, unless limited to the last four digits only; or

(C) any other information the court determines is confidential.

(3) "Financial account" includes bank, credit card, debit card, and brokerage accounts; pensions, profit-sharing, or retirement and similar benefit plans; and an insurance policy or an annuity contract.

(4) "Redact" means to edit or obscure text in a document in a manner that prevents it from being read. Redaction must be accomplished so that the redacted information cannot be identified in either paper or electronic formats.

(b) Access to Confidential Documents.

(1) Generally. Confidential documents are not part of the public record of a probate case.

(2) Probate Information Form. Only the following persons may access the Rule 6 information form:

(A) an attorney or a statutory representative appointed by the court to represent the person who is the subject of a guardianship or conservatorship proceeding in which the document has been filed;

(B) a court investigator appointed for the probate case in which the information form has been filed;

(C) judicial officers, court administrative staff, and other court personnel whose official duties require access to confidential information for processing and managing probate cases;

(D) any person authorized by the court, on a showing of good cause, to view or obtain a copy of the confidential document; and

(E) staff from the Administrative Office of the Courts who are conducting a compliance audit of a fiduciary, or an investigation into alleged misconduct by a licensed fiduciary, under Arizona Code of Judicial Administration § 7-201.

(3) Other Confidential Documents. Only the following persons may access other confidential documents:

(A) the persons described in subparts (b)(2)(A) through (E);

(B) a party to the probate case in which the document has been filed and that party's attorney or other legal representative; and

(C) a person appointed as a medical professional, psychologist, registered nurse, or accountant for the probate case in which the document has been filed.

(c) Filing Paper Confidential Documents. A party filing a paper confidential document must place it in an envelope marked with the case name, the case number, the name of the document being filed, the name of the party filing the document, and the words "Confidential Document." A confidential document filed as an exhibit to a pleading or motion must state on the envelope the title of that pleading or motion and identify the exhibit number. A party must use a separate envelope for each confidential document. The clerk is not required to review a document to determine whether it is a confidential document.

(d) Prohibition on Filing Confidential Information.

(1) Generally. Other than in a confidential document, a person must refrain from including confidential information in any document the person files with the court, whether filed electronically or in paper, unless otherwise ordered by the court or as prescribed by law.

(2) Responsibility with Filer. The responsibility for not including or redacting confidential information rests solely with the person filing a document. The clerk and the court are not required to review documents for compliance with this rule, or to seal or redact documents that contain confidential information.

(e) Motions Concerning Confidential Documents and Information.

(1) ***Available Orders.*** On its own or on a party's motion, the court may order that:

(A) a document be filed as a confidential document;

(B) a document not be filed as a confidential document;

(C) confidential information contained in a non-confidential document be redacted and, in instances where the document has not yet been filed, the filing party perform the redaction; or

(D) a filed document be replaced with an identical document with confidential information redacted or removed.

(2) ***Motion's Requirements.*** A party filing a motion to have a document or information deemed confidential must include in the motion:

(A) the title of the document to which the motion pertains;

(B) the date the document was filed; and

(C) why information should be redacted, or the document should be filed as a confidential document.

(f) Confidential Documents as Hearing Exhibits. A confidential document may be used as an exhibit, or a part of an exhibit, at any hearing in the probate case in which the confidential document was filed. The party submitting the exhibit for the clerk to mark must identify the document as being, or including, a confidential document, and the clerk must mark it as such. Any exhibit that is, or includes, a confidential document and that is offered into evidence is governed by section (b).

(g) Sanctions. The court may impose appropriate sanctions on a person who violates this rule.

Rule 15. Proposed Orders, Decrees, and Judgments.

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

~~(a)~~**(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 grant~~s~~ or deni~~es~~y 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.]~~

(c) Time to ~~Lodge~~Submit to Court. ~~If a~~A~~If~~ a party wishes to submit a proposed order prior to a hearing, the proposed order should be submitted to the a~~ 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~~at least 5 days before the ~~scheduled~~ 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) ~~Pre-Addressed , Stamped Postage Paid and Addressed Envelopes~~Duty to Provide Copies and Envelopes~~Notice~~. ~~T~~Unless the court orders otherwise, 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.~~include with it copies to be conformed and stampedpostage paid envelopes addressed to each party~~~~provide each party with a conformed copy of the order no later than 14 days of entry of the order and promptly file proof of provision of compliance of this rule who has entered an appearance in the case.~~ This section does not apply if a party submits a proposed order pursuant to a Supreme Court administrative order authorizing electronic filing.

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

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

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

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."

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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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Commented [JP4]: 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 defintions).

~~**(c) 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?]~~

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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. If a party wishes to submit a proposed order prior to a hearing, the proposed order should be submitted to the assigned judicial officer at least 5 days before the hearing.

(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) Duty to Provide Copies and Envelopes. Unless the court orders otherwise, 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. This section does not apply if a party submits a proposed order pursuant to a Supreme Court administrative order authorizing electronic filing.

(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~~ Statutory Representative ~~(Formerly Guardians Ad Litem and~~ Statutory Representatives~~)~~.

(a) Definition. "Statutory ~~R~~representative" means a person appointed under A.R.S. § 14-1408.

(b) Generally. In a probate proceeding, the court may not appoint a guardian ad litem, but ~~the court~~ may appoint a statutory representative if the court finds that an adequate basis for the appointment of a statutory representative exists under A.R.S. § 14-1408.**Generally**

~~A statutory representative is a representative appointed under A.R.S. § 14-1408(A).~~

~~How Requested.~~ ~~The court may appoint a statutory representative on a party's motion or on its own.A party who requests the appointment of a representative must file a written motion that states, with specificity:~~

~~Whether the person for whom the representative is requested is a minor, an incapacitated adult, an unborn child, or a person whose identity or location is unknown; and~~

~~(a)~~(c) ~~Why that person's interest is not represented under article 4, chapter 1, title 14, A.R.S., or why otherwise available representation is inadequate.~~**How Requested.** A party who requests the appointment of a statutory representative must file a verified petition that states, with specificity:

(1) Whether the person for whom the statutory representative is requested is a minor, an incapacitated person, an unborn child, or a person whose identity or location is unknown; and

(2) Why that person's interest is not represented under A.R.S. § 14-1404 through 14-1407, or why otherwise available representation is inadequate.

(d) Notice of Hearing. The petitioner must give notice to all interested persons as set forth in A.R.S. ~~§ s~~ 14-1401. In addition:

~~(b)~~(1) **Minor.** If the petitioner requests appointment of a statutory representative for a minor, the petitioner must give notice of the hearing as set forth in A.R.S. ~~§ s~~ 14-5207(A).

~~(c)~~(2) **Incapacitated Person.** If the petitioner requests appointment of a statutory representative for an alleged incapacitated person, the petitioner must give notice of the hearing as set forth in A.R.S. ~~s~~ § 14-5309.

~~(d)~~(3) **Person Whose Identity or Location Is Unknown.** If the petitioner requests appointment of a statutory representative for a person whose identity or

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location is unknown, the petitioner must give notice of the hearing as set forth in A.R.S. § 14-1401(A)(3).

~~**Notice and Right to Hearing.** The court must not appoint a statutory representative for an adult whose identity and address are known or reasonably ascertainable without first giving that adult notice and an opportunity to object. If the adult objects, the court promptly must hold an evidentiary hearing to determine whether an adequate basis for the appointment of a representative exists, except that the court is not required to hold a hearing if it, or another court of competent jurisdiction, already has found that the adult is an incapacitated person as defined in A.R.S. § 14-5101 or is a person in need of protection under § 14-5401(A)(2). [Do we need to explain what standard of proof is required for the finding of incapacity/in need of protection for a representative appointment? Keep in mind that statutorily, a guardianship requires clear & convincing evidence whereas a conservatorship only requires a preponderance.]~~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.~~

~~**Notice.** The court must not appoint a statutory representative for an adult whose identity and address are known or reasonably ascertainable without first giving that adult notice and an opportunity to object.~~

~~(c)~~ **Appointment ~~for~~of Statutory Representative for Subject Person of**

(c) Adult Guardianship or Conservatorship Proceeding. The court must not appoint a statutory ~~statutory~~ representative for the subject person ~~in~~of an adult guardianship or conservatorship proceeding unless the court, after notice and hearing, has found that the subject person is an incapacitated person as defined in A.R.S. § 14-5101 or is a person in need of protection under § 14-5401(A)(2).

~~**Other Probate Proceedings.**~~

(f) Order. An order appointing a statutory ~~guardian ad litem~~representative must ~~clearly~~ state the ~~reasons~~ basis for the appointment, the appointment's scope and duration, and any applicable terms of compensation~~, and rights of access authorized by (cg)~~. The order may also authorize the statutory representative immediate access to the person for whom the statutory representative has been appointed and to obtain medical and

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financial records pertaining to such person, including records and information that are otherwise privileged or confidential.

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

(g) **Participation in Court Proceedings**. A statutory ~~guardian ad litem~~representative is a party to the probate case in which the statutory representative was appointed and has the same rights and responsibilities of any other party. ~~appointed under this rule;~~

~~must participate in the proceeding to the same extent as an attorney for any partyis party to the probate case in which the representative was appointed;~~

~~may not engage in *ex parte* contact with the court except as authorized by law;~~

~~may engage in *ex parte* contact with other parties and witnesses;~~

~~may not be compelled to produce the guardian ad litemrepresentative's work product developed during the appointment;~~

~~may not be required to disclose the source of information obtained as a result of the appointment unless such information is privileged; and and~~

~~may not testify like any other partyfy.~~

~~**Recommendations.** Any recommendations submitted by the guardian ad litem may be considered by the court as argument but not as evidence.~~

COMMENT~~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.~~

Effective January 1, 2009, former A.R.S. § 14-1403(4~~*~~), which authorized the appointment of a "guardian ad litem" in probate proceeding was abrogated in favor of ~~and~~ A.R.S. § 14-1408(A), which authorizes the court to appoint a "representative.~~,~~" ~~was enacted.~~ Thus, Title 14, A.R.S., no longer authorizes the appointment of a guardian ad litem and, instead, authorizes the appointment only of a statutory representative. *See Unif. Trust* Code s 305 cmt. The official Comment to Uniform Trust Code section 305, from which A.R.S. § 14-1408 is derived, explains that the powers of a representative may be broader than the powers of a guardian ad litem.~~.~~

WG NOTE: Need to strike the definition of "guardian ad litem" in Rule 2.1 and search all rules for "guardian ad litem" and replace with "statutory representative."

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~~(g)~~ **JMP's COMMENTS TO WG#1 AND TF:**

Prior to 1/1/09, A.R.S. section 14-1403 stated, in pertinent part: "In formal proceedings involving trusts or estates of decedents, minors, protected persons or incapacitated persons, and in judicially supervised settlements, the following apply: . . . **4. At any point in a proceeding, a court may appoint a guardian ad litem to represent the interest of a minor, an incapacitated, unborn or unascertained person, or a person whose identity or address is unknown, if the court determines that representation of the interest otherwise would be inadequate. If not precluded by conflict of interests, a guardian ad litem may be appointed to represent several persons or interests. The court shall set out its reasons for appointing a guardian ad litem as a part of the record of the proceeding.**" 2008 Arizona Session Laws Chapter 247 (HB2806), which enacted the Arizona Trust Code, struck the emphasized language (dealing with a GAL) in its entirety and replaced it with A.R.S. sections 14-1404 through -1408, which are the virtual representation statutes.

The pre-1/1/09 version of A.R.S. section 14-1403(4) was based on, and substantially similar to, Uniform Probate Code ("UPC") section 1-403(5) (1969, as amended in 1997). The official Comment to UPC section 1-403 does not mention anything about GALs, and Westlaw does not list any reported decisions under UPC section 1-403 that address the appointment of a GAL.

When paragraph 4 of A.R.S. section 14-1403 was abrogated in 2009, it was replaced by, among other things, 14-1408, which is based on, and substantially similar to, section 305 of the Uniform Trust Code ("UTC") (2000). A.R.S. section 14-1408(A) states: "If the court determines that an interest is not represented under this article or that the otherwise available representation might be inadequate, the court may appoint a representative to receive notice, give consent and otherwise represent, bind and at on behalf of a minor, incapacitated person, unborn child or person whose identity or location is unknown. The court may appoint a representative for several persons or interests." The official Comment to UTC section 305 explains:

> This section is derived from Section 1-403(4) of the Uniform Probate Code. However, this section substitutes "representative" for "guardian ad litem" to signal that a representative under this Code serves a different role. ***Unlike a guardian ad litem, under this section a representative can be appointed to act with respect to a nonjudicial settlement or to receive a notice on a beneficiary's behalf.*** Furthermore, in making decisions, a representative may consider general benefit accruing to living members of the family. "Representative" is placed in brackets in case the enacting jurisdiction prefers a different term. The court may appoint a representative to act for a person even if the person could be represented under another section of this article.

(Emphasis added.) The emphasized language suggests that the powers of a statutory representative include, but are broader than, the traditional powers of a guardian ad litem.

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In this regard, a comparison of old A.R.S. section 14-1403(4) to current A.R.S. section 14-1408 reveals that whereas a guardian ad litem could only act in the in a court proceeding, a representative's appointment may extend beyond the court proceeding.

The Prefatory Note to the UTC provides the following additional explanation: "Another area of overlap [between the UTC and the UPC, concerns representation of beneficiaries. UPC Section 1-403 provides principles of representation for achieving binding settlements of matters involving both estates and trusts. The Uniform Trust Code refines these representation principles, and extends them to nonjudicial settlement agreements and to optional notices and consents. *See* Uniform Trust Codes, Section 111 and Article 3." This further demonstrates that the powers of a representative include, but are broader than, the powers of a GAL.

In providing a general overview of the UTC, the Prefatory Note states the following:

> **Article 3 - Representation-**This article deals with the representation of beneficiaries and other interested persons, both by fiduciaries (personal representatives, guardians and conservators), and through what is known as virtual representation. The representation principles of the article apply to settlement of disputes, whether by a court or nonjudicially. They apply for the giving of required notices. They apply for the giving of consents to certain actions. The article also authorizes a court to appoint a representative if the court concludes that representation of a person might otherwise be inadequate. The court may appoint a representative to represent and approve a settlement on behalf of a minor, incapacitated, or unborn person or person whose identity or location is unknown and not reasonably ascertainable.

(Emphasis in original.)

~~(h) ****Should we grant the representative some type of qualified immunity?****~~

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Rule 15.1. Statutory Representatives.

(a) Definition. "Statutory representative" means a person appointed under A.R.S. § 14-1408.

(b) Generally. In a probate proceeding, the court may not appoint a guardian ad litem, but may appoint a statutory representative if the court finds that an adequate basis for the appointment of a statutory representative exists under A.R.S. § 14-1408.

(c) How Requested. A party who requests the appointment of a statutory representative must file a verified petition that states, with specificity:

(1) Whether the person for whom the statutory representative is requested is a minor, an incapacitated person, an unborn child, or a person whose identity or location is unknown; and

(2) Why that person's interest is not represented under A.R.S. § 14-1404 through 14-1407, or why otherwise available representation is inadequate.

(d) Notice of Hearing. The petitioner must give notice to all interested persons as set forth in A.R.S. § 14-1401. In addition:

(1) Minor. If the petitioner requests appointment of a statutory representative for a minor, the petitioner must give notice of the hearing as set forth in A.R.S.§ 14-5207(A).

(2) Incapacitated Person. If the petitioner requests appointment of a statutory representative for an alleged incapacitated person, the petitioner must give notice of the hearing as set forth in A.R.S. § 14-5309.

(3) Person Whose Identity or Location Is Unknown. If the petitioner requests appointment of a statutory representative for a person whose identity or location is unknown, the petitioner must give notice of the hearing as set forth in A.R.S.§ 14-1401(A)(3).

(e) Appointment of Statutory Representative for Subject Person of Adult Guardianship or Conservatorship Proceeding. The court must not appoint a statutory representative for the subject person of an adult guardianship or conservatorship proceeding unless the court, after notice and hearing, has found that the subject person is an incapacitated person as defined in A.R.S. § 14-5101 or is a person in need of protection under § 14-5401(A)(2).

(f) Order. An order appointing a statutory representative must state the basis for the appointment, the appointment's scope and duration, and any applicable terms of compensation. The order may also authorize the statutory representative immediate

access to the person for whom the statutory representative has been appointed and to obtain medical and financial records pertaining to such person, including records and information that are otherwise privileged or confidential.

(g) Participation in Court Proceedings. A statutory representative is a party to the probate case in which the statutory representative was appointed and has the same rights and responsibilities of any other party.

COMMENT

Effective January 1, 2009, former A.R.S. § 14-1403(4), which authorized the appointment of a "guardian ad litem" in probate proceeding was abrogated in favor of A.R.S. § 14-1408(A), which authorizes the court to appoint a "representative." Thus, Title 14, A.R.S., no longer authorizes the appointment of a guardian ad litem and, instead, authorizes the appointment only of a statutory representative. *See Unif. Trust* Code s 305 cmt. The official Comment to Uniform Trust Code section 305, from which A.R.S. § 14-1408 is derived, explains that the powers of a representative may be broader than the powers of a guardian ad litem.

WG NOTE: Need to strike the definition of "guardian ad litem" in Rule 2.1 and search all rules for "guardian ad litem" and replace with "statutory representative."

JMP's COMMENTS TO WG#1 AND TF:

Prior to 1/1/09, A.R.S. section 14-1403 stated, in pertinent part: "In formal proceedings involving trusts or estates of decedents, minors, protected persons or incapacitated persons, and in judicially supervised settlements, the following apply: . . . **4. At any point in a proceeding, a court may appoint a guardian ad litem to represent the interest of a minor, an incapacitated, unborn or unascertained person, or a person whose identity or address is unknown, if the court determines that representation of the interest otherwise would be inadequate. If not precluded by conflict of interests, a guardian ad litem may be appointed to represent several persons or interests. The court shall set out its reasons for appointing a guardian ad litem as a part of the record of the proceeding.**" 2008 Arizona Session Laws Chapter 247 (HB2806), which enacted the Arizona Trust Code, struck the emphasized language (dealing with a GAL) in its entirety and replaced it with A.R.S. sections 14-1404 through -1408, which are the virtual representation statutes.

The pre-1/1/09 version of A.R.S. section 14-1403(4) was based on, and substantially similar to, Uniform Probate Code ("UPC") section 1-403(5) (1969, as amended in 1997). The official Comment to UPC section 1-403 does not mention anything about GALs, and

Westlaw does not list any reported decisions under UPC section 1-403 that address the appointment of a GAL.

When paragraph 4 of A.R.S. section 14-1403 was abrogated in 2009, it was replaced by, among other things, 14-1408, which is based on, and substantially similar to, section 305 of the Uniform Trust Code ("UTC") (2000). A.R.S. section 14-1408(A) states: "If the court determines that an interest is not represented under this article or that the otherwise available representation might be inadequate, the court may appoint a representative to receive notice, give consent and otherwise represent, bind and at on behalf of a minor, incapacitated person, unborn child or person whose identity or location is unknown. The court may appoint a representative for several persons or interests." The official Comment to UTC section 305 explains:

> This section is derived from Section 1-403(4) of the Uniform Probate Code. However, this section substitutes "representative" for "guardian ad litem" to signal that a representative under this Code serves a different role. ***Unlike a guardian ad litem, under this section a representative can be appointed to act with respect to a nonjudicial settlement or to receive a notice on a beneficiary's behalf***. Furthermore, in making decisions, a representative may consider general benefit accruing to living members of the family. "Representative" is placed in brackets in case the enacting jurisdiction prefers a different term. The court may appoint a representative to act for a person even if the person could be represented under another section of this article.

(Emphasis added.) The emphasized language suggests that the powers of a statutory representative include, but are broader than, the traditional powers of a guardian ad litem. In this regard, a comparison of old A.R.S. section 14-1403(4) to current A.R.S. section 14-1408 reveals that whereas a guardian ad litem could only act in the in a court proceeding, a representative's appointment may extend beyond the court proceeding.

The Prefatory Note to the UTC provides the following additional explanation: "Another area of overlap [between the UTC and the UPC, concerns representation of beneficiaries. UPC Section 1-403 provides principles of representation for achieving binding settlements of matters involving both estates and trusts. The Uniform Trust Code refines these representation principles, and extends them to nonjudicial settlement agreements and to optional notices and consents. *See* Uniform Trust Codes, Section 111 and Article 3." This further demonstrates that the powers of a representative include, but are broader than, the powers of a GAL.

In providing a general overview of the UTC, the Prefatory Note states the following:

> **Article 3 - Representation-**This article deals with the representation of beneficiaries and other interested persons, both by fiduciaries (personal representatives, guardians and conservators), and through what is known as virtual representation. The representation principles of the article apply to settlement of disputes, whether by a court or nonjudicially. They apply for

> the giving of required notices. They apply for the giving of consents to certain actions. The article also authorizes a court to appoint a representative if the court concludes that representation of a person might otherwise be inadequate. The court may appoint a representative to represent and approve a settlement on behalf of a minor, incapacitated, or unborn person or person whose identity or location is unknown and not reasonably ascertainable.

(Emphasis in original.)

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

~~Currentness~~

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

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

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

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

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

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

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

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.

** **Waiver of Jury Trial [Stop Gap]**

(a) Application of Civil Rule 38. Rule 38 of the Arizona Rules of Civil Procedure applies in probate proceedings except as provided in sections (b) and (c).

(b) Waiver at the Direction of the Alleged Incapacitated Person. The court must accept an alleged incapacitated person's waiver of a jury trial in a guardianship proceeding

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if the person has first consulted with his or her counsel. The person's waiver may be presented either by the person or by the person's counsel, orally or in writing.

(c) Waiver at the Direction of Counsel. After attempting to consult with the alleged incapacitated person and after consulting with the person's physician, if counsel reasonably believes that the person is unable to direct whether to waive a jury trial in a guardianship proceeding, counsel may waive the person's right to a jury trial, subject to court approval. Counsel must certify in writing, or avow in open court, compliance with this section and efforts to obtain direction from the person, without disclosing any privileged communication. The court may set a hearing to determine if a waiver is appropriate.

(d) Emergency and Temporary Guardianships. This rule does not create a right to a jury trial that does not exist in a statute. Any statutory right to a jury trial for an emergency or temporary guardianship is waived unless timely demanded.

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(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:

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(c) Waiver at the Direction of Counsel. After attempting to consult with the alleged incapacitated person and after consulting with the person's physician, if counsel reasonably believes that the person is unable to direct whether to waive a jury trial in a guardianship proceeding, counsel may waive the person's right to a jury trial, subject to court approval. Counsel must certify in writing, or avow in open court, compliance with this section and efforts to obtain direction from the person, without disclosing any privileged communication. The court may set a hearing to determine if a waiver is appropriate.

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~~W Workgroup 3 Commissioner Julia Connors assigned~~

Rule 19. ~~Appointment~~ Appointment of~~of~~ an Attorney, Medical Professional, ~~and~~ or Investigator.

Request and Proposed Order. The request for appointment of an attorney, investigator and medical professional may be by separate motion or as part of the petition ~~itself~~.

(a) A petitioner must provide a proposed order ~~for~~for the appointment of an attorney, investigator and medical professional as required by A.R.S. §14-5303(C) or A.R.S. §14-5407(B) no later than 3 days after filing the petition.

~~The form of order must be provided no later than 3 days after filing the Petition. The request for appointment of an attorney, investigator and medical professional may be by separate motion or as part of the petition itself.~~e, ~~for the appointment of an attorney, investigator and medical professional~~ **~~Request and Proposed Order.~~** ~~A petitioner seeking appointment of a guardian for an adult under A.R.S. §14-5303(C) must request that court appoint themen ofan attorney to represent the alleged incapacitated/protected adult (or "subject person" as defined in Rule 2 (R), Arizona Rules of Probate Procedure), an investigator and a medical professional (a physician, psychologist or registered nurse.)~~

~~**(2)** A petitioner seeking appointment of a conservator for an adult under A.R.S. §14-5407(B) must request that the court appoi an attorney to represent the subject person and an investigator, unless the alleged disability is confinement, detention by a foreign power or disappearance. An interested person may request, or the court on its own motion may order, the appointment of a medical or psychological evaluation.~~

~~**(a)**~~

~~**(b) 3** The arty may include petitioner may include the requests to the appointment theof an attorney, medical professional, and investigator and medical professional in the pin the petition for appointment of the a guardian or conservator, rather than making the requests by a separate mmotion.~~

~~**(c) 4** A party requesting the appointment of an attorney, a medical professional, or an investigator The petitioner must lodge a a separate proposed oorder to the court for appointment of the attorney, investigator and medical professional Pof an attorney,~~

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~~medical professional, and investigator no later than 3 days after filing the petition. the petition.hi MarkWorkgroup hi Mark~~

(b) ~~Nomination of an Attorney.~~ Appointment of a Specific Attorney. The court should appoint an attorney to represent the alleged incapacitated person or person deemed in need of protection who is independent from the petitioner, the petitioner's attorney, and the proposed or appointed guardian or conservator, unless the alleged incapacitated person or person in need of protection has had a previous attorney-client relationship with independent counsel who is willing to serve as court-appointed counsel for these proceedings.

(1) ~~A party seeking the appointment of a guardian or conservator may not nominate a specific attorney to represent the subject person unless the attorney has an existing or prior attorney-client relationship with the subject person, or unless other good cause exists.~~ If a ~~party~~ petitioner ~~nominates~~ requests appointment of a specific attorney to represent the subject person, the petition ~~for appointment of a guardian or conservator~~ must either describe the attorney's prior relationship, if any, with the petitioner and the subject person, or demonstrate good cause for the appointment.

~~(d)~~ (2) An attorney who is counsel of choice for the subject person ~~If a petitioner indicates that the subject person has an attorney of his or her own choosing, butthat attorney counsel may be given 5 days from tto file~~ must file a notice of appearance ~~g~~in the guardianship or protective proceeding within 5 days. Otherwise, ~~. If may be given~~ the petitioner must promptly submit a proposed ~~Oo~~order for the appointment of counsel by the court.~~.~~

(43) An attorney representing athe subject person~~, whether by court appointmented or participating based upon an attorney-client relationship, is subject to the oversight authority of the Court and~~ may be ordered to complete ~~the~~ training ~~provided in Rule 10(E)(1) and (2)~~under these Rules~~, Arizona Rules of Probate Procedure~~.

(c) ~~Dual~~ Prohibited Representation. ~~The court may not appoint an attorney, and an attorney may not accept an appointment or remain appointed, as the attorney or guardian ad litem for the subject person, if the attorney has an existing attorney-client relationship with the nominated or appointed fiduciary, unless the court orders otherwise for good cause. [Staff Note: The substance of this rule seems to require "good cause" to appoint an attorney notwithstanding its provisions, so the draft rule includes that phrase.]~~

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~~Alternative suggested paragraph:~~ An attorney who has an existing attorney-client relationship with the proposed or appointed guardian or conservator~~the nominated or appointed fiduciary,~~ may not accept an appointment, or remain appointed as an attorney, representative or guardian ad litem for the subject person, unless the Court orders otherwise for good cause.

~~Nomination of~~ **(d) Requesting Appointment of a Medical Professional.** ~~[JWR Note: The changes were intended to break up the rule into two sentences and to parallel the structure of (b).]~~

~~A party requesting the appointment of a guardian or conservator may nominate a specific medical professional to evaluate the subject person. If the party does so, the party must describe the medical professional's prior relationship, if any, with the petitioner and the subject person~~alleged incapacitated person or the person alleged to be in need ~~of protection.~~"Medical professional" includes a physician, psychologist, and registered nurse for guardian and conservator proceedings under A.R.S. §§ 14-5303(C) and -5407(B), and a psychologist or psychiatrist for a guardian requesting inpatient treatment authority under A.R.S. § 14-5312.01. The petitioner may name, and the court may appoint, a medical professional to evaluate the subject person if the medical professional has previously treated or recently evaluated the subject person. The petitioner must describe the medical professional's prior relationship, if any, with the petitioner and the subject person. The petitioner may submit the proposed medical professional's written evaluation if it is available at the time of filing of the petition or shortly thereafter.

~~(e)~~

~~(f)~~ (e) **Noncompliance.** The court may continue a hearing on a petition for appointment of a guardian or conservator ~~based on noncompliance~~if the petitioner fails to comply with this rule. ~~[**Staff Note:** Is this provision necessary? Isn't this inherent in the court's authority?]~~

COMMENT

~~Regarding Rule 19(A). This rule clarifies that a separate petition or motion for appointment of an attorney, a medical professional, and an investigator is not required. The request for the appointment of an attorney, a medical professional, and an investigator may be made in the petition for appointment of a guardian or conservator. As suggested by A.R.S. §§ 14-5303(C) and -5407(B), the phrase~~

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~~"medical professional" is intended to include, among others, a physician, psychologist, and registered nurse.~~

~~Regarding Rule 19(B). The appointment of a guardian or conservator affects an individual's fundamental liberties and entails serious due process concerns. Unless the alleged incapacitated person or person in need of protection has had a previous attorney-client relationship with independent counsel who is willing to serve as court-appointed counsel for these proceedings, the court should appoint an attorney to represent the alleged incapacitated person or person deemed in need of protection who is independent from the petitioner or the petitioner's attorney.~~

JULIA VERSION A:

Rule 19 Appointment of attorney, investigator and physician

(a) Appointment of attorney, investigator and physician by case type.

(1) *Minor Guardianship or Conservatorship*

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A petitioner seeking appointment of a guardian for a minor, conservator or both, may request the appointment of an independent attorney to represent the minor. The court must appoint an attorney for the minor if it finds the minor's rights are not otherwise adequately represented. Minors age fourteen or over may express and the court shall consider their choice of attorney.

(2) *Adult Guardianship*

A petitioner seeking appointment of a guardian for an alleged incapacitated adult must request the court appoint the following individuals at the time of the filing of the petition;

(A) an independent attorney to represent the alleged incapacitated adult, unless he or she is already represented by an attorney of his or her choice who has or will file a notice of appearance in a timely manner. If an attorney has not filed an appearance in a timely manner, one will be assigned by the court.

(B) an investigator to interview the alleged incapacitated adult and the petitioner and submit a written report to the court prior to the hearing,

(C) a physician, psychologist or registered nurse to evaluate the adult and submit a written report to the court prior to the hearing. The court does not maintain a roster of potential physicians, psychologists or registered nurses to perform such evaluations. The name of the evaluator must be supplied by the petitioner.

(3) *Adult Guardianship with Inpatient Psychiatric Treatment Consent Authority*

A petitioner seeking appointment of a guardian with authority to consent to inpatient psychiatric treatment, in addition to requesting the appointment of an independent attorney and an investigator as required above, must request the appointment of a psychiatrist or a psychologist to evaluate the adult and submit a written report of mental health expert to the court prior to the hearing. The court does not maintain a roster of potential physicians, psychologists, or registered nurses to perform such evaluations. The name of the evaluator must be supplied by the petitioner.

(4) *Adult Conservatorship*

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(A) A petitioner seeking appointment of a conservator for an adult must request the appointment of an independent attorney to represent the adult, unless he or she is already represented by an attorney of his or her choice who has or will file a notice of appearance in a timely manner. If an attorney has not filed an appearance in a timely manner, one will be assigned by the court.

(B) A petitioner seeking appointment of a conservator for an adult must request the appointment of an investigator to interview the proposed protected person unless the allegation supporting the appointment of conservator is detention by a foreign power or disappearance.

(C) The court may require, or the petitioner may request, appointment of a physician, psychologist or registered nurse to conduct a medical or psychological evaluation of the proposed protected person and submit a written report to the court prior to the hearing date. The court does not maintain a roster of potential physicians, psychologists or registered nurses to perform such evaluations. The name of the evaluator must be supplied by the petitioner.

(b) Nomination of attorney. Absent good cause, a petitioner must not nominate an attorney to represent the proposed ward/protected person unless the attorney has an existing attorney-client relationship with the proposed ward/protected person, and the petition describes the attorney's prior relationship, if any, with the petitioner and the proposed ward/protected person.

(c) Nomination of physician, psychologist, psychiatrist or registered nurse. If a petitioner nominates a physician, psychologist, psychiatrist or registered nurse to evaluate the proposed ward/protected person, the petition must describe the nominee's prior relationship, if any, with the petitioner and the proposed ward/protected person.

(d) Prohibited attorney appointments. A petitioner shall not request the appointment of an attorney, nor may the attorney accept an appointment, if the attorney has an existing or prior attorney-client relationship with the proposed guardian or conservator.

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(e) Timeframe for appointment requests. A petitioner must request the appointment of attorney, investigator and physician, psychologist, registered nurse or psychiatrist at the time of the filing of the petition seeking appointment of guardian and/or conservator or both.

(f) Form of request and form of order. A petitioner must request the appointments either in the original petition or by a separate motion. The petitioner must provide a blank form of order appointing attorney, investigator and physician to the assigned judicial division when the petition is filed.

(g) Notice requirement to appointees. A petitioner is responsible for notifying the individual appointees of their appointment by mailing a copy of the petition, the order of appointment and the Notice of Hearing to each appointee within 3 days of the signing of the Order.

JULIA VERSION B:

Rule 19 Appointment of Attorney, Investigator, and Medical Professional

(a) Time and Method. When required under Arizona Revised Statutes Title 14, requests for the appointment of an independent attorney, investigator, or medical professional must be submitted to the assigned judicial division by the petitioner at the time the petition is filed. The request may be included in the petition or filed as a separate motion.

(b) Proposed Order. The petitioner must provide to the assigned judicial division when the petition is filed a blank form of order appointing the attorney, investigator, and medical professional.

(c) Notice to Appointees. The petitioner is responsible for promptly notifying individuals of their appointment by mailing a copy of the petition, the order of appointment, and the Notice of Hearing to each individual.

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~~(d) Report of mental health expert.~~ ~~If a petition seeks the appointment of a guardian for an adult with authority to consent to inpatient psychiatric treatment, the petitioner must request the appointment of a psychiatrist or psychologist to evaluate the alleged incapacitated adult and provide a written report to the court prior to the hearing.~~

~~*[this last paragraph might be unnecessary if we adopt the proposed Part VII entitled "guardians with inpatient mental heaAlth authority"]*~~

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Cross-reference the definition of subject person in Rule 2(R). Should we use this term in Rule 19(b)?

Page 2: [2] Commented [MM4] **Meltzer, Mark** **4/20/2018 3:01:00 PM**

Judge Mackey will consider drafting a provision regarding court oversight of the appointed attorney's qualifications. This would-be subpart b4.

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Done with suggested subsection 4. See note below.

Page 2: [4] Commented [MDH6] **Mackey, David, Hon.** **4/24/2018 11:35:00 AM**

Left general at this time subject to further input of the workgroup. Or could rephrase to reference removal or withdrawl authority of the court.

Rule 19. Appointment of an Attorney, Medical Professional, or Investigator.

(a) Request and Proposed Order. The request for appointment of an attorney, investigator and medical professional may be by separate motion or as part of the petition. A petitioner must provide a proposed order for appointment of an attorney, investigator and medical professional as required by A.R.S. §14-5303(C) or A.R.S. §14-5407(B) no later than 3 days after filing the petition.

(b) Appointment of a Specific Attorney. The court should appoint an attorney to represent the alleged incapacitated person or person deemed in need of protection who is independent from the petitioner, the petitioner's attorney, and the proposed or appointed guardian or conservator, unless the alleged incapacitated person or person in need of protection has had a previous attorney-client relationship with independent counsel who is willing to serve as court-appointed counsel for these proceedings.

(1) If a petitioner requests appointment of a specific attorney to represent the subject person, the petitioner must either describe the attorney's prior relationship, if any, with the petitioner and the subject person, or demonstrate good cause for the appointment.

(2) An attorney who is counsel of choice for the subject person must file a notice of appearance in the guardianship or protective proceeding within 5 days. Otherwise, the petitioner must promptly submit a proposed order for the appointment of counsel by the court.

(3) An attorney representing the subject person may be ordered to complete training under these Rules.

(c) Prohibited Representation. An attorney who has an existing attorney-client relationship with the proposed or appointed guardian or conservator may not accept an appointment, or remain appointed as an attorney, representative or guardian ad litem for the subject person, unless the Court orders otherwise for good cause.

(d) Requesting Appointment of a Medical Professional. "Medical professional" includes a physician, psychologist, and registered nurse for guardian and conservator proceedings under A.R.S. §§ 14-5303(C) and -5407(B), and a psychologist or psychiatrist for a guardian requesting inpatient treatment authority under A.R.S. § 14-5312.01. The petitioner may name, and the court may appoint, a medical professional to evaluate the subject person if the medical professional has previously treated or recently evaluated the subject person. The petitioner must describe the medical professional's prior relationship, if any, with the petitioner and the subject person. The petitioner may submit the proposed medical professional's written evaluation if it is available at the time of filing of the petition or shortly thereafter.

(e) Noncompliance. The court may continue a hearing on a petition for appointment of a guardian or conservator if the petitioner fails to comply with this rule.

COMMENT

~~Regarding Rule 19(A). This rule clarifies that a separate petition or motion for appointment of an attorney, a medical professional, and an investigator is not required. The request for the appointment of an attorney, a medical professional, and an investigator may be made in the petition for appointment of a guardian or conservator. As suggested by A.R.S. §§ 14-5303(C) and -5407(B), the phrase "medical professional" is intended to include, among others, a physician, psychologist, and registered nurse~~

~~Regarding Rule 19(B). The appointment of a guardian or conservator affects an individual's fundamental liberties and entails serious due process concerns. Unless the alleged incapacitated person or person in need of protection has had a previous attorney-client relationship with independent counsel who is willing to serve as court-appointed counsel for these proceedings, the court should appoint an attorney to represent the alleged incapacitated person or person deemed in need of protection who is independent from the petitioner or the petitioner's attorney.~~

JULIA VERSION A:

Rule 19 Appointment of attorney, investigator and physician

(a) Appointment of attorney, investigator and physician by case type.

(1) ***Minor Guardianship or Conservatorship***

A petitioner seeking appointment of a guardian for a minor, conservator or both, may request the appointment of an independent attorney to represent the minor. The court must appoint an attorney for the minor if it finds the minor's rights are not otherwise adequately represented. Minors age fourteen or over may express and the court shall consider their choice of attorney.

(2) ***Adult Guardianship***

A petitioner seeking appointment of a guardian for an alleged incapacitated adult must request the court appoint the following individuals at the time of the filing of the petition;

(A) an independent attorney to represent the alleged incapacitated adult, unless he or she is already represented by an attorney of his or her choice who has or will file a notice of appearance in a timely manner. If an attorney has not filed an appearance in a timely manner, one will be assigned by the court.

(B) an investigator to interview the alleged incapacitated adult and the petitioner and submit a written report to the court prior to the hearing,

(C) a physician, psychologist or registered nurse to evaluate the adult and submit a written report to the court prior to the hearing. The court does not maintain a roster of potential physicians, psychologists or registered nurses to perform such evaluations. The name of the evaluator must be supplied by the petitioner.

(3) ***Adult Guardianship with Inpatient Psychiatric Treatment Consent Authority***

A petitioner seeking appointment of a guardian with authority to consent to inpatient psychiatric treatment, in addition to requesting the appointment of an independent attorney and an investigator as required above, must request the appointment

of a psychiatrist or a psychologist to evaluate the adult and submit a written report of mental health expert to the court prior to the hearing. The court does not maintain a roster of potential physicians, psychologists, or registered nurses to perform such evaluations. The name of the evaluator must be supplied by the petitioner.

(4) ***Adult Conservatorship***

(A) A petitioner seeking appointment of a conservator for an adult must request the appointment of an independent attorney to represent the adult, unless he or she is already represented by an attorney of his or her choice who has or will file a notice of appearance in a timely manner. If an attorney has not filed an appearance in a timely manner, one will be assigned by the court.

(B) A petitioner seeking appointment of a conservator for an adult must request the appointment of an investigator to interview the proposed protected person unless the allegation supporting the appointment of conservator is detention by a foreign power or disappearance.

(C) The court may require, or the petitioner may request, appointment of a physician, psychologist or registered nurse to conduct a medical or psychological evaluation of the proposed protected person and submit a written report to the court prior to the hearing date. The court does not maintain a roster of potential physicians, psychologists or registered nurses to perform such evaluations. The name of the evaluator must be supplied by the petitioner.

(b) Nomination of attorney. Absent good cause, a petitioner must not nominate an attorney to represent the proposed ward/protected person unless the attorney has an existing attorney-client relationship with the proposed ward/protected person, and the petition describes the attorney's prior relationship, if any, with the petitioner and the proposed ward/protected person.

(c) Nomination of physician, psychologist, psychiatrist or registered nurse. If a petitioner nominates a physician, psychologist, psychiatrist or registered nurse to evaluate the proposed ward/protected person, the petition must describe the nominee's prior relationship, if any, with the petitioner and the proposed ward/protected person.

(d) Prohibited attorney appointments. A petitioner shall not request the appointment of an attorney, nor may the attorney accept an appointment, if the attorney has an existing or prior attorney-client relationship with the proposed guardian or conservator.

(e) Timeframe for appointment requests. A petitioner must request the appointment of attorney, investigator and physician, psychologist, registered nurse or psychiatrist at the time of the filing of the petition seeking appointment of guardian and/or conservator or both.

(f) Form of request and form of order. A petitioner must request the appointments either in the original petition or by a separate motion. The petitioner must provide a blank form of order appointing attorney, investigator and physician to the assigned judicial division when the petition is filed.

(g) Notice requirement to appointees. A petitioner is responsible for notifying the individual appointees of their appointment by mailing a copy of the petition, the order of appointment and the Notice of Hearing to each appointee within 3 days of the signing of the Order.

JULIA VERSION B:

Rule 19 Appointment of Attorney, Investigator, and Medical Professional

(a) Time and Method. When required under Arizona Revised Statutes Title 14, requests for the appointment of an independent attorney, investigator, or medical professional must be submitted to the assigned judicial division by the petitioner at the time the petition is filed. The request may be included in the petition or filed as a separate motion.

(b) Proposed Order. The petitioner must provide to the assigned judicial division when the petition is filed a blank form of order appointing the attorney, investigator, and medical professional.

(c) Notice to Appointees. The petitioner is responsible for promptly notifying individuals of their appointment by mailing a copy of the petition, the order of appointment, and the Notice of Hearing to each individual.

~~**(d) Report of mental health expert.** If a petition seeks the appointment of a guardian for an adult with authority to consent to inpatient psychiatric treatment, the petitioner must request the appointment of a psychiatrist or psychologist to evaluate the alleged incapacitated adult and provide a written report to the court prior to the hearing.~~

~~*[this last paragraph might be unnecessary if we adopt the proposed Part VII entitled "guardians with inpatient mental heaAlth authority"]*~~

Workgroup 3 Commissioner Julia Connors assigned

Rule 23. REQUESTS FOR APPOINTMENT OF TEMPORARY GUARDIAN OR TEMPORARY Conservatorappointment of Temporary Guardian or Temporary ConservatorAppointment of Temporary Guardian or Temporary Conservator.

Petition. A petition may request the appointment of a temporary guardian, conservator, or both. Such a petition also must request the appointment of a permanent guardian, conservator, or both, or state why it is not necessary to appoint a permanent guardian or conservator.

(a) [**Connors Note:** The statutes require a petition for a temporary appointment of guardian or conservator proceed in the same manner as a hearing on a preliminary injunction. see Temporary Guardianship A.R.S. s. 14-5310 (H) , Temporary Conservatorship A.R.S. s. 14-5401.01(G) and Injunctions and Restraining Orders, A.R.C.P. Rule 65.

Rule 65 contemplates preliminary injunctions issued without notice be followed by a trial on the merits and allows the court, with reasonable notice to the parties, to advance the trial on the merits and consolidate it with the hearing on the motion.

(b) Temporary appointment hearings for guardian/conservator are held in emergent circumstances and usually without the normal 14 days notice to interested parties, and sometimes even without a hearing. Due process considerations support requiring notice and an opportunity to be heard, so I am proposing that we delete the provision in the original rule that invites a statement of why a permanent appointment is not necessary.]

(c) De

termination. The clerk [**Staff Note:** The current rule is unclear on who has this duty; this draft places the duty on the clerk] must provide a conformed copy [**Staff Note:** The current rule says "copies," but why is more than a single copy necessary?] of the petition for the appointment of a temporary guardian or conservator to the assigned judicial officer or, in the absence of an assigned judicial officer, to the presiding judge or other designated judicial officer. The assigned judicial officer will determine whether to appoint a temporary guardian or temporary conservator, and whether it may make the appointment without notice or without a hearing.

(d) Alternative language suggestion:

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Commented [li1]: I don't think this is an accurate statement. ARS 14-5310(B), and 14-5401.01(B) require very specific things to be pled in order for the court to appoint a temporary guardian or conservator without notice.
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~~(c) (a) **Petition Requirements**. A Petition to appoint a temporary guardian and/or conservator must also request the appointment of a permanent guardian, and/or conservator.~~

~~(b) **Copies to Assigned Judicial Officer**. The Petitioner must provide a conformed copy of the petition to the assigned judicial officer, or in the absence of an assigned judicial officer, to the presiding judge or other designated judicial officer.~~

~~© **Judicial Determinations, Notice and Hearing**. The assigned judicial officer will decide whether to appoint a temporary guardian and/or conservator and whether the appointment should be made without notice or without a hearing.~~

~~**(f) Determination.** The clerk [**Staff Note:** The current rule is unclear on who has this duty; this draft places the duty on the clerk] must provide a conformed copy [**Staff Note:** The current rule says "copies," but why is more than a single copy necessary?] of the petition for the appointment of a temporary guardian or conservator to the assigned judicial officer or, in the absence of an assigned judicial officer, to the presiding judge or other designated judicial officer. The assigned judicial officer will determine whether to appoint a temporary guardian or temporary conservator, and whether it may make the appointment without notice or without a hearing.~~

~~**COMMENT**~~

~~The phrases "permanent guardian" and "permanent conservator" are terms of art used to distinguish guardianships and conservatorships that do not have a predetermined duration from temporary guardianships and temporary conservatorships, both of which do have predetermined durations. Use of the word "permanent" is not intended to imply that the guardianship or conservatorship cannot be terminated.~~

~~This rule eliminates the practice in some counties of requiring a separate petition for appointment of a permanent guardian or conservator to be filed any time a temporary guardianship or conservatorship is requested. If it appears to the appointed fiduciary that a permanent appointment is necessary, the fiduciary should act promptly to see that one is appointed.~~**Rule 23. Appointment of a Temporary Guardian or Temporary Conservator**

(a) Petition. A petition requesting the appointment of a temporary guardian, temporary conservator, or both, must include either:

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(1) a request for the appointment of a permanent guardian, permanent conservator, or both; or

(2) a statement explaining why the appointment of a permanent guardian or permanent conservator is unnecessary.

(b) **Copies for the Assigned Judicial Officer.** The petitioner must provide a copy of the filed petition and copies of any required affidavits to the assigned judicial officer, or if a judicial officer has not been assigned, to the presiding probate judge or other designated judicial officer.

(c) **Judicial Determinations.** The assigned judicial officer must promptly determine whether the petition supports the request to appoint a temporary guardian or temporary conservator without notice or without a hearing.

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Rule 23. Appointment of a Temporary Guardian or Temporary Conservator

(a) Petition. A petition requesting the appointment of a temporary guardian, temporary conservator, or both, must include either:

(1) a request for the appointment of a permanent guardian, permanent conservator, or both; or

(2) a statement explaining why the appointment of a permanent guardian or permanent conservator is unnecessary.

(b) Copies for the Assigned Judicial Officer. The petitioner must provide a copy of the filed petition and copies of any required affidavits to the assigned judicial officer, or if a judicial officer has not been assigned, to the presiding probate judge or other designated judicial officer.

(c) Judicial Determinations. The assigned judicial officer must promptly determine whether the petition supports the request to appoint a temporary guardian or temporary conservator without notice or without a hearing.

~~Workgroup 3 Lisa Price assigned~~

Rule 32. Personal Representative's Inventory and Account; ~~Approval of a~~ Trustee's Account~~ing~~.

(a) Personal Representative's Inventory.

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

(A) *Timing.* Unless the court orders otherwise, ~~a personal representative must file or deliver the inventory of the decedent's estate~~ no later than 90 days after the date of the personal representative's appointment~~.~~ the personal representative must either:

(~~1~~i) file the inventory with the court, and send a copy only to interested persons who request it; or

(~~2~~ii) mail or deliver a copy of the inventory to each heir in an intestate estate, or to each devisee if a will has been probated, and to any other interested person who requests it.

(B) *Contents.* The inventory must list the value of all property owned by the decedent as of the date of death.

~~(C) *Filing or Delivery.* The personal representative must either:~~

~~(1) file the inventory with the court, and send a copy only to interest persons who request it; or~~

~~(2) mail or deliver a copy of the inventory to each heir in an intestate estate, or to each devisee if a will has been probated, and to any other interested person who requests it.~~

(~~D~~C) *Notice of Delivery.* If the personal representative mails or delivers the inventory, the personal representative must file a notice ~~of delivery with the court~~ ident~~,~~ifying each person who received the inventory, and the date and method of mailing or delivery.

(D) *Supplementary Inventory.* If the personal representative discovers an additional asset or discovers the value of an asset is erroneous or misleading, the personal representative must prepare a supplementary inventory showing the market value as of the date of death of the decedent. The supplementary inventory must be filed with the court if

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the original inventory was filed, or it must be mailed or delivered to the same parties as the original inventory if mailed or delivered. The personal representative must file a notice of delivery in accordance with the preceding subpart.

(2) *Motion for Additional Time.* If the personal representative is unable to file or deliver the inventory within 90 days, the personal representative must file a motion requesting additional time. The personal representative must file the motion before the deadline, and state why the personal representative needs more time~~,~~ and how much additional time is needed to file or deliver the inventory.

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

~~*(A) Generally.* If the personal representative discovers an additional asset or discovers the value of an asset is erroneous or misleading, the personal representative shall prepare a supplementary inventory showing the market value as of the date of death of the decedent. The supplementary inventory shall be filed with the court if the original inventory was filed, or mailed or delivered to the same parties as the original inventory if mailed or delivered.~~

~~*(B) Notice of Delivery.* If the personal representative mails or delivers the inventory, the personal representative must file a notice of delivery with the court identifying each person who received the inventory, and the method of delivery.~~

(b) Personal Representative's Account.

(1) *Generally.* Unless the court orders otherwise, or the personal representative's administration is supervised by the court, there is no statutory requirement for the personal representative to file annual accounts with the court.

(2) *Supervised Administration.* A ~~supervised~~ personal representative in a supervised administration under A.R.S. § 14-3505 ~~shall~~ must file an account with the court not less than annually, and upon closing of the estate.

(3) *County with a Court Accountant.* Unless the court orders otherwise, if a petition for approval of a personal representative's account is filed in a county with a court accountant, the petitioner is not required to submit the account to the court accountant for review or to pay the court accountant's fee.

(c) Trustee's Account.

(1) *Generally.* Trusts are generally administered without court supervision. Thus, a trustee is not required to submit any account~~ing~~ to the court. A court may order

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supervision of the trust ~~by the court~~, or a trustee may ~~seek~~seek court approval of ~~an~~its account~~ing upon petition to the court~~.

(2) ***County with a Court Accountant.*** Unless the court orders otherwise, if a petition for approval of a trustee's account is filed in a county with a court accountant, the petitioner is not required to submit the account to the court accountant for review or to pay the court accountant's fee.

~~Unless the court orders otherwise, if a petition for approval of a trustee's accounting is filed in a county that has a court accountant, the trustee is not required to submit the accounting to the court accountant for review or to pay the court accountant's fee. [**Staff Note:** Should the substance of this rule be consolidated with Rule 31(d)?] [**JWR Note:** Rule 31 deals with personal reps, while this deals with trustees. This could go with another rule dealing with trustees, but this seems to be the only rule that deals specifically with trustees.]~~

~~**COMMENT**~~

~~Unlike conservatorships, trusts generally are administered without court supervision. Thus, a trustee generally is not required to submit any accounting to the court. This rule is not intended to impose a duty upon a trustee to petition the court to approve an accounting. The rule is intended to clarify when an accounting filed by a trustee is subject to review by the court accountant in counties that have a court accountant. In such cases, the court has discretion regarding whether a court accountant should review a trustee's accounting submitted to the court for approval. For example, the court might order the court accountant to review an accounting in cases involving complex or problematic accountings; or in the case of a beneficiary who is a minor or incapacitated or protected adult for whom no conservator or similar fiduciary has been appointed; or in cases involving a beneficiary for whom a fiduciary has been appointed, but whose fiduciary has a conflict of interest. [**Staff Note:** There appears to be inconsistency between the substance of the rule and the substance of the comment.]~~

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Rule 32. Personal Representative's Inventory and Account; Trustee's Account.

(a) Personal Representative's Inventory.

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

(A) *Timing.* Unless the court orders otherwise, no later than 90 days after the date of the personal representative's appointment the personal representative must either:

(i) file the inventory with the court, and send a copy only to interested persons who request it; or

(ii) mail or deliver a copy of the inventory to each heir in an intestate estate, or to each devisee if a will has been probated, and to any other interested person who requests it.

(B) *Contents.* The inventory must list the value of all property owned by the decedent as of the date of death.

(C) *Notice of Delivery.* If the personal representative mails or delivers the inventory, the personal representative must file a notice identifying each person who received the inventory, and the date and method of mailing or delivery.

(D) *Supplementary Inventory.* If the personal representative discovers an additional asset or discovers the value of an asset is erroneous or misleading, the personal representative must prepare a supplementary inventory showing the market value as of the date of death of the decedent. The supplementary inventory must be filed with the court if the original inventory was filed, or it must be mailed or delivered to the same parties as the original inventory if mailed or delivered. The personal representative must file a notice of delivery in accordance with the preceding subpart.

(2) ***Motion for Additional Time.*** If the personal representative is unable to file or deliver the inventory within 90 days, the personal representative must file a motion requesting additional time. The personal representative must file the motion before the deadline, and state why the personal representative needs more time and how much additional time is needed to file or deliver the inventory.

(b) Personal Representative's Account.

(1) ***Generally.*** Unless the court orders otherwise, or the personal representative's administration is supervised by the court, there is no statutory requirement for the personal representative to file annual accounts with the court.

(2) ***Supervised Administration.*** A personal representative in a supervised administration under A.R.S. § 14-3505 must file an account with the court not less than annually, and upon closing of the estate.

(3) ***County with a Court Accountant.*** Unless the court orders otherwise, if a petition for approval of a personal representative's account is filed in a county with a court accountant, the petitioner is not required to submit the account to the court accountant for review or to pay the court accountant's fee.

(c) Trustee's Account.

(1) ***Generally.*** Trusts are generally administered without court supervision. Thus, a trustee is not required to submit any account to the court. A court may order supervision of the trust, or a trustee may seek court approval of its account.

(2) ***County with a Court Accountant.*** Unless the court orders otherwise, if a petition for approval of a trustee's account is filed in a county with a court accountant, the petitioner is not required to submit the account to the court accountant for review or to pay the court accountant's fee.