Task Force on the Arizona Rules of Probate Procedure

Meeting Agenda

Friday, December 14, 2018
10:00 a.m. to 4:00 p.m.
State Courts Building * 1501 West Washington * Conference Room 119 * Phoenix, AZ

Item no. 1	**Call to Order**	*Hon. Rebecca Berch, Chair*
Item no. 2	**Approval of the November 30, 2018 meeting minutes**	*Justice Berch*
Item no. 3	**Workgroup reports and comprehensive discussion of the proposed rules, including but not limited to the following:** **Workgroup 1: Rules 4, 4.1, and 10.6** **Workgroup 2: Rules 2 and 2.1** **Workgroup 3: Rules 19, 24+36, 27.1, 33, and 37**	*Judge Polk* *Judge Olson* *Judge Mackey*
Item no. 4	**Discussion of a draft rule petition and appendices**	*All*
Item no. 5	**Approval of the Task Force work product**	*All*
Item no. 6	**Roadmap** **Next meeting: May 2019**	*Justice Berch*
Item no. 7	**Call to the Public** **Adjourn**	*Justice Berch*

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

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

Probate Rules Task Force

State Courts Building, Phoenix

Meeting Minutes: November 30, 2018

Members attending: Hon. Rebecca Berch, (Chair), Marlene Appel, John Barron III, Colleen Cacy, Robert Fleming, Hon. Andrew Klein, Hon. David Mackey, Aaron Nash by his proxy Jessica Fotinos, Hon. Patricia Norris, Hon. Robert Carter Olson, Hon. John Paul Plante, Hon. Jay Polk, Lisa Price, Catherine Robbins, T.J. Ryan, Denice Shepherd

Absent: Hon. Julia Connors, Hon. Wayne Yehling

Guests: None

AOC Staff: Mark Meltzer, Angela Pennington, Stacy Reinstein, Theresa Barrett

1. Call to order; preliminary remarks; approval of meeting minutes. The Chair called the ninth meeting of the Task Force to order at 10:01 a.m. She noted that each workgroup met after the November 16 Task Force meeting and she thanked them for their continuing work. The Chair announced that the Arizona Center for Disability Law will serve as a partner in a pilot project for supported decision-making, and members with interest in this project should see her for contact information. The Chair noted that that today's meeting packet included Supreme Court Rule 42, ER 1.14, and *Rasmussen v. Fleming*, 154 Ariz. 207 (1987). The Chair then asked members to review the November 16 meeting minutes. There were no corrections.

Motion: A member moved to approve the November 16, 2018 meeting minutes. The motion received a second and it passed unanimously. **PRTF: 008**

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

Rule 2.1 ("definitions"): Workgroup 2 recently annotated Rule 2.1 with its recommendations for each definition. However, Judge Olson thought there would be more value in reviewing these annotations after the Task Force had a complete draft of the rules. The Chair accordingly deferred a discussion of Rule 2.1 to the next meeting.

Rule 7.1 ("sealing and unsealing of court documents"): Because the civil rules govern probate proceedings, the workgroup revised Probate Rule 7.1(a) ("procedure") to simply incorporate Civil Rule 5.4 ("sealing and unsealing court records") by reference. Rule 7.1(b) ("access to sealed documents") contains a provision specifically for probate that allows a fiduciary to obtain letters in a sealed file without the need for a court order unsealing the case. Judge Polk added that Judge Sara Agne is currently leading a stakeholder group that's reviewing Rule 5.4. Rule 7.1(a)'s incorporation of the Civil Rule will have the added benefit of not requiring an amendment to Rule 7.1 if that group proposes any changes to Rule 5.4.

Members discussed other sealing issues. One member has had difficulty obtaining a court order approving an accounting in a sealed case that the member submits to a bonding company. The member suggested adding this order to the list in section (b). Instead, members agreed that a party requesting such an order include language allowing its release in the form of order. Such language would avoid the necessity of including a list of exceptions in section (b). Members also discussed a perception that too many conservatorship files in personal injury cases are unnecessarily sealed. Although sealing is sometimes a condition of settlement, given the findings a court must make under Rule 5.4 before entering an order sealing a case, orders sealing conservatorship files should be less prevalent in the future. Judge Polk added that fewer than 300 probate cases in Maricopa County, out of a total of 9000 cases, are currently sealed. Members then approved Rule 7.1 as modified.

3. **Workgroup 1**. The Chair asked Judge Polk to present Workgroup 1's new rules.

Rule 4 ("initiation and termination of probate cases") and Rule 4.1 ("termination of probate proceedings initiated by petition"): Rule 4 is a current Probate Rule. It concerns how a probate case begins and concludes. The current rule uses the words "commencement and duration," whereas the draft rule uses "initiation and termination." Section (a) ("generally") provides that "a probate case is initiated by filing a probate proceeding as described in this rule. The termination of that probate proceeding does not necessarily terminate the probate case." Section (b) deals with the initiation and termination of a decedent's estate case. Sections (c), (d), and (e) respectively address cases concerning guardianships, conservatorships, and trusts. Section (f) addresses cases that challenge or enforce decisions of health care surrogates, but the draft section is not complete. Rule 4.1, which is newly proposed, has the title, "termination of probate proceedings initiated by petition." The draft rule proposes alternative language. The Chair asked for members' comments.

A judge member asked if section (a) alone would suffice as the entire rule. The member observed that the remaining sections are essentially statutory cross-references that add little value to the rule. Another member noted that the list of proceedings in Rule 4 was incomplete; for example, it did not include adult adoptions, matters concerning the disposition of remains, or other actions arising under Title 14. Judge Polk responded that the workgroup did not intend to create an exhaustive list, but members interpreted the rule as doing so. Another judge member had no opposition to the content of the rule but would add a catchall provision to address miscellaneous matters. On a straw vote, 4 members preferred reducing Rule 4 to only section (a), and 8 members supported adding a new catchall provision.

Members continued to discuss Rule 4(a). Some thought it duplicated the provisions of Rule 2, especially because Rule 4(a)'s use of "probate case" and "probate proceeding" could require readers to return to Rule 2 for clarification. Furthermore, Rule

4.1 appeared to duplicate or confound Rule 4(a). Judge Polk offered to combine some of the provisions of Rules 2, 4, and 4.1 into a single rule, which he will present later.

Rule 4.2 ("related non-probate actions"): Judge Polk advised that this newly proposed rule would apply to civil claims brought by a fiduciary, such as wrongful death or elder abuse cases, and family law cases involving a protected person. Judge Polk noted that because these cases are now filed in the probate case, they elude civil time standards, they are difficult to calendar, they are not administered efficiently, they lose the practical benefit of electronic filing (which is not available in probate court), and they complicate entitlement to notices of change of judge. To address these issues, new Rule 4.2(b) ("filing of non-probate action in probate case prohibited") would provide, "A non-probate action may not be filed in a probate case." Rule 4.2(c) ("assignment and consolidation of non-probate action") would allow partial or complete consolidation of those cases with the probate case. Rule 4.2(d) ("procedural requirements") specifies procedural requisites for consolidation, including notice to the parties and a requirement that the judges assigned to the probate and non-probate actions must confer. Rule 4.2(e) ("separate hearings") derives from Civil Rule 42(b).

Members had split views on this proposed rule. Some contended it was contrary to A.R.S. 14-1302(b)(3), which gives the court general jurisdiction to "hear and determine related claims by or against fiduciaries, protected persons or incapacitated persons by or against third parties, including claims for malpractice, breach of contract, personal injury, wrongful death, quiet title and breach of fiduciary duty." They also believed it was contrary to case law. These members suggested that proposed Rule 4.2 would increase administrative burdens rather than reduce them, because the rule would require the filing of motions to consolidate. Moreover, they believe that probate judges would want to know about, and be involved in the disposition of, related civil and family law proceedings as a matter of course, and this rule would frustrate that purpose. These members also were concerned about non-probate judges making decisions affecting the assets of a probate estate. One member gave an example of a rental property in a conservatorship estate, which could give rise to actions for unpaid rent, eviction, remediation, and quiet title and that could be addressed more effectively by a single probate judge rather than multiple civil judges. Another member suggested that if fiduciaries were required to file complaints at the civil counter, counterclaims would inevitably arise that would need to be heard in probate court. These members thought the most productive solution to the issues raised by Judge Polk would be to simply assign separate cases numbers to the civil filings but track the civil and probate cases together in probate court. One member predicted a "firestorm of opposition" to Judge Polk's proposal if it was included in the rule petition.

Other members supported the proposal for the reasons cited by Judge Polk. They also supported it because judicial officers in probate court cannot always conduct certain civil proceedings such as defaults with the same routine and efficiency as non-probate

judges. They also believe that the reference to "court" in A.R.S. 14-1302 refers to the superior court generally, rather than to a distinct probate court.

The Chair called for a straw vote. Seven members supported Judge Polk's proposal for the separate filing of non-probate claims, while eight members favored the current practice that allows the filing of non-probate claims in the probate case. One member observed that most of the judges on the Task Force supported Judge Polk's proposed Rule 4.2, and most practitioners opposed it, demonstrating a clear divide in their respective perspectives. The rule petition will mention this split. Regardless, Rule 4.2 as proposed will not appear in the final draft.

Rule 5 ("document captions"): Judge Polk noted that the workgroup simplified this rule by incorporating within section (a) ("generally") by reference the captioning requirements of Civil Rule 5.2(a) ("caption"). Section (b) ("title of the case") adds two other requirements for probate cases. Section (c) ("continuation of a conservatorships or other protective order") is like current Rule 5(c), but the words, "beyond the minor's eighteenth birthday" were added for clarity. Section (c) does not apply to guardianships of minors because those proceedings originate in juvenile court rather than in probate. Members approved the draft as presented.

Rule 8 ("personal service of certain documents"): Judge Polk explained that section (a) of the draft rule ("personal service on subject person of guardianship or protective proceeding") reflects a statutory provision applicable to guardianships and conservatorships whereby the subject person can waive service only by appearing in court. Section (c) ("personal service when money judgment requested") is new; it would require service of petitions making such a request under Civil Rules 4, 4.1, and 4.2 Some members thought section (c) was unnecessary in light of section (b) ("personal service on other persons"), which requires service under the Civil Rules when required by Title 14. Judge Polk responded that service in probate proceedings is customarily made by mail, and the court accepts an unsworn proof of mailing. He believes that personal service should be required when a party requests a monetary judgment. One member thought this was illogical because once the court has jurisdiction over a party, the court can award significant nonmonetary relief after service by mailing. Another member believed section (c) would require personal service of a petition for attorney fees, or any petition that included a request for fees.

Most members initially favored abrogating Rule 8, and particularly Rule 8(c). They believed that Title 14 included the necessary service provisions, that experienced attorneys would use personal service when they wanted to verify service, that Civil Rules 4, 4.1, and 4.2 applied in the absence of a probate rule on service, and that the court could order a higher level of service in an individual case if appropriate, for example, before proceeding with a default. But Judge Polk observed that Rule 8 was adopted recently, in 2007, and abrogating the rule and references to the Civil Rules might result in litigants lacking the directions they need. A member then suggested including as Rule 8 only the

following language, which is taken from the last sentence of the comment to the current rule:

> If personal service is required by the court or by any provision of A.R.S. Title 14, service must comply with Rules 4 [not 4(d), as in the comment], 4.1, and 4.2 of the Arizona Rules of Civil Procedure.

Members agreed with this alternative. They will consider later relocating this brief provision to the rule on notice. They declined to include an additional sentence in the provision that would thereafter allow the court to enter default judgment because court inherently has this authority.

Rule 10 ("duties of self-represented parties"): Judge Polk noted that current Rule 10 is quite lengthy, and staff proposed breaking the current sections into Rules 10 and 10.1 through 10.6. The workgroup agreed with this approach. The workgroup proposed the deletion of current Rule 10(A) ("duties of counsel"), because the content is covered by Civil Rule 5.3 ("duties of counsel and parties").

Draft Rule 10 is derived from current Rule 10(B). However, it does not include current Rule 10(B)(3), which concerns document preparation, because that current provision is ambiguous and possibly inaccurate. The workgroup believes that draft Rule 10(b) ("representation of parties"), which provides that only an active State Bar member may represent a party in a probate proceeding, is more a tool for judges to use when instructing lay parties that they may not represent another individual, than it is for lay parties' consumption. One member observed that draft Rule 10(b) is awkwardly worded, and suggested changing it to something simpler, such as, "a non-lawyer may not represent someone else." Draft Rule 10(c) ("fiduciaries") provides that a non-lawyer serving as a fiduciary may represent himself or herself in that capacity in a probate case. Members discussed potential conflicts of interest in that circumstance. Supreme Court Rule 31(d)(30), which details exceptions to the practice of law, is instructive regarding licensed fiduciaries, and members agreed that this provision should serve as a model for redrafting Rule 10(c).

Rule 10.1 ("duties of court appointed fiduciaries"): This draft rule corresponds with current Rule 10(C) ("duties of court-appointed fiduciaries"). It is substantively like the current rule, except it no longer includes current subpart (C)(1)(d) requiring an updated probate information form because that is covered by Rule 6. Members approved Rule 10.1.

Rule 10.2 ("duties of counsel for fiduciaries"): This rule derives from current Rule 10(D) ("duties relating to counsel for fiduciaries"). The draft is substantively the same as the current rule, and it includes a duty to minimize legal expenses. The current rule says that counsel "shall encourage the fiduciary." Members discussed whether to change "shall" to "should" or "must." They agreed that "must encourage" was more directive and yet sufficiently flexible to meet the purpose of this rule. They then approved the draft rule.

Rule 10.3 ("duties of counsel for the subject person of a guardianship or conservatorship proceeding"): This rule is based on current Rule 10(E) ("duties of counsel for subject person of guardianship/conservatorship proceeding; duties of guardian ad litem"). References to "guardian ad litem" in the text of the current rule were changed to "statutory representative" in the draft. The current rule is not clear on where counsel should file the completion certificate. The workgroup's draft would require counsel to file the certificate in each case in which counsel was appointed. However, Judge Polk proposed that the rule allow a local administrative order to specify where it should be filed, so the process could be customized and vary from county to county as local needs dictate. Another judge member observed that the rule addresses professional duties of members of the State Bar, and as professionals, counsel should only be required to retain the certificate and produce it upon request. Members agreed with this idea, and noted that in counties with appointment lists, counsel are probably asked to produce the certificate as a requirement of having their names added to the court's list. Accordingly, members removed from draft Rules 10(a) ("initial training") and 10(b) ("later required training") provisions that required counsel to file their completion certificates. Members approved the rule as modified.

Rule 10.4 ("duties of investigators"): Draft Rule 10.4 derives from current Rule 10(F), which has the same title. Members discussed a similar issue about the filing of completion certificates. They noted (1) there is a training program on the Supreme Court's website for investigators; (2) a significant number of investigators are directly employed by public agencies; and (3) the Supreme Court's website includes a list of qualified probate investigators. Given these facts, members no longer saw the need to require the filing of completion certificates in individual cases, and they deleted this requirement from sections (a) ("initial training") and (b) ("later required training"). Members then approved the rule as modified.

Rule 10.5 ("repetitive filings; vexatious conduct; remedies"): Current Rule 18(C), presently untitled, concerns repetitive filings. Workgroup 2 suggested that Workgroup 1 combine that provision with current Rule 10(G) on vexatious conduct, and draft Rule 10.5 shows this combination. Definitions and remedies in Rule 10.5 derive from existing Rule 10(G) and under the combined rule, the definitions and remedies apply to both repetitive filings and vexatious conduct. The term "guardian ad litem" was replaced with "statutory representative." One member suggested that Rule 10.5 was unnecessary because judges have inherent authority to deal with vexatious conduct, but other members disagreed. Members also discussed the provisions of section (c) and determined that they were appropriate and not internally redundant. Members approved the draft rule.

Rule 10.6 ("prudent management of costs"): Although this draft initially reflected the title and text of current Rule 10.1, the workgroup recommended deleting it. Judge Polk explained that the current rule preceded legislation (A.R.S. § 14-1104) and code sections (A.C.J.A. § 3-303) covering the same subject area, and the workgroup believed the rule had become superfluous. If the Task Force deletes this rule, he suggested

including text concerning the prudent management of costs in the acknowledgement forms, which the fiduciaries sign and presumably read. But another judge member urged retention of this rule, noting that it was a major accomplishment of the 2011 committee, and it is broader and more instructive than the statute. Members then discussed whether the rule should only apply to guardianships and conservatorships, or whether it also should apply to fiduciaries in decedents' estates and trusts. They also discussed whether fiduciaries as a practical matter request a court order that the fiduciary not to do something, as the rule requires, because the cost exceeds the benefit. After reviewing the statute and further discussion, members proposed deleting draft Rule 10.6(a) ("fiduciary duties") but retaining section (b) ("duty to notify the court and court orders") with modifications to the introduction of that section so it also encompasses personal representatives and trustees, and to truncate the provisions of (c) ("market rates"). On a straw poll, most members approved this approach. They also agreed to change "guardian ad litem" to "statutory representative." Approval of the rule will abide these modifications.

Rule 13 ("accelerated hearings and rulings; emergency appointments; ex part motions and petitions"): Judge Polk advised that the draft was primarily a restyling of the current rule, with the addition of language in section (a) ("accelerated hearings on petitions") and section (b) ("accelerated rulings on motions") that would allow the court to summarily grant or deny a request under either section. Judge Polk also noted that section (d) ("*ex parte* motions and petitions") included an explanation of the Latin term. Members had no questions or comments and approved the draft rule.

4. **<u>Workgroup 3.</u>** Judge Mackey made presentations on behalf of the workgroup.

Rules 24 + 36 consolidated ("guardian's inpatient mental health authority"): Because Judge James McDougall (ret.) recently suggested edits to the consolidated rule, and because the members' further consideration of the rule might require extended discussion, Rules 24 + 36 will be deferred until the next Task Force meeting.

Rule 30 ("conservator's inventory, budget, and account"): The Task Force previously returned this rule to the workgroup with comments and requests for modification. Accordingly, in the timing provisions of section (c) ("conservator's budget"), the workgroup added the underlined words, "<u>if ordered by a judicial officer</u>, the conservator must file the initial budget…." The sustainability provisions of subpart (d)(2) were modified to add a requirement, if the estate is not sustainable, that the conservator include a discussion in the account of available options. In subparts (d)(3) and (d)(4), the workgroup added the words "or other date set by the court" to accommodate local variations in setting due dates for accountings. Members had no additional comments and approved the rule with these modifications.

Rule 33 ("compensation for fiduciaries, attorneys, and statutory representatives"): The Task Force had also returned this rule to the workgroup with its

suggestions. The workgroup thereafter modified the Rule 33 approval process to apply to all case types. The court may either approve the request for fees when the request is included in a fiduciary's account, or it may approve fees in a separate request. The members' subsequent discussion focused on two issues. First, they questioned whether section (d) ("content of a request for approval") which requires detailed and specific records, is sufficient to preclude block billing. They concluded that it would be helpful if the section contained an express provision disallowing block billing. They also had concerns about the terminology of the draft rule, and whether it clearly delineated the difference between filing a request and filing a petition. They believed a new introductory section should explain the difference. They returned the rule to the workgroup to address these issues. Members also discussed whether section (c) ("personal representatives and trustees") was necessary. They concluded that these fiduciaries are not required to submit fee requests to the court, but they may choose to, or the court may order their submission. Accordingly, they retained section (c). They also discussed whether the proof of notice provision in section (f) ("objections") was necessary because the general rule on notice applies. They agreed it was unnecessary and removed the second sentence of draft section (f).

5. Workgroup 2. Judge Olson presented Rule 38.

Rule 38 ("forms"): Judge Olson explained that the current forms for accountings, by default, are the most complex, i.e., Forms 5 through 8. The workgroup changed the default to form number 9, the simplified form. (The draft rule now says, "Unless otherwise ordered, a conservator should submit simplified accounts using Form 9.") But the rule permits the court to go higher or lower on the continuum of complexity, depending on the circumstances of each case. The revised rule also allows the court to waive an account, as provided in a former comment. Members agreed with this approach and thought it was consistent with their revisions to Rule 30.

Judge Olson also noted that the workgroup added a comment to advise that Rule 38 is not the only form resource. The comment provides:

> In addition to the official forms, additional forms are generally available from the self-help resources at the websites of the Arizona Supreme Court, the Superior Court, and the Clerk of the Superior Court, as well as the State Bar of Arizona Probate Practice Manual.

Judge Olson further suggested that forms be in an appendix to the rules, so stakeholders did not have to search for them. Members took no action on this suggestion.

Members approved Rule 38 as modified.

6. Petition regarding Probate Rule 28.2. The meeting materials included a draft rule petition, which would be submitted by the Task Force, requesting the Court to

adopt Probate Rule 28.2 on an emergency basis. This petition is a response to amendments to Civil Rule 38 included in Order No. R-18-0018, which becomes effective on January 1, 2019 and affords the parties a jury trial automatically, without the necessity of a jury demand. (See the discussion in the September 28, 2018 Task Force meeting minutes at pages 8-9, and in the October 26, 2018 meeting minutes at pages 8-9.) The draft petition requests that effective January 1, 2019, the probate rules revert to the current procedure for guardianships by requiring a demand for a trial by jury. After discussion and a review of pertinent statutes, members agreed to add conservatorships to this request.

> **Motion:** A member then moved to give the Chair authority to finalize the petition and to file it on December 3, 2018. The motion received a second and it passed unanimously. **PRTF: 009**

The Chair advised that the Court would consider the petition on December 12, 2018.

7. **Roadmap.** As directed by the Chair at the November 30 meeting, a small group of Task Force members met to discuss the respective roles of statutory representative, court-appointed attorney, and guardian ad litem. During today's meeting, the Chair asked those members to provide proposed revisions to draft Rule 19 ("appointment of an attorney, medical professional, or investigator") that reflect the group's conclusions. Judge Polk will also circulate his proposal regarding Rules 2, 4, and 4.1 for discussion at the next meeting.

The next Task Force meeting will be on Friday, December 14, 2018. Members will review a draft petition and consider any residual rules issues. The Chair does not anticipate another Task Force meeting between December 14 and January 10, 2019, the petition filing deadline. However, the editorial group (the Chair, Judge Norris, Judge Polk, and staff) will review the petition, rules, and appendices after the December 14 meeting to assure that the drafts are correct. The Court will open the petition for public comment after the filing date, and stakeholders may submit comments until May 1. The Task Force will meet in May, on a date to be determined, to review the comments and prepare a reply. The Court will consider the petition, comments, and reply at its rules agenda in late August or early September 2019.

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

9. **Adjourn.** The meeting adjourned at 4:12 p.m.

12.14.2018
Draft through Rule 29

Rebecca White Berch (Justice, ret.), Chair
Task Force on the Arizona Rules of Probate Procedure, Petitioner
1501 W. Washington St.
Phoenix, AZ 85007

SUPREME COURT OF ARIZONA

PETITION TO AMEND THE ARIZONA RULES OF PROBATE PROCEDURE	)	Supreme Court No. R-19-

Pursuant to Rule 28 of the Rules of the Arizona Supreme Court, the Task Force on the Arizona Rules of Probate Procedure ("Task Force") petitions this Court to amend the Arizona Rules of Probate Procedure by restyling the existing rules, and by making substantive changes that further Probate Rule 1's goals of producing "a consistent, predictable, prompt, efficient, and just resolution of probate cases."

Because the proposed amendments concern all the current probate rules, this petition presents the revisions as a complete new set of rules, rather than as individual rule amendments. Appendix A to this petition contains a clean version of the proposed rules. The Task Force decided against preparing a "redline" version because the changes are so extensive that a redline would be more confusing than helpful.

Petitioner also proposes conforming changes to Rule XX of the Arizona Rules of Civil Procedure, as shown in Appendix B. Appendix C is a table that correlates the proposed probate rules with the current probate rules. Because this table might be further revised, it is produced in a separate appendix, but the Task Force intends to incorporate the table within its final version of the probate rules.

Section 1. Background. The work of two Supreme Court committees preceded this Task Force's efforts. In 2006, the Court established a Probate Rules Committee (AO No. 2005-87). That Committee proposed a set of probate rules that the Court adopted in 2008 and became effective on January 1, 2009. In 2010, the Court established a Committee on Improving Judicial Oversight and Processing of Probate Court Matters (AO 2010-52), which focused on rules relating to fiduciary responsibilities and the protection of elderly, incapacitated, and other vulnerable persons. Its recommendations resulted in modifications to certain Probate Rules, and in the adoption of §§ 3-302 and 3-303 of the Arizona Code of Judicial Administration, which respectively concern probate accounting forms and fee guidelines.

The Court established this Task Force by Administrative Order No. 2017-133. Task Force members include Superior Court judges from Maricopa, Pima, Pinal, and Yavapai Counties; several attorneys in private practice, including certified specialists in estate and trust law; a public fiduciary and a private fiduciary; a

representative of the Superior Court Clerks; and a retired judge from the Arizona Court of Appeals. The Chair is a retired Supreme Court Justice. A.O. No. 2017-133 directed the Task Force to review the current Probate Rules and "identify possible changes to conform to modern usage, and to clarify and simplify language." These changes are generally known as "restyling."

Section 2. Restyling. In the past several years, the Court has adopted restylings of the Arizona Rules of Evidence (effective 2012), Rules of Civil Appellate Procedure (2015), Rules of Protective Order Procedure (2016), Civil Procedure (2017), Criminal Procedure (2018), and Family Law Procedure (2019). The proposed amendments to the probate rules, like other recently adopted rule sets, include stylistic revisions that make the rules more comprehensible and user-friendly. The elements of restyling include:

1. using informative headings and subheadings;

2. breaking up long sentences, or making them shorter;

3. converting a lengthy rule into shorter subparts, which makes it easier to find provisions;

4. using lists;

5. avoiding repetition;

6. using "plain English" and the active voice;

7. stating things in a positive form; and

8. avoiding legal jargon and ambiguous terminology, including the word "shall" ("shall" is replaced in the proposed amendments with "must," "may," "should," or "will," depending on the context).

The stylistic revisions generally follow the conventions recommended in Bryan Garner's *Guidelines for Drafting and Editing Court Rules* (1996). The proposed rules also employ consistent formatting and nomenclature.

Other principles have guided the Task Force's restyling efforts, including the following.

1. If comments to a rule are necessary to understand the rule, then the rule is incomplete or unclear. Substantive matters belong in the rules, not in the comments.

2. If existing case law clarifies or interprets an ambiguity in a current rule, an effort should be made to remove the ambiguity and, if possible, to incorporate interpretative case law.

3. The rules should recognize best practices statewide.

Previous rules projects endeavored to accommodate electronic filing and document management. This principle had marginal application to the probate rules project because electronic filing is not currently available in probate court and is not yet in the planning stages. However, the proposed rules include a few references to electronic filing on the expectation that it will become available in the foreseeable future.

Section 3: Probate is Different. The probate rules restyling project differs from previous restyling projects in several important respects.

First, the probate process is largely driven by statutory requirements, which are a mixture of substance and procedure. Almost half of the current probate rules include at least one reference to a specific Title 14 statute. One of the initial decisions the Task Force made — a decision the Task Force frequently revisited — involved the extent to which the restyled rules should continue to cross-reference statutes.

Second, probate judges conduct more than just probate proceedings. By statute, rule, and practice, probate courts frequently hear civil matters related to a probate estate. For example, civil tort actions and debt collection claims are routinely filed in probate cases concerning decedents' estates, guardianships, conservatorships, and trusts. Probate judges may also hear related family law or juvenile proceedings. Accordingly, the probate rules must distinguish which set of procedural rules is applicable a non-probate proceeding.

Third, probate involves liberty as well as property interests. Guardianships, conservatorships, and mental health proceedings (which are handled by the probate court) involve liberty interests. Decedents' estates, conservatorships, and trusts involve property interests. Probate rules need to provide due process protections for both interests.

Fourth, probate cases often involve self-represented litigants. These litigants may appear in any probate case type, including decedents' estates, guardianships,

and conservatorships. The person who is the subject of a guardianship or conservatorship proceedings may be elderly or incapacitated. The proceedings usually involve money or property, as do estates and trusts. Court-appointed fiduciaries may not be licensed or sophisticated. The potential for financial exploitation exists, and the rules need to provide appropriate protections.

Section 4: Task Force Methodology. There currently are 46 probate rules. (The last numbered rule is Rule 38, but some of the rules have a number to the right of a decimal point.) The Task Force Chair divided Task Force members into 3 workgroups and assigned each workgroup roughly equivalent portions of the rules. A judicial officer led each workgroup. Workgroups met 40 times between April and December 2017, with some meetings lasting more than six hours. Outside of meetings, the workgroups reviewed drafts, researched law, and edited documents. The workgroups reviewed the rules in depth, and then presented proposed revisions to the full Task Force.

The Task Force met ten times during 2018; most meetings lasted a full day. Revisions to a few rules were minor or stylistic and required little discussion, but the Task Force learned early in the process that when it came to the probate rules, there was very little low hanging fruit. Most probate rules were complex or controversial and were the subject of exhaustive discussions at multiple meetings. The Task Force also recommended the abrogation of several rules, usually because their provisions

were combined with other rules, sometimes because existing rules restated statutory provisions, and rarely because the provisions were no longer pertinent. While this petition uses the term "abrogated," the rules utilize the term "reserved" to refer to rules with no content.

Section 5: Preamble. The current rules include a three-paragraph preamble, which the Task Force proposes abrogating. The first paragraph concerns the scope of the probate rules, which the Task Force now addresses in proposed Rule 1 ("scope, applicability, and construction"). The first paragraph of the Preamble also recites,

> [P]ractitioners and unrepresented persons should be able to participate in probate proceedings in any part of the state by referencing these rules, the applicable statutes, and the rules of civil procedure, without having to tailor procedures and forms to comply with differing local probate practices or rules.

The Task Force believes that the suggestion that self-represented persons can participate in a probate proceeding by referring to unspecified statutes and two sets of rules is perhaps overly optimistic, and some local practices do still differ, in part because of the size or complexity of the court systems. The second paragraph of the preamble comments on the role of fiduciaries in probate court, but that role is implemented by fiduciary acknowledgement forms and knowledgeable judicial officers. The third paragraph basically repeats Arizona Code of Judicial Administration § 3-301, and so is unnecessary for that reason. The Task Force

proposes to abrogate the preamble and, like other recent restyling projects, instead include a prefatory comment, as shown in the appendix.

Section 6: The proposed rules. Following is a summary of significant issues and proposed changes in the probate rules, grouped by the current part designations.

Part I: Scope of Rules, Definitions, Applicability of Other Rules (Rules 1 - 3).

Rule 1 ("scope, applicability, and construction") differs from the current rule in two noteworthy respects. First, and unlike other recent restylings, it contains this new provision: "These rules apply to all persons in a probate case, whether self-represented or represented by an attorney." Second, the proposed rule — before the phrase "prompt, efficient, and just resolution" provision on rule construction — adds the words "consistent [and] predictable."

Rule 2 ("probate case and proceedings") is new. It clarifies that a "probate case" may include a "probate proceeding" and a "non-probate proceeding." The rule explains each of these terms, which some stakeholders now find confusing and may use interchangeably. The distinctions become important in subsequent rules.

Current Rule 2 ("definitions") has become ***new Rule 2.1.*** Some definitions have been added, while others have been removed or modified.

Rule 3 ("applicability of other rules") explains that "the Arizona Rules of Civil Procedure apply to probate proceedings unless they are inconsistent with these probate proceedings." The Task Force received guidance from the Advisory

Committee on Rules of Evidence on a provision concerning the way the Rules of Evidence apply in probate proceedings. The rule concludes with a provision that "in non-probate proceedings, the same procedure and evidence rules apply as if the matter had been litigated as a separate action."

Rule 3.1 ("contested and uncontested hearings") is also new. This rule is instructive on the application of Rule 3 provisions concerning the Rules of Evidence, which differentiate between contested and uncontested proceedings.

Part II: General Procedures (R. 4 - 15.2).

[Need to add language regarding Rule 4.]

The requirements of ***Rule 5 (now, "document captions")*** have been shortened by a cross-reference to Civil Rule 5.2(a) ("caption") and providing for only those portions of the caption that are specifically required for probate court filings.

Rule 6 ("probate information form and notice of change of contact information form") begins with new definitions of "contact information" and "fiduciary." Then, rather than list items of information these forms require, as the current rule does, the proposed rule simply instructs parties to "file a Probate Information Form that is substantially similar to Form 11 in Rule 38." Similarly, another provision requires fiduciaries or guardians to file a Notice of Change of Contact Information Form, substantially similar to Form 13 or Form 14.

Rule 7 ("confidential documents and information") has increased readability because of reformatting changes. The proposed rule omitted current section (B), which requires the clerk to comply with court rules and code sections and added a new section (b) on "access to confidential documents."

New Rule 7.1 ("sealing and unsealing court documents") incorporates by reference Civil Rule 5.4 ("sealing and unsealing court records"). But it allows a fiduciary access to an appointment order and letters of appointment in a sealed case without the need for a court order unsealing the file.

[Need to add language regarding Rule 8.]

Rule 9 ("notice of initial hearing on petition"), includes helpful section headings, which the current rule lacks. The Task Force modified the required warning language in section (b), in part by advising readers that attendance at the hearing is not required unless they oppose the requested relief, and if they do oppose it, the warning instructs the reader on necessary action.

Rule 10 ("duties of self-represented parties") eliminates the current section concerning the duties of counsel, which is covered by Civil Rule 5.3 ("duties of counsel and parties"). The remaining sections of Rule 10 are lengthy, and the Task Force separated them into their own standalone rules numbered 10.1 through 10.5, as follows:

Rule 10.1: Duties of Court-Appointed Fiduciaries
Rule 10.2: Duties of Counsel for Fiduciaries

Rule 10.3: Duties of Counsel for the Subject Person of a Guardianship or Conservatorship Proceeding
Rule 10.4: Duties of Investigators
Rule 10.5: Repetitive Filings; Vexatious Conduct; Remedies

Rule 10.6 ("prudent management of costs"), derives from current Rule 10.1. Members discussed abrogating this rule because its provisions were partially included in subsequently enacted A.R.S. § 14-1104 and judicial code sections. However, they nonetheless retained it, with modifications, in the proposed rule set.

Rule 11 ("telephonic and video attendance and testimony"): Members were initially divided on how far in advance of a hearing a party should make this request. Some would have required a month's written notice, others were comfortable with making an oral request on the day of the hearing. Members eventually agreed on a provision, shown in Rule 10(d) ("time for making a request"), that requires a request be made "in a timely manner considering the circumstances at the time the request was made." The provision then identifies five circumstances that might be relevant in making that determination. Section (d) allows local rules to establish variations in this process.

Rule 12 ("initial hearing on a petition"): Readers should consider this rule in conjunction with Rule 9, discussed above. Like that rule, the readability of Rule 12 has been improved by adding section titles and with formatting changes. But the most notable change to Rule 12 is its title. It was formerly "non-appearance hearing," nomenclature that confused both lay litigants and judicial officers. The

proposed rule describes when a person must attend an initial hearing without using the term "non-appearance hearing."

Rule 12.1 ("conference"), Rule 12.2 ("oral argument"), Rule 12.3 ("settlement conference"), Rule 12.4 ("evidentiary hearing"), and Rule 12.5 ("compliance and order to show cause hearings"): Although it's debatable whether self-represented litigants read the rules of procedure, if they do, these new rules should be of benefit. They should also benefit attorneys who dabble in probate, as well as experienced practitioners. These rules describe events that might occur in a probate case after an initial hearing under Rule 12. These five rules have parallel but different provisions on subjects such as a definition of the event, how the event is set, how it is noticed, who is required to attend, and whether evidence will be presented.

Rule 13 (now, "accelerated hearings and rulings; emergency appointments; ex parte motions and petitions") is substantively like the current rule. Although it continues to use the Latin phrase *"ex parte,"* it provides its meaning (i.e., without prior notice to interested persons.)

Rule 14 (now, "acknowledgment of a consent, waiver, renunciation, or nomination"): The introductory language to the modified rule explains that it requires a signature before a notary public or a judicial officer because they are "legally authorized to verify the identity of the signer." Additionally, and unlike the

current rule, an acknowledgment on a consent to a petition or application is only required for self-represented individuals.

Rule 15 ("proposed orders, decrees, and judgments"): The restyled rule begins with a definition of "order." Like the current rule, the restyled rule requires that a form of proposed order comply with Civil Rule 5.1(d) ("proposed orders; proposed judgments"). The Task Force added a new section to this rule titled, "duty to provide copies and envelopes." The section reflects current practices in paper-centric Maricopa County's probate court, and it allows any court to "order otherwise." It also contains a provision that the section does not apply "if a party submits a proposed order pursuant to a Supreme Court administrative order authorizing electronic filing."

Rule 15.1 (now, "appointment of a statutory representative") was the subject of extensive discussion. The title of the current rule is "appointment of guardian ad litem." [Need to add text.]

Rule 15.2 (now, "administrative dismissals"), Rule 15.3 ("administrative closure of a decedent's estate and termination of appointment"), Rule 15.4 ("involuntary termination of a minor guardianship or closure of a minor conservatorship case"), and Rule 15.5 ("remedies for non-compliance by a guardian or conservator"): Proposed Rules 15.3, 15.4, and 15.5 are new, but these rules, as well as proposed Rule 15.2, all have their origins in current Rule 15.2. The

effect of an administrative dismissal under proposed Rule 15.2 depends on whether it is the only petition filed in the case, in which event the entire case is dismissed, or whether there are multiple petitions, where the dismissal only effects that petition. Rule 15.3 more fully details the content of a court notice of impending administrative closure of a decedent's estate. Administrative dismissals do not discharge a fiduciary from liability. Rule 15.5 is substantively like current Rule 15.2(C), but it adds the option of entering an order under Civil Rule 70 ("enforcing a judgment for a specific act").

Part III: Applications, Petitions, and Motions (R. 16 – 18).

The formatting changes in the proposed probate rules were particularly effective in restyling ***Rules 16 ("applications in probate proceedings") and 17 ("petitions in probate proceedings"),*** because procedures in these rules parallel one another. In addition, these two proposed rules begin with new sections (a) that respectively describe the meaning of "application" and "petition." An application is submitted to the probate registrar, and Rule 16 includes additional new duties for the Clerk and Registrar. The proposed rule requires the Clerk to file and retain the application. The rule requires the registrar to "promptly approve or deny" the application, and if denied, "to file a statement with the reasons for the denial and provide a copy to the applicant." Meanwhile, Rule 17 more clearly describes how a petition in a formal proceeding becomes contested. ***Rule 18 ("motions")*** has been

truncated by removing a section concerning the appointment of counsel that is addressed by other rules, and by relocating another current section on repetitive filings to a related restyled rule on vexatious conduct.

Part IV: Procedures Relating to the Appointment of Fiduciaries (R. 19 – 26.1).

Rule 19

Rule 20 (currently, "affidavit of proposed appointee," and as proposed, "abrogated): The Task Force questioned whether it was necessary to retain the rule, because its substance also is in a statute. Members agreed that when a substantive requirement is in a statute, the Task Force should not repeat it in a rule, unless the intent is to assist self-represented litigants, in which event the rule should repeat it. Members also observed that if a rule repeats the content of a statute, the rule would require amendment after any statutory change. After discussion, the members' consensus was to recommend abrogation of Rule 20.

Rule 21 (currently, "background check requirements," and as proposed, "abrogated"): A similar discussion ensued regarding Rule 21: what is the reason for this rule if its requirements are specified by statute? If self-represented litigants need to know about it, they should instead have access to a handbook that sets out the statutory requirements. The Task Force recommends the abrogation of Rule 21.

Rule 22 ("order appointing guardian, conservator, personal representative, or special administrator"): The current rule uses the term "restricted accounts."

The Task Force believes a more appropriate term is "restricted authority," and it restyled the rule using that term. The rule requires that the order of appointment include restrictions on authority. This rule is one of the few for which the Task Force proposes a new comment. The new comment would provide useful language for restrictions in an order regarding real property, monetary assets, or a guardian's authority.

Rule 23 ("appointment of a temporary guardian or temporary conservator): The proposed rule is similar to the current rule, with the exception that the new rule omits a current provision that is already contained in a statute and that requires the judge to decide whether to make the appointment, and whether it should occur without notice or a hearing.

Rule 24 (currently, "appointment of guardian with inpatient mental health authority"). The Task Force recommends consolidating this rule with current Rule 36; see the discussion, infra.

Rule 25 ("order to fiduciary"). This rule contains the substance of the current rule, including references to Forms 2, 3, and 4. However, the current rule recites that those forms are in the Arizona Code of Judicial Administration. That is incorrect, and the proposed rule removed those recitals.

Rule 26 ("issuing and recording letters of appointment"): The proposed rule differs from the current rule by including a new section explaining that fiduciary

requires court authority before acting for an estate or a subject person. The proposed rule also includes a new definition of "letters of appointment."

Rule 26.1 (currently, "written findings on appointment," and as proposed, "abrogated"): The Task Force proposes the abrogation of this rule because its substance is covered by a statute.

Part V: Contested Probate Proceedings (R. 27 - 29).

Rule 27 (currently, "how a probate proceeding becomes contested," and as proposed, "abrogated"). Proposed Rule 17 ("petitions in probate proceedings") has a section on contested proceedings. The section begins with the words, "A proceeding becomes contested when…." Rule 17 is the most appropriate rule for this explanation, and the Task Force would abrogate Rule 27, which would be redundant.

Rule 27.1 ("training for non-licensed fiduciaries").

Rule 28 (currently, "pretrial procedures," and as proposed, "management of contested probate proceedings"). After adoption of the probate rules, civil rules on case management changed significantly. Some of the civil rule provisions are incongruent with the management of a probate case. For example, the judicial officer in an uncomplicated probate case might enter a scheduling order at the initial hearing, eliminating the need for a scheduling conference in that case; whereas more complex case might require counsel to meet and confer and prepare a joint report

and proposed scheduling order. Proposed Rule 28 accommodates different case management practices, which may vary based on the circumstances of the case.

Rule 28.1 ("disclosure and discovery"). This is a new probate rule. Current Rule 28(B) is a single sentence that incorporates Civil Rules 26 through 37 by reference. Members agreed that the 3-tier concept adopted in recent amendments to the Civil Rules would not work well in probate cases. Proposed Rule 28.1 does indeed include presumptive limits on discovery, like the tiers do, but do this by specifying a single set of limits applicable to all probate cases. The rule further provides that the court on its own or a party's motion may modify the limits. Rule 28.1 also contains a new provision whereby under specified circumstances, a public, licensed, or unlicensed fiduciary may obtain court subpoenas.

Rule 28.2 ("demand for jury trial"). This rule is also new. It was prompted by amendments to Civil Rule 38, which became effective on January 1, 2019, which replaced a jury trial on demand with an automatic jury trial, unless waived. The predicament is that in probate proceedings involving alleged incapacitated individuals, the individual frequently lacks the capacity to knowingly waive a trial. This proposed rule would revert to juries only by demand. Note that the Task Force filed rule petition R-18-0039 in December 2018, which requested emergency adoption of a similar version of Rule 28.2 for guardianship and conservatorship proceedings.

Rule 29 ("alternative dispute resolution in probate proceedings"). The proposed rule is shorter than the current rule, but it maintains the current requirements that parties must make good faith efforts to agree on an alternative dispute resolution process, and to participate in good faith.

Part VI: Post-Appointment Procedures (R. 30 – 36).

Rule 30 (now, "guardianship/conservatorship specific procedures," and as proposed, "conservator's inventory, budget, and account"); Rule 30.1 (currently, "financial order for conservatorships," and as proposed, "abrogated"); Rule 30.2 (currently, "sustainability of a conservatorship," and as proposed, "abrogated"); and Rule 30.3 (currently, "conservatorship estate budgets," and as proposed, "abrogated").

Part VII: Other Matters (R. 37).

Part VIII: Forms (R. 38).

Section 7: Conclusion. The Task Force will meet again after the comment period closes to discuss the comments and, as appropriate, to revise its proposed rules. Subject to those revisions, the Task Force requests the Court to abrogate the current Probate Rules and in their place, to adopt the proposed new Probate Rules.

RESPECTFULLY SUBMITTED this ___ day of January 2019

By _____
Rebecca White Berch (Justice, ret.), Chair, Probate Rules Committee

ARIZONA RULES OF PROBATE PROCEDURE

Effective January 1, 2009

Including Amendments Received Through November 1, 2017

Preamble

These rules apply to probate proceedings brought under Arizona Revised Statutes ("A.R.S.") Title 14 and to proceedings to challenge or enforce the decision of one authorized to make health care decisions for a patient. They are designed to establish uniform practice and statewide

Rule 2. Probate Case and Proceedings

(a) Generally. These rules distinguish between a probate case and the various proceedings that may occur within the case.

(b) Probate Proceeding. A probate proceeding is a court proceeding arising under:

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

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

(c) Non-Probate Proceeding. A proceeding that is not described in section (c) is a non-probate proceeding.

(d) Probate Case. A probate case is a court case initiated by filing a probate proceeding. Each probate case is assigned a unique number by the court clerk. A probate case includes one or more probate proceedings and, subject to the requirements of Rule 4.1, may include one or more non-probate proceedings. The termination of the initial probate proceeding does not necessarily terminate the probate case.

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

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

~~Regarding Rules 2(O) and (P). The definitions of "probate case" and "probate proceeding" are intended to distinguish between the establishment of a court case and the various proceedings that may occur within the case. Thus, a "probate case" is a court case originally commenced for one or more of the listed purposes. Each probate case is assigned a single number by the clerk of court. A probate case will involve one or more probate proceedings. *See, e.g.*, A.R.S. § 14-3107. For example, a probate case relating to a decedent's estate may involve a proceeding to probate a will and appoint a personal representative, a proceeding to approve the sale of real property, and a proceeding to settle the estate and discharge the personal representative. Each application or petition filed within a probate case gives rise to a separate probate proceeding. A probate case may also involve non-probate issues such as personal injury claims or breach of contract claims. Thus, a probate case also may involve a civil action or a family law proceeding filed within or consolidated with the probate case.~~

~~Regarding Rule 2(P). For purposes of these rules, the definition of "civil action" includes, but is not limited to, actions that assert claims for breach of contract, negligence, fraud, or statutory abuse.~~

Rule 2.1. Definitions.

WG2 recommends inserting provisions concerning STAT REP and court-appointed counsel, and their respective roles and duties in Rule 10 or a new rule.

~~**(a) "Application"** is a written request to the probate registrar under Rule 16.~~

(x) **"Application"** has the meaning described in Rule 16.

(x) "Attend" means to be present, either personally or by counsel, at a court event {WG2 REC. ADOPT AS AMENDED}~~When these rules require a person to attend a court event, the person may satisfy that requirement by the attendance of that person's attorney. A person may attend a court event through that person's attorney unless these rules, a statute, or a court order provide otherwise.~~

(b) "Civil action" is a lawsuit brought to enforce, redress, or protect private rights and includes suits in equity and actions at law. For purposes of these probate rules, the term "civil action" excludes any family law or probate proceeding. {WG2 REC. KEEP AS WRITTEN IF STILL IN USE}

(x) **"Civil Rules"** means the Arizona Rules of Civil Procedure. A **"Civil Rule"** is a rule in the Arizona Rules of Civil Procedure. {WG2 REC. KEEP AS WRITTEN}

(x) **"Contested hearing"** has the meaning described in Rule 3.1(a).{WG2 REC. KEEP AS WRITTEN}

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

(x). **"Court"** includes a judicial officer, clerk, or court administrator.{WG2 REC. KEEP AS WRITTEN}

(xx) "**Demand for notice"** means a written request filed with the court by an interested person to be notified of any filings made in the probate proceeding.

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

(e) "Family law proceeding" is a proceeding brought under A.R.S. Title 25. {WG2 REC. KEEP AS WRITTEN IF STILL IN USE}

(f) **"Financial institution"** has the same meaning as defined in Arizona Revised Statutes § 14-5651. {WG2 REC. KEEP AS WRITTEN }

(f) "Guardian ad litem" is a person appointed by the court under A.R.S. § 14-1408, or under Rule 17(f), Arizona Rules of Civil Procedure, to represent the interests of a minor, unborn, or unascertained person; a person whose identity or address is unknown; or an incapacitated person in a particular case before the court. "Guardian ad litem" does not include an attorney appointed under A.R.S. §§ 14-5207(D), -5303(C), or -5407(B). {WG2 SUGGESTION TO DELETE THIS DEF. - EDIT RULE 33 to remove GAL, etc.}

(x) **"Interested person"** INCLUDES ANY PARTY, AND ANY PERSON As defined by Arizona Revised Statutes § 14-1201. {WG2 REC. KEEP AS AMENDED }

(g) "Judicial officer" includes a commissioner, judge pro tempore, and judge. {WG2 REC. KEEP AS WRITTEN }

B. **"Licensed fiduciary"** means a person or entity that is licensed by the Supreme Court of Arizona under A.R.S. § 14-5651. {WG2 REC. KEEP AS WRITTEN }

h) "Medical professional" includes a physician, psychologist, and registered nurse, or others authorized by law 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.{WG2 REC. DELETE - ALREADY DEFINED IN STATUTE }

(x) **"Motion"** has the meaning described in Rule 18.{WG2 REC. KEEP AS AMENDED}

~~**(h) "Motion"** is an oral or written request to the court under Rule 18.~~

~~**(i) "Non-appearance hearing"** means a setting on the court's calendar where the attendance of interested persons is not required, but where any interested person who wants to make an objection may appear and do so before the court makes a ruling on the issue to be decided.~~

(x) **"Month"** means

(j) "Oral argument" is a proceeding before a judicial officer when parties or their lawyers state their positions in support of or in opposition to a motion. Evidence is not presented at an oral argument. {WG2 REC. DELETE – SEEMS UNNECESSARY}

(k) "Party" is a person who has filed a notice of appearance, an application, a petition, or an objection in a probate proceeding. An interested person who has filed a demand for notice, but has not filed a notice of appearance, a petition, or an objection, is not a party. A party includes the party's attorney, except when a rule provides otherwise.{WG2 REC. KEEP AS WRITTEN }

(l) **"Person"** means an individual or an organization. {WG2 REC. KEEP AS WRITTEN }

~~**(m) "Petition"** is a written request to the court under Rule 17 for substantive relief .~~

(x) **"Petition**" has the meaning described in Rule 17. {WG2 REC. KEEP AS WRITTEN }

(n) "Protected adult" is an adult who qualifies for the appointment of a conservator under Arizona statutes regardless of whether a conservator has been appointed. {WG2 REC. DELETE THIS – RULE 34 IS NOW RULE 37 AND THE PRHASE PROTECTED ADULT IS NO LONGER USED. }

(o) "Subject person" is the decedent, alleged incapacitated person, ward, person allegedly in need of protection, or protected person. [**Staff Note:** Should this rule include definitions for each of these terms?] {WG2 REC. DELETE – SUPERFLUOUS. DEFINITION IS DERRIVED FROM CONTEXT, DUH!}

(x) "Uncontested hearing" has the meaning described in Rule 3.1(b). {WG2 REC. KEEP AS WRITTEN}

Rule 4. Initiation and Termination of Probate Proceedings.

(a) ~~Generally.~~ ~~A probate case is initiated by filing a probate proceeding as described in this rule. The termination of that probate proceeding does not necessarily terminate the probate case.~~

(b) Initiation.

(1) A probate proceeding for a decedent's estate is initiated by filing a petition; an application under A.R.S. title 14, chapter 3, article 3; certified copies of a domiciliary foreign personal representative's appointment and any official bond under A.R.S. § 14-4204; or an affidavit of succession to real property under A.R.S. § 14-3971(E).

(2) All other probate proceedings are initiated by filing a petition.

(c) Termination. A probate proceeding that was initiated by the filing of a petition terminates when:

(1) a judicial officer has resolved all the issues raised in the petition and has entered a final order or judgment in accordance with Civil Rule 54(c), or

(2) the petition has been dismissed.

(d) ~~Initiation and Termination of a Decedent's Estate Case.~~

(1) ~~*Initiation.* A decedent's estate case is initiated by filing any of the following documents:~~

~~**(A)** an application for:~~

~~**(i)** informal appointment of a personal representative or for informal probate of a will under A.R.S. §§ 14-3301 to -3311; or~~

~~**(ii)** informal appointment of a special administrator under A.R.S. § 14-3614;~~

~~**(B)** a petition for:~~

~~**(i)** formal appointment of a personal representative or for formal probate of will or for determination of intestacy under A.R.S. §§ 14-3401 to -3415;~~

~~**(ii)** formal appointment of a special administrator under A.R.S. § 14-3614;~~

~~**(C)** certified copies of a domiciliary foreign personal representative's appointment and any official bond under A.R.S. § 14-4204; or~~

~~**(D)** an affidavit of succession to real property under A.R.S. § 14-3971(E).~~

(2) ~~*Termination.* A probate case initiated by filing one of the documents listed in subparts (b)(1)(A)(i), (b)(1)(B)(i), or (b)(1)(B)(ii) terminates when:~~

(A) ~~the court has entered an order under A.R.S. §§ 14-3931 or 14-3932; or~~

(B) ~~under A.R.S. § 14-3933, or under A.R.S. §§ 14-3973 and 14-3974, one year after the personal representative has filed a closing statement if no proceeding is then pending in the case.~~

(e) ~~Initiation and Termination of a Guardianship Case.~~

(1) ~~***Initiation.*** A guardianship case is initiated by filing a petition requesting the appointment of a guardian under A.R.S. §§ 14-5303 or 14-5310.~~

(2) ~~***Termination.*** A guardianship case terminates when:~~

(A) ~~the court has entered an order terminating the guardianship;~~

(B) ~~in the case of a guardianship of an adult, by operation of law under A.R.S. § 14-5306; or~~

(C) ~~in the case of a guardianship of a minor, by operation of law under A.R.S. § 14-5210.~~

(f) ~~Initiation and Termination of a Conservatorship Case.~~

(1) ~~***Initiation.*** A conservatorship case is initiated by filing a petition requesting the appointment of a conservator or other protective relief authorized under A.R.S. Title 14, Chapter 5, Article 4.~~

(2) ~~***Termination.*** A conservatorship case terminates when:~~

(A) ~~the court has entered an order terminating the conservatorship; or~~

(B) ~~after the protected person's death, and if the conservator is granted the powers of a personal representative,~~ termination occurs under subparts ~~(b)(2)(A) or (b)(2)(B) of this rule.~~

(g) ~~Initiation and Termination of a Trust Case.~~

(1) ~~***Initiation.*** A case relating to~~ the administration ~~of a trust is initiated by filing:~~

(A) ~~a petition under A.R.S. § 14-10201; or~~

(B) ~~a petition for declaratory judgment under A.R.S. §§~~ 12-1831 to ~~-1846.~~

(2) ~~***Termination.*** A case relating to the administration of a trust terminates when:~~

(A) ~~the court enters an order terminating its continuing supervision of the trust,~~

(B) ~~the court enters an order terminating the trust, or~~

(C) ~~in all other instances, the court enters a final, appealable order granting or denying the petition.~~

(h) ~~Initiation and Termination of Case Challenging or Enforcing Decision of Health Care Surrogate.~~

(1) ***~~Initiation~~.*** ~~A case relating to the challenge or enforcement of the decision of a health care surrogate may be initiated by filing a petition under A.R.S. § 36-3206;~~

(2)

Rule 4.1. Non-Probate Proceedings Filed Within or Consolidated with a Probate Case.

(a) Requirements. A non-probate proceeding may be filed within or consolidated with a probate case, under the case number assigned to the probate case, only under one of the following conditions:

(1) if the probate case involves a decedent's estate, parties to the non-probate proceeding must include the decedent's estate or the personal representative of the decedent's estate, or both;

(2) if the probate case involves a guardianship or conservatorship, the ward or protected person, or the guardian or conservator for the ward or protected person, must be a party to the non-probate proceeding; or

(3) if the probate case involves the internal affairs of a trust, the trust or the trustee of the trust must be a party to the non-probate proceeding.

(b) Separate Hearings and Severance. If a non-probate proceeding has been consolidated with a probate case, the court may order a separate hearing on one or more issues, or it may order a severance of the non-probate proceeding from the probate case. When ordering a separate hearing, the court must preserve any right to a jury trial.

(c) Definition of Party. As used in Rule 4.1(a) only, the word "party" means plaintiff, petitioner, defendant, respondent, counterclaimant, counter-defendant, cross-claimant, cross-defendant, third-party plaintiff, or third-party defendant in the case filed within or consolidated with a probate case.

Rule 10.6. Prudent Management of Costs.

~~(a) Fiduciary Duties. A fiduciary must prudently manage costs and preserve the assets of the ward or protected person for his or her benefit. Unless a governing instrument or a court order directs otherwise, a fiduciary also must avoid incurring any cost for a good or service if the cost exceeds the likely [JWR Note: "Probable" sounds like a $50 word for "likely."] benefit of the good or service to the ward, protected person, decedent's estate or trust. [Staff Note: In the preceding section, the first sentence does not mention a personal representative, or an estate or trust, but the second does refer to an estate or trust. Was this an intended omission, or should the first sentence include additional references?]~~

~~(b) Duty to Notify the Court and Court Orders. A guardian ad litem, guardian or conservator, guardian or conservator's attorney, or an attorney for a ward or protected person [Staff Note: Consider replacing the preceding phrase with "a fiduciary or the fiduciary's attorney"] must timely disclose to the court any reasonable belief that the projected cost of complying with a court order may exceed the likely benefit to the ward, protected person, decedent's estate, or trust. This notice also must be given to all persons entitled to notice. [Staff Note: The preceding sentence was added because the first sentence made multiple references to "person" with different meanings.] If appropriate and if consistent with due process, the court may enter or modify orders to protect [JWR Note: Do we need the clause? It makes the sentence really wordy. Its substance also follows from the first sentence of the rule.] or further the best interest of the ward, protected person, decedent's estate, or trust. [Staff Note: Similar comment to the note above. Also, the beginning of the first sentence seems to include redundant positions. Is there a shorter way of saying the same thing?]~~

~~Market Rates. Market rates for goods and services are a proper, ongoing consideration for the fiduciary and the court during the initial court appointment of a fiduciary or attorney, at a hearing on a budget objection, and on a request to substitute a court-appointed fiduciary or attorney. [JWR Note: I'm not sure what this sentence means. I took a stab at it in the next sentence, but I'm not sure I captured the intent. What does it mean to "consider" market rates?] In appointing a fiduciary or attorney, in ruling or considering on a budget objection, and in ruling on a request to substitute a court-appointed fiduciary or attorney, the court and fiduciary should not agree to pay more than market rates for a good or service. At~~

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~~**any stage of the proceedings, the court may require competitive bids for goods or services.**~~

~~**(c)**~~ **WG Note:** WG-1 was divided about whether this rule should be entirely deleted because it is redundant to ARS 14-1104 and ACJA 3-303, whether section (b) or certain other portions should be retained, or whether to leave the restyled version intact. The WG requests direction from the Task Force. The WG also proposed the alternative of incorporating the provisions of this rule into the order to fiduciary and acknowledgement, which would help to assure that the fiduciary has read and has knowledge of these provisions.

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Rule 10.6. Prudent Management of Costs.

WG Note: WG-1 was divided about whether this rule should be entirely deleted because it is redundant to ARS 14-1104 and ACJA 3-303, whether section (b) or certain other portions should be retained, or whether to leave the restyled version intact. The WG requests direction from the Task Force. The WG also proposed the alternative of incorporating the provisions of this rule into the order to fiduciary and acknowledgement, which would help to assure that the fiduciary has read and has knowledge of these provisions.

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.

(c) 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 with Edits suggested at 10/26 Task Force Mtg:

Rule 19 Appointment of Attorney, Investigator, and Medical Professional

(a) Time and Method. When required under Arizona Revised Statutes Title 14, the petitioner must submit to the court a request for the appointment of an attorney, investigator, or medical professional at the time the petition is filed, except as provided by Rule 15. The request may be included in the petition or filed as a separate motion. The court is authorized to make an appointment without a request, or to appoint an attorney, investigator, or medical professional other than the one nominated 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) Prohibited Attorney Appointments. A petitioner must not request the appointment of an attorney, nor may the attorney accept an appointment, if:

(1) the attorney has an existing attorney-client relationship with the proposed guardian or conservator, or

(2) the attorney has a prior attorney-client relationship with the proposed guardian or conservator, unless after disclosure of the prior relationship to the court and parties, the court approves the appointment.

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

(e) Proposed Order. When the petition is filed, the petitioner must provide to the assigned or authorized judicial officer a blank form of order appointing the attorney, investigator, and medical professional.

(f) Notice to Appointees. The petitioner is responsible for notifying individuals of their appointment by promptly providing 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"]*~~

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

PART VII. GUARDIANS WITH INPATIENT MENTAL HEALTH AUTHORITY

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

(b) Time Limit. The order must specifically state that the guardian's authority terminates no more than one year from the order's filing date

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

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

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

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

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

Strike the Comment

COMMENT

This rule is intended to aid in cases where a guardian has been granted the general duties of a guardian pursuant to A.R.S. § 14-5312 and the additional authority to consent for the ward to receive inpatient mental health care and treatment in a behavioral health facility licensed by the Department of Health Services. By statute, a

guardian's authority to consent to inpatient treatment ends if the guardian does not file an evaluation report at the one-year anniversary, but the guardian's other duties do not end after one year. The guardian with inpatient mental health authority is required to file a report every year to state that the ward needs ongoing inpatient treatment. The purpose of this report is to provide due process for the ward, and helps to ensure the ward is not held in a locked treatment facility if the ward does not require confinement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

COMMENT

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

Consolidated Rule

Rule ####. Order Granting and Renewing the Guardian's Inpatient Mental Health Authority.

(a) Order Granting Guardian Inpatient Mental Health Authority. Upon filing a petition and complying with A.R.S. § 14-5312.01 including the submission of a psychiatrist's or psychologist's evaluation report required under A.R.S. § 14-5312. 01(P) the court can issue an order authorizing the guardian to consent to the placement, care, and treatment of a ward in an inpatient treatment facility.

(1) Time Limit. The order authorizing a guardian to place a ward in an inpatient treatment facility pursuant to A.R.S. § 14-5312.01, and the letters of appointment, must specifically state

(A) the authority that is granted, and

(B) a specified date that the guardian's authority to consent to inpatient mental health care and treatment terminates.

(2) Report and Review. The guardian must file an annual report and an evaluation report, as required by A.R.S. § 14-5312.01(P), at least one month prior to the termination date of the inpatient authority. The court must promptly review the reports, and either approve it, set the report for hearing, or modify the prior order by terminating the guardian's authority to consent for the ward to receive inpatient mental health care and treatment. (Notice to the facility.)

(3) Other Provisions. The order may include other provisions concerning the guardian's authority that the court determines are necessary to protect the ward's best interests. But the court must limit the guardian's authority to what is reasonably necessary in the least restrictive treatment alternative. [**Comment from Lisa:** Should the LOA also include language regarding the guardian's mental health authority? Addressed above in A1]

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

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

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

(b) Renewal of a Guardian's Inpatient Mental Health Authority.

(1) Renewal of Authority. The court can order a renewal of the guardians' authority to consent to inpatient treatment pursuant to A.R.S. §14-5312.01.

(2) Required Filings. A guardian who has been authorized to place a ward in an inpatient treatment facility pursuant to A.R.S. §14-5312.01 has been authorized to consent for the ward to receive inpatient mental health care and treatment in an inpatient psychiatric facility licensed by the Arizona Department of Health Services, and who wants to renew that authority before it expires, must file:

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

(B) a psychiatrist's or psychologist's evaluation report required under A.R.S. § 14-5312.01(P); and

(C) the guardian's annual report if due within one month of the renewal of inpatient mental health authority or a reference to the last annual report and an update on any changes in the information set forth in the last annual report.

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

(4) Proposed Order. When the motion is filed, the guardian also must lodge a proposed order that would grant the motion and renew the guardian's authority. Renewal orders are subject to the requirements of A above.

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

(6) Objection to Motion for Renewal or Request for Hearing. The ward may file an objection to a motion for renewal or may file a request for a hearing under A.R.S. § 14-5312.01(P). If the ward files either an objection or a request for a hearing, the

court must (or may?) enter an order that extends the guardian's authority to consent for the ward to receive inpatient mental health care and treatment in a behavioral health facility licensed by the Arizona Department of Health Services until the court has ruled on the ward's objection, or conducted a hearing on whether the guardian's authority should be renewed.

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

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

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

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

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

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

Strike comment

COMMENT

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

PART VII. GUARDIANS WITH INPATIENT MENTAL HEALTH AUTHORITY

Consolidated Rule STAFF'S REVISED VERSION 10.17.2018 - UPDATED 11.27.18

Rule X. Guardian's Inpatient Mental Health Authority.

(a) Guardian's Petition Requesting Inpatient Mental Health Authority. If a petition complies with A.R.S. § 14-5312.01 and includes the submission of a psychiatrist's or psychologist's evaluation report required under A.R.S. § 14-5312. 01(P), the court may enter an order that authorizes the guardian to consent to the placement, care, and treatment of the ward in an inpatient psychiatric facility.

(1) Order and Letters. The order authorizing a guardian to place the ward in an inpatient psychiatric facility under A.R.S. § 14-5312.01, and the letters of appointment, must describe the authority granted to the guardian and include a specific date that the guardian's authority terminates. The court for good cause may terminate the authority before the specified date.

(2) Other Provisions. The order granting the guardian inpatient mental health authority may include other provisions that the court determines are necessary to protect the ward's best interests. But the court must limit the guardian's authority to what is reasonably necessary and the least restrictive treatment alternative.

(3) Acknowledgement. The court will not issue letters concerning the guardian's inpatient mental health authority until the guardian has signed an acknowledgment of the guardian's power and the court has entered an order substantially similar to Form **.

(4) Emergency Order. The court may temporarily authorize the guardian to consent for the ward to receive inpatient mental health care and treatment, once determination has been made that an emergency exists. ~~as provided by A.R.S. § 14-5310.~~

(5) Reports. The guardian must file an annual guardian's report, as required by A.R.S. § 14-5315. In addition, a guardian who requests to continue the guardian's inpatient mental health authority also must file an evaluation report by a psychiatrist or psychologist, as required by A.R.S. § 14-5312.01(P). The guardian must file the evaluation report no later than 30 days before the termination date of the inpatient authority. The court must promptly review the reports and take appropriate action under A.R.S. § 14-5312.01(P).

(b) Renewal of a Guardian's Inpatient Mental Health Authority.

(1) Renewal of Authority. The court can renew the guardians' authority to consent

to inpatient treatment as provided by A.R.S. § 14-5312.01 and this rule.

(2) Timing. The guardian must file a motion and the other documents required by subpart (b)(3) no later than 30 days before expiration of the order that grants the guardian inpatient mental health authority. If the guardian does not file a motion for renewal before the expiration of the order, the guardian must file a new petition requesting inpatient mental health authority under section (a) of this rule.

(3) Required Filings. A guardian who has been authorized to place a ward in an inpatient psychiatric facility pursuant to A.R.S. §14-5312.01 may request renewal of that authority before it expires by complying with the time requirement of subpart (b)(2) and by filing:

(A) a motion that states grounds for renewal and requests the court to renew the guardian's authority;

(B) a psychiatrist's or psychologist's evaluation report required under A.R.S. § 14-5312.01(P);

(C) the guardian's annual report, if due within one month of the renewal of inpatient mental health authority, or otherwise, a reference to the guardian's last annual report and an update on the information contained in the last annual report.

(D) a proposed order that would grant the motion and renew the guardian's authority. Renewal orders are subject to the requirements of section (a) of this rule.

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

(5) Objection to Motion for Renewal or Request for Hearing. The ward may file an objection to a motion for renewal or may file a request for a hearing under A.R.S. § 14-5312.01(P). The guardian's authority continues pending the court's determination of the motion. If the motion proceeds to a hearing, the guardian has the burden of providing by clear and convincing evidence that the ward is likely to be in need of inpatient mental health care and treatment during the renewal period.

Strike comment

~~COMMENT~~

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

Rule 27.1. Training for Non-Licensed Fiduciaries.

(a) Generally. A guardian, a conservator, or personal representative, who is not a licensed fiduciary or a financial institution, must complete prescribed training programs approved by the Supreme Court and file a Certificate of Completion with the court before letters of appointment are issued, unless the court orders otherwise.

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

Rule 33. Compensation for Fiduciaries, Attorneys, and Statutory Representatives.

(a) Generally. Any request for approval of fiduciary fees, attorney fees, or statutory representation fees must be made in a petition filed under section (b) or section (c) of this rule.

(b) Approval in an Account. When a petition requests approval of a fiduciary's account, and if the fiduciary's account includes the payment of fees to a fiduciary, an attorney, or a statutory representative, the petition may request the court's approval of those fees. Fee statements concerning the fees actually paid must be submitted with the petition, unless the court orders otherwise.

(c) Approval by Separate Petition. If a request for approval of fees was not included in a petition for approval of the fiduciary's account, a fiduciary, an attorney, or a statutory representative may file a separate petition for approval of compensation.

(d) Personal Representatives and Trustees. Unless the court orders otherwise, a personal representative or a trustee, or their attorney, is not required to file a petition for approval of their fees.

(e) Content of Request for Approval. Any request or petition for approval of compensation must be accompanied by statements that include the following information described in subparts (1) through (3):

> **(1)** If the requested compensation is based on hourly rates, the statements must specify the services provided and explain the tasks performed, the date each task was performed, the time expended in performing each task, the name and position of the person who performed each task, and the hourly rate charged for such services. Block billing is not permitted.
>
> **(2)** If the requested compensation is not based on hourly rates, the statement must include an explanation of the fee arrangement and a computation of the fee for which approval is sought.
>
> **(3)** If the request includes reimbursement of costs, the statement must specify each cost, the date the cost was incurred, the purpose of the cost, and the amount of reimbursement requested or, if reimbursement of costs is based on some other method, an explanation of the method being used.

(f) Waiver. An attorney or statutory representative waives compensation from the estate of a ward or protected person if a request is not timely submitted under A.R.S. §14-5110.

(g) Objections. A person objecting to a request for compensation in the account or in a separate petition must provide a specific basis for each objection. The objecting person must mail or provide a copy of the objection to every person who has appeared or requested notice in the case. The person also must file a proof of notice that identifies each person to whom the objection was provided and how notice was provided.

(h) Fee Guidelines. When determining reasonable compensation, the court must follow statewide fee guidelines contained in § 3-303 of the Arizona Code of Judicial Administration.

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

(a) Generally.

(1) Settlement of Personal Injury and Wrongful Death Claims. Any settlement of a personal injury or wrongful death claim brought on behalf of a minor or an adult person in need of protection must be submitted for approval by a judicial officer assigned to hear matters arising under A.R.S. Title 14, regardless of whether a court has previously appointed a conservator for the minor or person in need of protection, except that a judicial officer may approve settlements for minors pursuant to Section 2 below.

(2) Settlement of a Minor's Claim for Less than $10,000. A settlement of a minor's personal injury or wrongful death claim is not binding on the minor until a judicial officer has approved it. Upon request, any judicial officer may approve the payment of money or delivery of personal property to a parent or conservator of a minor in an amount not exceeding $10,000 and may approve the settlement and authorize the recipient to execute appropriate releases of liability as may be required to conclude a settlement.

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

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

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

(1) The reasonableness of the settlement proposal,

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

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

(4) The effect of the settlement on eligibility for public benefits or other resources which might be available, and

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

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

(1) appoint a conservator;

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

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

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

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

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

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

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

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

(6) approve a structured settlement; or

(7) enter any other order authorized by statute.

(e) Duty to Inform. If a fiduciary or other interested person asks the court to approve a distribution from a conservatorship estate, a decedent's estate, or a trust, and if the fiduciary or interested party has knowledge one or more of the distributees is a minor, an incapacitated person, or a protected adult, the fiduciary or interested person must:

(1) notify the court of the distributee's status as a minor, an incapacitated person, or a protected adult; and

(2) if a court has appointed a guardian or conservator for the proposed distributee, or if a court has approved other protective arrangements for the proposed distributee, the fiduciary or interested person must provide the court with a copy of the order appointing the guardian or conservator or the order approving the protective arrangement. [**Note**: Section (e) was derived from current Rule 34.]

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

(a) Generally.

(1) A settlement of a minor's personal injury or wrongful death claim is not binding on the minor until approved by the court.

(2) Settlement of Personal Injury and Wrongful Death Claims. Except as set forth in Section 3 below, a petition for approval of a settlement of a personal injury or wrongful death claim shall only be brought in a proceeding under A.R.S. Title 14, regardless of whether a court has previously appointed a conservator for the minor or person in need of protection.

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

(4) Payment of Money or Delivery of Property in Other Situations. In circumstances not involving a personal injury or wrong death claim, any petition filed to authorize establishment of a suitable trust or other arrangement to avoid the necessity of continuing court supervision must be filed under A.R.S. Title 14. In order to grant the petition, the judicial officer must find that the best interests of the minor or adult person in need of protection would be satisfied by the alternative arrangement.

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

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

(1) The reasonableness of the settlement proposal,

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

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

(4) The effect of the settlement on eligibility for public benefits or other resources which might be available, and

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

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

(1) appoint a conservator;

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

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

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

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

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

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

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

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

(6) approve a structured settlement; or

(7) enter any other order authorized by statute.

(e) Duty to Inform. If a fiduciary or other interested person asks the court to approve a distribution from a conservatorship estate, a decedent's estate, or a trust, and if the fiduciary or interested party has knowledge one or more of the distributees is a minor, an incapacitated person, or a protected adult, the fiduciary or interested person must:

(1) notify the court of the distributee's status as a minor, an incapacitated person, or a protected adult; and

(2) if a court has appointed a guardian or conservator for the proposed distributee, or if a court has approved other protective arrangements for the proposed distributee, the fiduciary or interested person must provide the court with a copy of the order appointing the guardian or conservator or the order approving the protective arrangement.