

Task Force on the Arizona Rules of Probate Procedure

Amended Meeting Agenda

Friday, September 28, 2018

10:00 a.m. to 4:00 p.m.

State Courts Building * 1501 West Washington * Conference Room 230 * Phoenix, AZ

Item no. 1	Call to Order	<i>Hon. Rebecca Berch, Chair</i>
Item no. 2	Approval of the August 24, 2018 meeting minutes	<i>Justice Berch</i>
Item no. 3	Consent agenda: Rule 3 (“Applicability of Other Rules”) Rule 17 (“Petitions in Probate Proceedings”)	<i>Justice Berch</i> <i>Mr. Barron</i>
Item no. 4	Workgroup reports and discussion of rules Workgroup 1: Rule 14, Rule 15, and Rules 15.1 through 15.5 Workgroup 2: Rule 28, Rule 28.1, and Rule 28.2 Workgroup 3: Rule 30, Rule 31, and abrogation of Rules 30.1, 30.2, and 30.3	<i>Judge Polk</i> <i>Judge Olson</i> <i>Judge Mackey</i>
Item no. 5	Roadmap <ul style="list-style-type: none">• Next meeting: Friday, October 26 [Room 119]• Proposed meeting schedule:<ul style="list-style-type: none">○ Friday, November 16 [Room 230]○ Friday, December 14 [Room 119]	<i>Justice Berch</i>
Item no. 6	Call to the Public Adjourn	<i>Justice Berch</i>

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

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

Rule 3. Applicability of Other Rules.

(a) Generally Probate Proceedings.

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

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

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

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

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

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~~(b) Trials and~~

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

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

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

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

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~~(3)~~

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CURRENT COMMENT

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

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

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

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

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

COMMENT TO 2016 AMENDMENT

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

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Rule 3. Applicability of Other Rules.

(a) Probate Proceedings.

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

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

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

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

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

Rule 17. Petitions in Probate Proceedings.

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

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

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- ~~(1) a statute or court rule requires the party to seek the requested relief by filing a petition or in a formal proceeding;~~
- ~~(2) an evidentiary hearing is required before the court may grant the requested relief, or the party seeking relief requests an evidentiary hearing; or~~
- ~~(3) substantive relief, other than relief under Rule 16(a), is requested. [Staff Note: Staff added the underlined words to the draft.]~~

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

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

- ~~(c) must contain a short statement of the requested relief;~~
- ~~(d) may request alternative or different types of relief; and~~
- ~~(e) must comply with Rules 5.2(b) and Rules 8 through 11 of the Arizona Rules of Civil Procedure, applicable to complaints and claims for relief.~~

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

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

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

~~(h)(c) Objection to a Petition, Contested Proceeding: Response.~~ A proceeding becomes contested when a party opposes a petition as follows:

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

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

(2) **Oral-Oral Responseobjections.** AIf an interested personparty does not file a written response 7 or more days before the hearing, the person ~~may~~ must orally ~~obje~~ctrespond to the petition at the hearing, ~~but~~hearing and ~~must~~ file a written ~~objection or motion~~responseobjection, response that objects to the petition, ~~or a motion under Rule 12,~~ within 10 days after the hearing, or as the court directs, stating the reasons for the objection. ~~END HERE 5.24 but still working on e1~~

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[Staff Note: Is this provision necessary?]

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

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

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

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

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

CURRENT COMMENT

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

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

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

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

Rule 17. Petitions in Probate Proceedings.

- (a) **Meaning of “Petition.”** “Petition” is a written request to a judicial officer seeking substantive relief in a probate proceeding, usually requiring advance notice to interested persons and a hearing. “Petition” includes a counter petition, cross-petition, and third-party petition.
- (b) **Form of Petition.** A petition must contain any statements required by statute and comply with Rule 5.2 and Rules 8 through 11 of the Arizona Rules of Civil Procedure applicable to pleadings and claims for relief.
- (c) **Initial Hearing Date.** The petitioner must obtain a date and time for an initial hearing on the petition.
- (d) **Notice of Hearing on the Petition.** The petitioner must timely provide notice as required by statute, which must include a notice of hearing and a copy of the petition, and must file proof of notice with the court.
- (e) **Contested Proceeding: Response.** A proceeding becomes contested when a party opposes a petition as follows:
- (1) **Written Response.** Any party who opposes the relief requested in a petition should file with the court ~~an objection~~ a response that objects to the petition, or a motion under Rule 12 of the Arizona Rules of Civil Procedure, no later than 7 days before the hearing.
 - (2) **Oral Response.** If a party does not file a written response 7 or more days before the hearing, the person must orally respond to the petition at the hearing and file a written ~~objection~~ response that objects to the petition, or a motion under Rule 12, within 10 days after the hearing or as the court directs.
 - (3) **Form of Written Response.** A written ~~objection~~ response must comply with Rule 5.2, and Rules 8 through 11 of the Arizona Rules of Civil Procedure.
 - (4) **Notice of Response.** Unless the court orders otherwise, a party who files a written response to a petition must notify all parties by providing a copy of the response.
- (f) **Joinder or Statement of No Position.** Any party who agrees that the court should ~~enter~~ grant the relief requested in the petition may file a notice of joinder. Any party who takes no position concerning the requested relief may file a statement of no position. A notice of joinder or statement of no position should be made in open court or filed within the times and in the manner provided by section (e).
- (g) **Reply.** Unless the court directs otherwise, a party may not file a reply.

CURRENT COMMENT

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

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

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

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

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

Workgroup 3 Commissioner Julia Connors assigned

Rule 31. Annual Guardian Reports. -

(a) ~~Generally Deliver~~ **[JWR Note: “Serve” is ambiguous. Rule 4 service?]** ~~an~~ **Inventory.** For purposes of this rule, the guardian’s appointment is the date the court first issued letters.

~~(1) **Timing** Generally. A guardian must file the an annual report of guardian on the date established by the court, but in no event later than sixty 60(60) days after the anniversary date of the guardian’s appointment. Unless the court orders otherwise, no later than 90 days after the court issues the personal representative’s letters, a personal representative who is required to prepare an inventory must either, [as required by statute]: **[JWR Note: I could be wrong, but I don’t think (A) and (B) are optional to the PR. I think if there are heirs/devisees, then the PR has to deliver under (B); if there are no heirs/devisees, then the PR delivers under (A). If I am correct, then the bracketed phrase would clarify that. The other option is to rewrite the rule to make the PR’s responsibilities more explicit.]**~~

(1)

- (A) file the original of the inventory with the court, and mail or otherwise deliver a copy of the inventory to any interested person who requests it; or
- (B) mail or otherwise deliver a copy of the inventory to each of the heirs of an intestate estate or to each of the devisees if a will has been probated, and to any other interested person who requests it.

~~(2) **Content/Notice of Delivery.** After mailing or otherwise delivering copies of the inventory under (a)(1), the personal representative The guardian’s annual report must contain the information outlined in A.R.S. (Section) § 14-5315(B), must file a notice of delivery with the court identifying each person to whom the inventory was delivered and the method of delivery to that person.~~

(2)

~~(b) **(b) First Report/Content of Inventory.** Unless the court orders otherwise, the guardian’s first guardianship report must reflect all activity relating to the guardianship from the date of first appointment through, and including, the anniversary date of the guardian’s permanent letters. The personal representative must list in the inventory all the property the decedent owned at the time of the decedent’s death and an estimate of each asset’s value at that time. The inventory~~

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must list only such property known to the personal representative when preparing the inventory.

(e) — (c) Later ReportsMotion for Additional Time. Unless the court orders otherwise, all later guardianship reports must reflect all activity relating to the guardianship from the ending date of the most recently filed guardianship report through, and including, the anniversary date of the guardian's permanent letters. If a personal representative who is required to prepare an inventory is unable to comply with the deadline set forth in this rule, the personal representative must file a motion requesting an extension of time. The motion must be filed before the deadline, and state why the personal representative needs additional time and how much additional time he or she needs to prepare the inventory.

(d) (bd) Motion for Additional TimeCounty with a Court Accountant. If the guardian is unable to file an annual report within the time ~~set forth in~~ provided by this rule, the guardian must file a motion requesting additional time to file the report. The guardian must file the motion before the deadline, state why the guardian needs additional time, and how much additional time is needed to file the report. Unless the court orders otherwise, if a petition for approval of a personal representative's accounting is filed in a county that has a court accountant, the petitioner is not required to submit the accounting to the court accountant for review or to pay the court accountant's fee.

COMMENT

Regarding Rule 31(A). A.R.S. § 14-3706 sets forth the general requirements for the preparation of an inventory. This rule is intended to clarify that the 90 days referred to in that statute begins to run when the personal representative's letters issue. Pursuant to Rule 7(A)(1)(e), the inventory is a confidential document and should be filed as such.

Regarding Rule 31(B). Unlike conservatorships, decedents' estates generally are administered without court supervision. There is no statutory requirement for personal representatives to file annual accountings with the court as a conservator is required to do. This rule is not intended to impose a duty upon a personal representative to petition the court to approve an accounting. The rule is intended to clarify that when a personal representative files an accounting, the accounting is

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~~not subject to review by the court accountant in counties that have a court accountant. In such cases, the court has discretion to decide whether a court accountant should review a personal representative's accounting submitted to the court for approval. For example, the court might order the court accountant to review an accounting in cases involving complex or problematic issues, or in the case of a beneficiary who is a minor or incapacitated or protected adult for whom no conservator or similar fiduciary has been appointed, or in cases involving a beneficiary for whom a fiduciary has been appointed, but whose fiduciary has a conflict of interest.~~

Rule 31. Annual Guardian Reports.

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

(1) *Timing.* A guardian must file an annual report on the date established by the court, but in no event later than 60 days after the anniversary date of the guardian's appointment.

(2) *Content.* The guardian's annual report must contain the information outlined in A.R.S. § 14-5315(B).

(b) Motion for Additional Time. If the guardian is unable to file an annual report within the time provided by this rule, the guardian must file a motion requesting additional time to file the report. The guardian must file the motion before the deadline, state why the guardian needs additional time, and how much additional time is needed to file the report.