

ATTACHMENT*

ARIZONA RULES OF PROBATE PROCEDURE

* * *

Rule 2. Definitions

Unless a term is defined differently in these rules, the definitions in A.R.S. § 14-1201 shall apply to these rules. In addition, unless the context otherwise requires, the following definitions shall apply:

A. [No change in text.]

B. “~~Certified~~ Licensed fiduciary” means a person or entity that is certified by the Supreme Court of Arizona pursuant to A.R.S. § 14-5651.

C.- R. [No change in text.]

* * *

Rule 6. Probate Information Form

A. [No change in text.]

B. If the nominated fiduciary is a ~~certified~~ licensed fiduciary, a national banking association, a holder of a banking permit under Arizona law, a savings and loan association authorized to conduct trust business in Arizona, a title insurance company qualified to do business in Arizona, or a trust company holding a certificate to engage in trust business from the superintendent of financial institutions, none of the information required in section A(1) of this rule need be provided.

C. If the nominated fiduciary is a ~~certified~~ licensed fiduciary, the nominated fiduciary's ~~certification~~ license number shall be included on the probate information form.

D. [No change in text.]

E. Unless otherwise ordered by the court, ~~and except as provided in Rule 10(C)(1)(d)~~, a party who files an information form pursuant to this rule is not required to provide other parties or interested persons with a copy of the information form.

F. [No change in text.]

Comment

[No change in first two paragraphs.]

* Changes and additions to text are indicated by underlining; deletions are indicated by ~~strikeouts~~.

As to the requirement in Rule 6(C), if the nominated ~~certified~~ licensed fiduciary is an entity, only the entity's fiduciary ~~certification~~ license number need be provided. The fiduciary ~~certification~~ license number of an individual is required only if the nominated ~~certified~~ licensed fiduciary is an individual rather than an entity.

Pursuant to Rule 10(C) of these rules, court-appointed fiduciaries have a duty to update the information contained in the information form filed pursuant to this rule. Although Rule 6(E) typically does not require the person filing the probate information form to send a copy of the probate information form to other parties or interested persons, Rule 10(C)(1)(d) requires that, if a person is filing an updated information form reflecting a change to the address or telephone number of a ward, a protected person, or a fiduciary, the person must send a copy of the updated probate information form to the attorney for the ward or protected person, the ward or protected person's guardian ad litem, and all other parties.

Rule 7. Confidential Documents and Information

A. Definitions.

1. For purposes of this rule, “confidential document” means the following:

a.-b. [No change in text.]

c. inventories and appraisements filed pursuant to A.R.S. §§ 14-~~3706(B)~~ or 5418(A);

d.-f. [No change in text.]

2.-4. [No change in text.]

B.-F. [No change in text.]

G. The clerk of the court shall disclose confidential documents, except for the probate information form described in Rule 6, and confidential information only to the following persons:

1.-5. [No change in text.]

6. staff from the Administrative Office of the Courts for the purpose of conducting a compliance audit of a fiduciary or an investigation into alleged misconduct by a ~~certified~~ licensed fiduciary, pursuant to the Arizona Code of Judicial Administration § 7-201.

H. The clerk of court shall disclose the probate information form described in Rule 6 only to the following persons:

1.-4. [No change in text.]

5. staff from the Administrative Office of the Courts for the purpose of conducting a compliance audit of a fiduciary or an investigation into alleged misconduct by a ~~certified~~ licensed fiduciary, pursuant to the Arizona Code of Judicial Administration § 7-201.

I. [No change in text.]

Comment

[No change in first four paragraphs.]

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

[No change in remainder of comment.]

* * *

Rule 9. Notice of Hearing

A.-C. [No change in text.]

D. When a petition for confirmation of the sale of real estate is filed,

1. [No change in text.]

2. Unless otherwise ordered by the court, the notice of the hearing shall be provided to all interested persons in accordance with A.R.S. § 14-1401(A). The court may also require that the notice of hearing be posted on the property to be sold and published in a newspaper of general circulation in the county in which the property is located at least fourteen days before the scheduled hearing for the sale of the property. If the court orders that notice of the hearing be posted on the property to be sold, the notice shall be posted in a place that is visible from the front of the property and, if the property is a structure, in a place that is visible outside the structure.

E. [No change in text.]

Rule 10. Duties Owed to the Court

A.-B. [No change in text.]

C. Duties of Court-Appointed Fiduciaries.

1. A court-appointed fiduciary shall

a. [No change in text.]

b. if the fiduciary is a ~~certified~~ licensed fiduciary who is not also an active member of the State Bar of Arizona, place the fiduciary's ~~certification~~ license number on all documents signed by the fiduciary and filed with the court; ~~and~~

c. file an updated probate information form that contains the information required by Rule 6 of these rules within ten days after any changes in such information, except that if the ward's physical address changes, the ward's guardian shall file the updated probate information form within three days of learning of the change in address; and

d. in the case of an updated probate information form that reflects a change of a subject person's address or telephone number or a change of the fiduciary's address or telephone number, mail or deliver a copy of the updated probate information form to the subject person's court-appointed attorney, the subject person's guardian ad litem, and all parties to the probate case in which the updated probate information form has been filed.

2.-3. [No change in text.]

D. [No charge in text.]

E. Duties of Counsel for Subject Person of Guardianship/Conservatorship Proceeding.

In a guardianship or conservatorship proceeding, the participation of an attorney representing the subject person shall terminate upon the subject person's death. In extraordinary situations, the court, for good cause shown, may authorize the limited participation of the subject person's attorney after the subject person's death. In such cases, the court shall set forth, in its order authorizing the attorney's continued participation, the basis for the continued participation and the scope of the attorney's participation.

Comment

[No change to first five paragraphs.]

Rule 10(E) applies not only to attorneys appointed by the court pursuant to A.R.S. §§ 14-5303(C) and -5407(B), but also to counsel of the subject person's own choosing, as well as counsel nominated pursuant to Rule 19(B). The purpose of a court-appointed attorney in guardianship and conservatorship proceedings is to represent the interests of the subject person and to protect the subject person's civil liberties. Upon the death of the subject person, the subject person no longer has an interest in his or her estate. Therefore, the subject person's attorney's role in the case is no longer necessary. Moreover, a client's death ordinarily terminates the lawyer's representation of the client. See The American College of Trust and Estate Counsel Foundation, *Commentaries on the Model Rules of Professional Conduct* MRPC 1.16 (4th ed. 2006). Accordingly, the subject person's death terminates the representation of that person's attorney. Nothing in the rule, however, is intended to preclude the subject person's attorney

from participating in the case as a creditor of the subject person's estate.

* * *

Rule 17. Petitions

A.-C. [No change in text.]

D. Objection to Petition. Any interested person who opposes the relief requested in the petition shall file with the court, at least three days before the hearing, either an objection to the petition or a motion authorized by Rule 12, Arizona Rules of Civil Procedure, or the person may appear at the hearing and orally object to the petition.

1.-3. [No change in text.]

4. Unless otherwise ordered by the court, a person who files a written objection to a petition shall serve a copy of the objection upon all interested persons and shall file proof of such service with the court. Service of the objection may be made in any of the manners allowed by A.R.S. § 14-1401(A) for service of a notice of hearing.

E.-G. [No change in text.]

* * *

Rule 33. Compensation for Fiduciaries and Attorney's Fees

A. Unless otherwise ordered by the court, All a petitions that requestings approval for payment of compensation to for a personal representatives, trustees, guardians, conservators, guardian ad litem, attorney representing such fiduciary, or an attorney representing the subject person in a guardianship or conservatorship proceeding their attorneys for services rendered in proceedings under A.R.S. Title 14 shall be accompanied by a statement that includes the following information:

1. If compensation is requested based on hourly rates, a detailed statement of the services provided, including the tasks performed, the date each task was performed ~~dates that such services were rendered~~, the time expended in performing each task ~~for performing the services~~, the name and position of the person who performed each task ~~the services~~, and the hourly rate charged for such services;

2. An itemization of costs for which reimbursement is sought that identifies the cost item, the date the cost was incurred, the purpose for which the expenditure was made, and the amount of reimbursement requested, or, if reimbursement of costs is based on some other method, an explanation of the method being used for reimbursement of costs; and

3. [No change in text.]

B.-D. [No change in text.]

E. The superior court may adopt fee guidelines designating compensation rates that may be used in determining the reasonableness of fees payable to ~~certified~~ licensed fiduciaries in cases under A.R.S. Title 14.

F. [No change in text.]

Comment

[No change in first paragraph.]

When a fiduciary asks the court to approve an accounting, the fiduciary necessarily is asking the court to approve, among other things, all the disbursements made by the fiduciary during the accounting period, including any fiduciary or attorney fees paid during the accounting period. Consequently, when a fiduciary files a petition requesting approval of the fiduciary's accounting, the burden is on the fiduciary to supply the information required by Rule 33(A), not just with respect to the fiduciary's fees but also with respect to all fiduciary and attorney fees paid during the accounting period. Pursuant to Rule 33(D), in such cases, the fiduciary should supply fee statements that match the disbursements reported in the accounting. The fee statements may take the form of the invoices paid during the accounting period so long as those invoices contain the information required by Rule 33(A).

[No change in remainder of existing paragraphs.]

The purpose of requiring a detailed statement of services that describes each task performed, the date each task was performed, the amount of time spent on each task, and the person performing each task is to assist the court in determining whether the amount of time spent on a particular task was reasonable. Such requirement is intended to prevent "block billing," which occurs when a timekeeper provides only a daily total amount of time spent working on the case rather than an itemization of the time expended on specific tasks. See, e.g., *Hawaii Ventures, LLC, v. Otaka, Inc.*, 173 P.3d 1122, 1132 (Haw. 2007). "Block billing" makes it difficult, if not impossible, for the court to determine the reasonableness of the time spent on a particular task because all the tasks are lumped together in a single entry that provides only a total amount of time spent. *Id.* That is not to say, however, that the combining of related tasks in a single time entry is prohibited, especially if the time involved for each such task is minimal. For example, if reading an e-mail takes one minute and drafting the response to that e-mail takes four minutes, a single time entry of one-tenth of an hour for both tasks is more appropriate than two time entries of one-tenth of an hour each. Thus, lawyers and fiduciaries should exercise "billing judgment" when writing time entries to ensure that the court can determine whether the time expended was reasonable.

* * *

Rule 35. Civil Arrest Warrants, Orders to Show Cause, and Fiduciary Arrest Warrants

A.-C. [No change in text.]

Comment

[No change in first paragraph.]

The superior court must notify the supreme court if it appears that a ~~certified~~ licensed fiduciary has violated any rule adopted by the supreme court. *See* A.R.S. § 14-5651(D).

Rule 36. Renewal of Guardian’s Inpatient Mental Health Authority

A. Renewal Prior to Expiration of Authority

1. ~~Within~~ No later than thirty days before the anniversary date of the guardian's appointment, 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 licensed by the Arizona Department of Health Services, and who wishes to renew such authority before it expires, shall file with the court the annual report of guardian and physician's or psychologist's evaluation report required by A.R.S. § 14-5312.01(P) and a motion requesting that the court renew the guardian's authority to consent for the ward to receive inpatient mental health care and treatment in a level one behavioral health facility licensed by the Arizona Department of Health Services. In addition, the guardian shall lodge a form of order renewing such authority. The guardian shall serve a copy of the annual report of guardian, a copy of the physician's or psychologist's evaluation report, a copy of the motion, and a copy of the form of order upon both the ward and the ward's court-appointed attorney.

2. [No change in text.]

B. [No change in text.]

* * *

Rule 38. Appendix of Forms

A.-B. [No change in text.]

Form 1. Order to Personal Representative and Acknowledgement and Information to Heirs/Devises

Name of Person Filing Document: _____

Address: _____

City, State, Zip Code: _____

Telephone Number: _____

Attorney Bar Number (if applicable): _____

~~Certified~~ Licensed Fiduciary Number (if applicable): _____

Representing Self or Attorney for: _____

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF <<COUNTY>>

In the Matter of the Estate of	No. <<CaseNo.>>
<<DECEDENT'S NAME>>, Deceased.	ORDER TO PERSONAL REPRESENTATIVE AND ACKNOWLEDGEMENT AND INFORMATION TO HEIRS/DEVISEES

[No changes to text.]

Form 2. Order to Guardian and Acknowledgement

Name of Person Filing Document: _____

Address: _____

City, State, Zip Code: _____

Telephone Number: _____

Attorney Bar Number (if applicable): _____

~~Certified~~ Licensed Fiduciary Number (if applicable): _____

Representing Self or Attorney for: _____

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF <<COUNTY>>

In the Matter of the Guardianship of	No. <<CaseNo.>>
--------------------------------------	-----------------

	ORDER TO GUARDIAN AND ACKNOWLEDGEMENT
<<Ward's Name>>,	
<input type="checkbox"/> a Minor	
<input type="checkbox"/> an Adult	
	(Assigned to the Honorable <<Judicial Officer>>)

[No change in first paragraph.]

1.-14. [No change in text.]

15. If you are not a ~~certified~~ licensed fiduciary and are not related by blood or marriage to the ward, you are not entitled to compensation for your services as the ward's guardian. *See* A.R.S. § 14-5651(J)(1).

[No change in remainder of form.]

Form 3. Order to Conservator and Acknowledgement

Name of Person Filing Document: _____

Address: _____

City, State, Zip Code: _____

Telephone Number: _____

Attorney Bar Number (if applicable): _____

~~Certified~~ Licensed Fiduciary Number (if applicable): _____

Representing Self or Attorney for: _____

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF <<COUNTY>>

In the Matter of the Conservatorship for	No. <<CaseNo.>>
<<Protected Person's Name>>, <input type="checkbox"/> a Minor	ORDER TO CONSERVATOR AND ACKNOWLEDGEMENT
 <input type="checkbox"/> an Adult	(Assigned to the Honorable <<Judicial Officer>>)

[No change in first paragraph.]

1.-13. [No change in text.]

14. If you are not a ~~certified~~ licensed fiduciary and are not related by blood or marriage to the protected person, you are not entitled to compensation for your services as the ward's conservator. *See* A.R.S. § 14-5651(J)(1).

[No change in remainder of form.]

Form 4. Order to Guardian and Conservator and Acknowledgement

Name of Person Filing Document: _____

Address: _____

City, State, Zip Code: _____

Telephone Number: _____

Attorney Bar Number (if applicable): _____

Certified Licensed Fiduciary Number (if applicable): _____

Representing Self or Attorney for: _____

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF <<COUNTY>>

In the Matter of the Guardianship of and	No. <<CaseNo.>>
Conservatorship for	
<<Ward's Name>>,	ORDER TO GUARDIAN AND
	CONSERVATOR AND
	ACKNOWLEDGEMENT
<input type="checkbox"/> a Minor	(Assigned to the Honorable
	<<Judicial Officer>>)
<input type="checkbox"/> an Adult	

[No change in first paragraph.]

GUARDIAN(S)

1. -14. [No change in text.]

15. If you are not a ~~certified~~ licensed fiduciary and are not related by blood or marriage to the ward, you are not entitled to compensation for your services as the ward's guardian and conservator. See A.R.S. § 14-5651(J)(1).

[No change in remainder of form.]