

SUPREME COURT OF ARIZONA

In the Matter of) Arizona Supreme Court
) No. R-13-0038
PETITION TO AMEND RULE 21,)
ARIZONA RULES OF PROBATE)
PROCEDURE) **FILED 08/28/2013**
)
)
_____)

**ORDER
ADOPTING AMENDMENTS TO RULE 21,
ARIZONA RULES OF PROBATE PROCEDURE**

A petition having been filed proposing to amend Rule 21, Arizona Rules of Probate Procedure, on an expedited basis in response to the Legislature's recent passage of House Bill 2308 (Laws 2013, Chapter 26), which will become effective September 13, 2013, and upon consideration,

IT IS ORDERED that Rule 21, Arizona Rules of Probate Procedure, be amended on an expedited basis pursuant to Rule 28(G), Rules of the Supreme Court, in accordance with the attachment hereto, effective September 13, 2013.

IT IS FURTHER ORDERED that this matter shall be opened for comment in accordance with Rule 28(G)(2), Rules of the Supreme Court, until October 25, 2013.

DATED this _____ day of August, 2013.

REBECCA WHITE BERCH
Chief Justice

TO:
Rule 28 Distribution
David K Byers, Administrative Director, Administrative Office of the
Courts

ATTACHMENT*

ARIZONA RULES OF PROBATE PROCEDURE

* * *

Rule 21. Background Check Requirements ~~for Non-Relative Seeking Appointment as Guardian of Minor~~

A. Appointment of Non-Relative as Guardian of Minor. A non-relative who seeks appointment as the guardian of a minor shall submit to a criminal background investigation pursuant to A.R.S. § 14-5206(B). ~~The applicant shall submit a full set of fingerprints and pay the required fee to the appropriate court or clerk division assigned to process such requests for the superior court in that county.~~

B. Appointment of other Persons as Guardian or Conservator. ~~The court or clerk shall forward the background check application, fingerprint card, inventory sheet, and processing fee directly to the Arizona Department of Public Safety. Pursuant to A.R.S. §§ 14-5304 and -5401, the court may require each person who seeks appointment as a guardian or conservator to furnish a full set of fingerprints to enable the court to conduct a criminal background investigation. This rule does not apply to a fiduciary who is licensed pursuant to A.R.S. § 14-5651 or an employee of a financial institution.~~

C. Procedure. ~~The applicant, as required by law or the court, shall submit a full set of fingerprints and pay the required fee to the court or clerk division assigned to process such requests for the superior court in that county. The cost shall not exceed the actual cost of obtaining the person's criminal history information. The court or clerk shall forward the background check application, fingerprint card, inventory sheet, and processing fee directly to the Arizona Department of Public Safety.~~

Comment

A person not related to a minor who wishes to be appointed as guardian for that minor must undergo a criminal background investigation before the hearing on the petition to appoint a guardian. At the court's discretion other persons seeking appointment must undergo a criminal background investigation before appointment as a guardian or conservator. Licensed fiduciaries undergo background checks in the licensing process. Employees of financial institutions are exempted from these

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

requirements by statute. The investigation is designed to assist the court in determining the applicant's suitability to serve as a guardian or conservator. Applicants should contact the court or clerk division assigned to probate matters in the county for information regarding how to obtain a fingerprint card application and inventory sheet (where applicable) and where to be fingerprinted.

The Department of Public Safety conducts criminal history records checks pursuant to A.R.S. § 41-1750 and ~~applicable federal law~~ Public Law 92-544. The Department submits the fingerprint card information to the Federal Bureau of Investigation for a national criminal history records check. The Department of Public Safety then forwards the results of the background check to the court before ~~appointment of a non-relative as a guardian for a minor~~ occurs.

The criminal background check process may take six to eight weeks to complete once the Department of Public Safety has received the paperwork from the court or clerk. In most circumstances, the court will not ~~appoint a non-relative as guardian for a minor~~ make the appointment until the background check has been completed. In emergency circumstances, the court may make a temporary appointment ~~of a non-relative as guardian~~ pending receipt of the background check results.

In most counties, the clerk's office is charged with the responsibility for distributing the fingerprint cards and instructions for fingerprinting to applicants for appointment as a guardian or conservator. In Maricopa County, the Probate Court Administrator's Office handles the fingerprinting process.

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