

SUPREME COURT OF ARIZONA

In the Matter of ) Arizona Supreme Court  
 ) No. R-18-0039  
RULE 28.2, RULES OF PROBATE )  
PROCEDURE ) **FILED 12/13/2018**  
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**ORDER  
ADOPTING ON AN EMERGENCY BASIS  
NEW RULE 28.1,  
ARIZONA RULES OF PROBATE PROCEDURE**

On December 3, 2018, the Task Force on the Arizona Rules of Probate Procedure filed a rule petition proposing the adoption on an emergency basis of a new Rule 28.2 of the Arizona Rules of Probate Procedure. Upon consideration of the petition and noting that currently there is no Rule 28.1 of the Arizona Rules of Probate Procedure,

IT IS ORDERED that pursuant to Rule 28(G), Arizona Rules of the Supreme Court, Rule 28.1 of the Arizona Rules of Probate Procedure is adopted as set forth in the attachment to this Order, effective January 1, 2019.

IT IS FURTHER ORDERED that this matter shall be opened for comment, with comments due by May 1, 2019, and any reply due by

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June 1, 2019, in accordance with Rule 28(B)(2), Arizona Rules of  
the Supreme Court.

DATED this 13<sup>th</sup> day of December, 2018.

/s/

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SCOTT BALES  
Chief Justice

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TO:

Rule 28 Distribution List

Hon. Rebecca White Berch

## ATTACHMENT

### ARIZONA RULES OF PROBATE PROCEDURE

#### **Rule 28.1. Demand for Jury Trial in Guardianship and Conservatorship Proceedings.**

**(a) Demand.** On any issue triable of right by a jury in a guardianship or conservatorship proceeding, a party may obtain a jury trial by filing and serving a written demand at any time after the proceeding is commenced, but no later than 30 days after the initial hearing on the petition. The demand may not be combined with any other motion or pleading filed with the court.

**(b) Specifying Issues.** In its demand, a party may specify the issues for which it requests a jury; otherwise, the party is deemed to have demanded a jury trial on all issues triable by jury. If a party has demanded a jury trial on only some issues, any other party may—within 10 days after the demand is served or within a shorter time ordered by the court—serve a demand for jury trial on any other or all factual issues triable by jury.

**(c) Waiver; Withdrawal.** A party waives a jury trial unless its demand is properly filed and served. A proper demand may be withdrawn only if all parties consent.

**(d) If a Demand Is Made.** If a jury trial is demanded, the action must be tried by jury unless:

- (1) all parties file a stipulation to a nonjury trial or so stipulate on the record; or
- (2) the court, on motion or on its own, finds that there is no right to a jury trial on some or all of those issues.

**(e) If No Demand Is Made.** The court must try all issues on which a jury trial is not properly demanded. The court may, on motion, order a jury trial on any issue for which a jury might have been demanded.

**(f) Advisory Jury; Jury Trial by Consent.** In an action not triable of right by a jury, the court, on motion or on its own:

- (1) may try any issue with an advisory jury; or
- (2) may, with the parties' consent, order a jury trial on any issue, and the verdict will have the same effect as if a jury trial had been held as a matter of right.