

# **Task Force on the Arizona Rules of Probate Procedure**

## **Meeting Agenda**

**Friday, June 15, 2018**

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

State Courts Building \* 1501 West Washington \* Conference Room 119 \* Phoenix, AZ

Item no. 1	<b>Call to Order</b>	<i>Hon. Rebecca Berch, Chair</i>
Item no. 2	<b>Approval of the May 8, 2018 meeting minutes</b>	<i>Justice Berch</i>
Item no. 3	<b>Workgroup reports and discussion of rules</b>  <b>Workgroup 1: Rules 6 and 11 (revisited), and an introduction to a proposed new rule regarding types of court events</b>  <b>Workgroup 2: Rules 16, 17, and 18</b>  <b>Workgroup 3: Rules 19, 22, 35, and 37; and discussion of limited guardianships and minor conservatorships</b>	<i>Judge Polk</i>  <i>Judge Olson</i>  <i>Judge Mackey</i>
Item no. 4	<b>Roadmap</b> <ul style="list-style-type: none"><li>• Meeting schedule</li><li>• Next meeting: Friday, July 27, 2018</li></ul>	<i>Justice Berch</i>
Item no. 5	<b>Call to the Public</b>  <b>Adjourn</b>	<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.

**Probate Rules Task Force  
State Courts Building, Phoenix  
Meeting Minutes: May 8, 2018**

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

**Absent:** Hon. Wayne Yehling

**Guests:** None

**AOC Staff:** Theresa Barrett, Jodi Jerich, Mark Meltzer, Angela Pennington, Lou Ponesse, Jacob Oubre

**1. Call to order; preliminary remarks; approval of meeting minutes.** The Chair called the second Task Force meeting to order at 10:00 a.m. She welcomed the members and introduced a proxy. She advised that workgroups met seven times after the first Task Force meeting and prepared ten rules for presentation at today's meeting. She then asked members to review draft minutes of the first meeting. There were no corrections to the draft.

**Motion:** A member moved to approve the April 6, 2018 meeting minutes, the motion received a second, and it passed unanimously. **PRTF: 001**

**2. OneDrive.** The Chair had announced at the first meeting that members would utilize Microsoft's OneDrive, a cloud-based document storage application, to facilitate the members' collaboration on restyling the probate rules. OneDrive has been effectively used for other recent rules restyling projects, but some Task Force members have had difficulty using OneDrive's editing features. The Chair invited Lou Ponesse, manager of the AOC's Support Center, and Jacob Oubre, an AOC SharePoint administrator, to address this issue. Mr. Ponesse acknowledged the problem and informed members that it probably was the result of Microsoft's recent changes to OneDrive. Consequently, Task Force members who are not on the Court's intranet have limitations editing Word documents. Notwithstanding Microsoft's recent changes, members should be able to track their changes in online versions of the rules, but Microsoft has not yet fully implemented that function and it may take a couple more weeks for Microsoft to do so. Mr. Ponesse assured members that the origin of their problems is with Microsoft rather than the AOC, and he encouraged members to contact the Support Center for assistance, including a temporary workaround, as needed.

3. **Workgroup 2.** The Chair then requested reports from the workgroups on their assigned rules, beginning with Workgroup 2. She asked that members defer motions to approve rules because as the Task Force progresses, it might need to make subsequent modifications to rules it previously considered. But the Chair encouraged members to reach informal consensus today as they reviewed and discussed each rule.

Judge Olson presented four rules on behalf of Workgroup 2. Judge Olson first made observations concerning the intended audience for the restyled rules. If the Task Force believed that its intended audience is self-represented litigants, the rules could be written as a how-to user manual. But the information self-represented litigants rely upon is typically provided in printed forms and the instructions that accompany those forms. Workgroup 1 concluded that the real audience for the restyled rules is professionals, and it approached restyling with a view toward the needs of attorneys and licensed fiduciaries. Workgroup 2 was cautious about including exhaustive lists and statutory citations in its rules to avoid the unintended omission of any necessary details or provisions. Comments to Workgroup 2's rules are labeled "current comments" because the workgroup did not anticipate keeping any of them. Finally, Judge Olson noted that Rules 1, 2, and 3 are complementary and he requested members to consider them collectively.

**Rule 1 ("Scope, Applicability, and Construction"):** The workgroup spent hours on this rule over the course of two sessions. The workgroup's draft differs from the current rule because it has three sections (scope, applicability, and construction) rather than one. Section (a) concerning scope is brief and it defers to Rule 2 an enumeration of the types of probate proceedings. Section (b) regarding applicability informs users that the rules apply to parties who are self-represented as well as to those represented by counsel. The workgroup presented section (c) concerning construction in three versions, all of which included principles of construing the rules to effect "consistent, predictable, prompt, efficient, and just" resolution of probate proceedings. (Current Rule 1 does not include the principles of "consistent" or "predictable.") But the three section (c) versions had nuanced differences regarding the emphasis each placed on court enforcement of the rules.

Members had concerns that infrequent judicial enforcement of court rules resulted in increased costs and reduced consistency and predictability. But members also tried to balance the court's need to enforce rules without unduly limiting the court's necessary discretion in a myriad of circumstances. One member noted that few cases are contested. Most cases are uncontested and typically involve self-represented litigants or attorneys who "dabble" in probate, and judges should have considerable flexibility in fashioning a just process in those cases. In contested cases, by contrast, members believed the rules should be more than mere guidelines and should instead ensure that cases are litigated as the rules and statutes direct. Members had an extensive discussion of these concepts. They rejected suggestions to reverse the order of the verbs "construe" and "enforce," or

to substitute “interpret” for “construe.” Members then agreed to the following version of Rule 1(c):

The court must enforce and construe these rules in a manner that ensures a consistent, predictable, prompt, efficient, and just resolution of probate cases.

Members further agreed that it was not necessary to include in the restyling a comment to the current rule.

**Rule 2 (“Probate Case and Proceedings”):** Restyled Rule 2 was derived from current Rules 2(O) and 2(P). The restyled rule distinguishes a probate case from a probate proceeding and provides the meaning of the term “non-probate proceeding.” A probate case is the basic container. It includes a probate case number and probate proceedings, and it may include non-probate proceedings. A probate case will include one or more probate proceedings arising under Title 14 or specified provisions of Title 12 or Title 36. A non-probate proceeding is one that could be filed as a separate case, that is, other than as a probate case, but it might also be appropriately filed within, or consolidated with, a probate case. A member suggested revising the text of Rule 2(a) to read, “These definitions distinguish between a probate case and the various proceedings that may occur within the case.” Task Force members concurred with this suggestion and agreed that this sentence was clearer and more direct than the workgroup’s draft.

In conjunction with Rule 2, members discussed surcharge actions. Can a third party be brought into a probate case in these actions without a summons? If they do not appear, can the court enter a default? Members distinguished situations where a person was already participating in a probate case from those where a new entity such as a bonding company was brought into the action. The latter could probably be sued in a civil action, the clerk would accordingly issue a summons, and a default procedure could occur if the defendant failed to respond. On the other hand, a fiduciary who has appeared in the probate proceeding is under the court’s authority and need not be served with a summons, and members declined to incorporate a summons provision in the probate rules. However, one member recommended that even in this circumstance, a private process server should serve the fiduciary to confirm the fact of service. The court might also require personal service under A.R.S. § 14-1401, and the Chair suggested Workgroup 1 propose language for a rule if it believed one was necessary to address this issue.

**Rule 2.1 (“Definitions”):** Judge Olson described Rule 2.1 as the receptacle of definitions in the probate rules. The workgroup already deleted some definitions in current Rule 2 that it believed unnecessary, and members can add other definitions to Rule 2.1 as this project progresses. He suggested that if a definition is specific to a single rule, the rule should include the definition, but if the defined term appears in multiple rules, it should probably be defined in Rule 2.1. The Chair encouraged members to provide definitions that are meaningful for self-represented litigants. The Task Force will revisit this rule in the future.

**Rule 3 (“Applicability of Other Rules”):** Judge Olson coupled his discussion of Rule 2 with Rule 3. He noted the workgroup’s simple provision, set forth in Rule 3(b), for applying other rule sets in non-probate proceedings. This provision says, “In non-probate proceedings, the same procedure and evidence rules apply as if the matter had been litigated as a separate action.” Judge Olson believes this is a straightforward navigation provision that will direct users to the appropriate rule set in a non-probate proceeding. The appropriate rules could be civil or family, as current Rule 3 indicates, but they might also be eviction rules, protective order rules, or other rules. Judge Olson suggested changing the last word of Rule 3(b), “action,” to the word “case.” A member noted that in its draft, the workgroup had removed a specific reference in current Rule 3 to the juvenile rules, and that at least in Maricopa County, proceedings concerning guardians for minors occur in juvenile court rather than in the probate department. Judge Olson suggested addressing this by inserting the word “qualifying” before the word “civil” in Rule 2(d), which concerns the meaning of a non-probate proceeding, but members declined this suggestion pending further information about the statewide process for handling guardianships of minors. In this regard, members noted the last sentence of the current comment to Rule 3, which describes consolidation of a probate proceeding and a juvenile case. This led to a discussion of the entire comment. One member suggested retaining the comment and observed that the concept of a “case within a case” described in the comment is useful and illustrative. But after further review of the comment, members could not find enough justification to retain it and the comment will be removed for now.

**4. Workgroup 1.** Judge Polk presented Rules 6 and 11 on behalf of the workgroup.

**Rule 6 (“Probate Information Form”):** The workgroup made stylistic changes to the draft. Substantive changes included the addition in section (c) (“required information”) of the fiduciary’s work and cell phone numbers, and an email address. Judge Polk explained that this is a confidential form the court uses to track fiduciaries, and the fiduciary’s information might be used for issuing a fiduciary arrest warrant. Mr. Nash explained the clerk’s process for keeping the information confidential. For unknown reasons, Pima County required the decedent’s date of birth, and this data field was included in current Rule 6(c).

The workgroup proposed that it might be simpler and more effective to include the data fields specified in section (c) within a statewide form. The rule could direct fiduciaries to complete the form rather than detailing those fields in the rule. If the Task Force adopted this alternative, members inquired where fiduciaries would be able to find the form. Self-represented litigants might not readily look for the form in the Arizona Code of Judicial Administration, and the company that publishes court rules might not include forms in its products. Members also discussed whether a rule petition would be necessary whenever the form required amendment, which could be onerous. Staff noted Rule 148(a) of the Justice Court Rules of Civil Procedure, which provides an expedient

process for the AOC's administrative director to modify forms in response to changes in state laws or procedures, or to make administrative amendments or technical corrections, without the need to file a rule petition.

Regardless of whether a form is adopted, a judge member recommended that the rule should require sufficient information to locate fiduciaries. The member noted that courts cannot just close their files when fiduciaries fail to appear, and that courts spend considerable time and resources attempting to locate these individuals. Members discussed a range of new fields, including third party-contact information, which the members rejected; and prior addresses, maiden names, aliases, and photographs, or a copy of a driver's license or statewide identification card, which might be useful. One member was concerned that if the rule or form required more personal information, fiduciaries would submit incomplete forms. Another factor is that guardianships and conservatorships can last for decades, but fiduciaries rarely update the current information forms when their demographic information changes. It would be helpful to bolster the provision requiring updated information. To assess the need for fiduciaries' information, one member requested data on the number of fiduciary arrest warrants the court issues. Members were generally supportive of a statewide probate information form, and Workgroup 1 will create a form and return it to the Task Force for further discussion.

***Rule 11 ("Telephonic Attendance and Testimony"):*** The Family Law Rules Task Force recently restyled its corresponding rule concerning telephonic appearances and testimony. Although the workgroup used that restyling as a model, Judge Polk noted that the workgroup modified that rule to meet the needs of a probate court. In doing so, the workgroup changed "telephonic appearance" to "telephonic attendance" to accommodate those who want to attend and listen without making a formal appearance. Judge Polk further explained distinctions in the draft rule between attending and testifying. Although the last paragraph of the current comment is advisory, he suggested retaining that paragraph in the restyling.

Judges from non-urban counties took exception to a provision in the draft rule that would require filing a motion to allow telephonic attendance or testimony no later than 30 days before the hearing. Those judges thought this time requirement was unrealistic and advised that many requests are filed at the last minute. One judge described last-minute requests as routine, and thought that in uncontested matters, the requests should be presumptively granted. Another judge observed that some minute entries advise parties that they may attend telephonically without the necessity of a request. One judge noted a preference for allowing requests filed on the day of a hearing because that would be consistent with the principles enumerated in Rule 1.

Members considered adding a "good cause" requirement that would permit a judge to waive the 30-day limit, but other members disagreed with that addition. Some believed a provision in the draft could allow a judge to authorize a shorter time, but this

would necessitate two filings, first to allow filing a request within 30 days of a hearing, and second, filing the actual request after the court grants the first. But other members thought the rule should require some notice, particularly for a request to allow a witness' telephonic testimony or for any evidentiary hearing. As a compromise, a member suggested filing a notice rather than a motion, because a party could choose not to object to the former. Another member noted that telephonic appearances reduce the parties' expenses, and the request process should be accordingly simple. A judge member cautioned against a one-size-fits-all rule. For example, a status conference should be amenable to telephonic attendance, but the number of parties might make that impractical. If everyone on a long calendar of uncontested hearings wanted to attend by telephone, it might create logistical issues for the court. The judge suggested that the rule provide for considerable judicial discretion in allowing telephonic attendance.

The Chair concluded the discussion by directing Workgroup 1 to prepare an alternative version with some notice provision and with consideration of the members' comments at today's meeting.

**5. Workgroup 3.** Judge Mackey presented four rules on behalf of Workgroup 3.

***Rule 20 ("Affidavit of Proposed Guardian or Conservator"):*** Current Rule 20 is a single sentence followed by an exception contained in a longer comment. Both the rule and the comment include a statutory reference. Workgroup 3 reorganized Rule 20 into two sections; the first section is based on the current rule, and the second section is taken from the comment. Notwithstanding, the workgroup questioned whether it was necessary to retain the rule, because its substance also is in the referenced statute. The Chair noted that when a substantive requirement is in a statute, we should not repeat it in a rule, unless the intent is to assist self-represented litigants, in which event we should repeat it. Members agreed that incorporating some statutory requirements in rules while omitting others was an irrational approach. Moreover, if a rule repeats the content of a statute, the rule would require amendment for any statutory change. After discussion, the members' consensus was to recommend abrogation of Rule 20.

***Rule 21 ("Background Check Requirements"):*** 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, members agreed they should instead have access to a handbook that sets out the statutory requirements. One member proposed striking every probate rule that incorporates statutory provisions. Although the members did not go that far, they did agree to recommend the abrogation of Rule 21.

***Rule 26.1 ("Request for Findings on Appointment"):*** The substantive content of this rule is also covered by statute. Although the workgroup considered whether to retain this rule to address the priority for appointment of a guardian of a minor, it concluded that this alone was not a sufficient basis for keeping the rule. Accordingly, the workgroup recommended abrogating Rule 26.1, and the Task Force concurred.

**Rule 27.1 (“Training for Non-Licensed Fiduciaries”):** The workgroup noted that this rule does not fit well in its current location within Part V (“contested probate proceedings”), and it recommended relocating these provisions to Part IV, which concerns the appointment of fiduciaries. Task Force members agreed. Ms. Appel also explained other proposed restyling modifications to the draft. A member asked whether the Certificate of Completion referenced in section (a) was filed with the court, as specified in the rule. Mr. Nash noted that the clerk requires the certificate or other proof of training, such as a finding in a minute entry. Accordingly, section (a) includes the phrase, “unless the court orders otherwise.” One member advised that the training appears to consist of simply a dozen PowerPoint slides, with the last slide constituting the Certificate of Completion. Members agreed that the Task Force should recommend to the AOC’s Education Services Division that the training be sufficiently robust and topically specific; and if it is presented as a PowerPoint presentation, that there be some means to authenticate that the fiduciary in fact read the presentation.

Because the title of Rule 27.1 refers to non-licensed fiduciaries, a member inquired why section (b), which excepts licensed fiduciaries and financial institutions from the section (a) training requirement, was necessary. One member responded that the rule title is not part of the rule’s substance, so the exceptions need to be specified in the body of the rule. A judge member supported retaining section (b), which includes statutory references that contain the definition of a financial institution. The member was concerned that this term would be undefined if section (b) was deleted. Another member observed that although financial institutions are exempt from the licensing requirement for fiduciaries under A.R.S. § 14-5651, they are only exempt from the non-licensed fiduciary training requirement because of the language of Rule 27.1(b). The member noted that removing section (b) would require financial institutions to have the specified training, so the abrogation of section (b) might have untoward consequences. Members considered two alternatives to address this issue. One alternative would add language in section (a) containing an exception for financial institutions; the other alternative was to retain section (b). Although a majority initially favored the first alternative, Mr. Nash favored the second option because the rule is more directive if the exceptions are explicitly specified. Another member favored retaining section (b) to not rile financial institutions. Also, removal of section (b) would necessitate a definition of financial institutions and licensed fiduciaries elsewhere, probably in Rule 2.1. One member suggested new language in section (a) to address fiduciaries licensed by the AOC and financial institutions as defined under pertinent statutes. Workgroup 1 volunteered to work on this issue further and to obtain input from Workgroup 3.

**6. Roadmap.** The previously proposed meeting date of Friday, June 8 is no longer available. Based on members’ indicated availability, the Chair confirmed a new date for the third Task Force meeting: Friday, June 15, beginning at 10 a.m. in Conference Room 119. She also suggested either Friday, July 13, or Friday, July 27, for the fourth Task Force meeting. She directed staff to poll the members after today’s meeting for their availability on these two dates. In response to a question from a member, the Chair and

staff confirmed that meeting materials were available to the public on the Task Force webpage.

The Chair commended the workgroups for their progress and the members for the quality of today's discussions.

7. **Call to the public.** There was no response to a call to the public.
8. **Adjourn.** The meeting adjourned at 2:19 p.m.

## Rule 6. Probate Information Form- and Notice of Change of Contact Information Form.

(a) Definitions. For purposes of this rule,

(1) “Contact information” means that information designated on the Probate Information Form as contact information.

(2) “Fiduciary” means personal representative, guardian, or conservator, whether temporary or permanent.

### (ab) Probate Information Form

(1) Generally. A party who requests the appointment of a personal representative fiduciary must file a court approved “Probate Information Form.” Probate Information Form that is substantially similar to Form 11 in ~~the Arizona Code of Judicial Administration~~ Rule 38. For purposes of this rule, “fiduciary” is limited to a personal representative, special administrator, guardian, or conservator. A party who requests the appointment of a guardian or conservator, whether temporary or permanent, must file a Probate Information Form that is substantially similar to Form 12 in ~~the Arizona Code of Judicial Administration~~ Rule 38.

(2) (b) Exception. A party does not need to file a Probate Information Form if the nominated fiduciary is 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.

(3) (e) Trust Proceedings. In a proceeding relating to the internal affairs of a trust, ~~the court may require~~ a party to file a Probate Information Form that is substantially similar to Form 13 in ~~the Arizona Code of Judicial Administration~~ Rule 38 or to provide the court with other information relating to the trustor, the trustee, the trust protector, or the beneficiary. ~~the information in the “Probate Information Form” or other information relating to a trust, including information regarding trust beneficiaries, trustees, and trustors.~~

(4) Confidentiality. Confidentiality. The court must maintain an information forma Probate Information Form filed under this rule as a confidential document under Rule 7.

(5) No Service. Except as required by the court, a party who files a Probate Information Form, including an updated Probate Information form, is not required to provide other parties or interested persons with a copy of the Probate Information Form.

(6) Non-Compliance. The clerk may not reject a petition or application because the filing party failed to provide all the information required in the Probate Information Form.

Unless otherwise ordered by the court, a Notice of Change of Contact filed under this rule must be maintained as part of the public record.

(b) Exception. A party does not need to provide the information required in (c)(1) if the proposed fiduciary is a 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. However, if the proposed personal fiduciary is a licensed fiduciary, the fiduciary's license number must be included on the probate information form.

(dc) Duty to Provide Updated Information Notice of Change of Contact Information.

(i1) Change Generally.

(A) Change in Contact Information for Fiduciary. If a fiduciary's contact information changes during the fiduciary's appointment in probate case, that fiduciary must file a Notice of Change of Contact Information Form that is substantially similar to Form 14 in ~~the Arizona Code of Judicial Administration~~ Rule 38 within ~~ten~~ 10 days after such change occurs.

(B) (ii) Change Change in Contact Information for Ward. If a ward's contact information changes, the ward's guardian must file a Notice of Change of Contact Information Form that is substantially similar to Form 15 in ~~the Arizona Code of Judicial Administration~~ Rule 38 within ~~3~~ three days of learning of such change.

(C) (iii) Other Other Information. If a fiduciary learns that any other information on the most recently filed Probate Information Form is incomplete or incorrect, the fiduciary must file an updated Probate Information Form within ten days after learning of the missing or incorrect information. |JP21

(Div) Trusts. A trustee appointed by the court must file an updated Probate Information Form as ordered by the court.

~~(ee) Confidentiality. The court must maintain an information form a Probate Information Form filed under this rule as a confidential document under Rule 7. Unless otherwise ordered by the court, a Notice of Change of Contact filed under this rule must be maintained as part of the public record.~~

~~Confidentiality. The court must maintain an information form filed under this rule as a confidential document under Rule 7.~~

~~(df) Service of Initial Probate Information Form. Except as required by Rule 10(C)(1)(d) or by the court, a party who files a form Probate Information Form, including an updated Probate Information form, under this rule is not required to provide other parties or interested persons with a copy of the Probate Information Form. form.~~

~~(g) Service of Notice of Change of Contact Information. (2) No Confidentiality. Unless the court orders otherwise, a Notice of Change of Contact Information filed under this rule must be maintained as part of the public record. Unless otherwise ordered by the court,~~

~~(3) Service. a Unless the court orders otherwise, a person who files Notice of Change of Contact Information the Fform must mail or deliver a copy of the Notice of Change of Contact Information Fform 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 Notice of Change of Contact Information Form has been filed.~~

~~(4) Non-Compliance. Absent good cause, the fiduciary must pay all costs of the court or the estate that result from a failure to timely provide a notice of change of contact information.~~

~~(h) Non-Compliance. The clerk may not reject a petition or application because the filing party failed to provide all the information required by this rule in the Probate Information Form.~~

~~(i) Definitions. For purposes of this rule,~~

~~—— (i) “Contact information” means that information designated on the Probate Information Form as contact information.~~

~~(ii) “Fiduciary” means personal representative, guardian, or conservator.~~

## **Rule 6. Probate Information Form.**

~~(a) Generally. If a petition or application requests the appointment of a personal representative, a guardian, or a conservator, the person filing the petition must also file a form that contains the information specified in (c) must accompany the petition or application.~~

~~(b) **Exception.** None of the information required in (c)(1) needs to be provided if the proposed personal representative, guardian, or conservator is a 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. However, if the proposed personal representative, guardian, or conservator is a licensed fiduciary, the fiduciary's license number must be included on the probate information form.~~

~~(c) **Required Information.**~~

~~(1) *About the Proposed Personal Representative, Guardian, or Conservator.* The form must include the proposed personal representative's, guardian's, or conservator's:~~

~~(A) mailing address;~~

~~(B) physical address;~~

~~(C) home telephone number; [**Staff Note:** Include a cell phone number? An email address?]~~

~~(D) work telephone number;~~

~~(E) date of birth;~~

~~(F) social security number;~~

~~(G) race, height, weight, eye color, hair color; and [**Staff Note:** Would it be feasible to require a photograph of the person's face? Include the person's gender/sex?]~~

~~(H) relationship to the decedent, or to the person alleged to be incapacitated or in need of protection; and;~~

~~(I) if a licensed fiduciary, the entity's or individual's license number.~~

~~(2) *About the Person Alleged to Be Incapacitated or Needing Protection.* The form must include the following information for a person alleged to be incapacitated or needing in need of protection:~~

~~(A) mailing address;~~

~~(B) physical address;~~

~~(C) home telephone number;~~

~~(D) date of birth; and~~

~~(E) social security number.~~

~~(3) *About a Decedent.* For appointment of a personal representative of a decedent's estate, the form must include the decedent's date of birth.~~

~~(d) **Confidentiality.** The court ~~will~~ must maintain an information form filed under this rule as a confidential document, as provided in Rule 7.~~

~~(e) **Service.** Unless the court orders otherwise, and except as provided in Rule 10(C)(1)(d), a party who files a form under this rule is not required to provide other parties or interested persons with a copy of the form.~~

~~(f) **Non-Compliance.** ~~The petitioner's or applicant's~~ A party's failure to provide all the information required by this rule does not preclude the filing of a petition or application.~~

## **COMMENT**

~~For various administrative functions, the court needs certain basic identifying information regarding fiduciaries and their wards and protected persons. The sole purpose of the probate information form is to provide the court with the information it needs to identify accurately the fiduciary and the ward or protected person. In some counties, the data contained in the probate information form will be entered into the court's electronic database and maintained by the clerk of the court or court administration. Each document filed with the court under Title 14 is deemed to include an oath, affirmation, or statement to the effect that the representations in it are true to the best of the knowledge of the person signing the document, and thus each document may subject the person signing or filing it to penalties relating to perjury. A.R.S. § 14-1310.~~

~~Generally, proceedings relating to the administration of a trust are not subject to the requirements of Rule 6. However, nothing in this rule limits the court's authority to request the information listed in Rule 6 or other information relating to a trust, including information regarding trust beneficiaries, trustees, and trustors.~~

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

**PROBATE FORM 11:**  
**PROBATE INFORMATION FORM FOR DECEDENT’S ESTATE**

**Name of Person Filing Document:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**City, State, Zip Code:** \_\_\_\_\_

**Telephone Number:** \_\_\_\_\_

**Attorney Bar No. (if applicable):** \_\_\_\_\_

**Licensed Fiduciary No. (if applicable):** \_\_\_\_\_

**Representing  Self or  Attorney for:** \_\_\_\_\_

**IN THE SUPERIOR COURT OF ARIZONA**  
**IN AND FOR THE COUNTY OF \_\_\_\_\_**

**IN THE MATTER OF THE ESTATE OF:** \_\_\_\_\_

**Case Number:** \_\_\_\_\_

\_\_\_\_\_,

**PROBATE INFORMATION FORM**

**Deceased.**

**Updated** *(check this box if this is an updated form)*

**INSTRUCTIONS:**

- 1. Complete this form to the best of your knowledge and ability and then file it with your application or petition.**
- 2. If you later learn of additional information that you omitted or if you later learn that any information in this form is incorrect, you must file an updated probate information form.**
- 3. Items designated with an asterisk (\*) constitutes “contact information” under ~~r~~Rule 6, ~~arizona~~Arizona ~~r~~Rules of ~~p~~Probate ~~p~~Procedure. If contact information changes, you must file a notice of change of contact information.**

4. This form is filed as a confidential ~~document~~document, so it is *not* available to the general public. In addition, you are *not* required to provide anyone **with this form**, other than the court ~~with this form~~.

Section 1:

Information About the Nominated Personal Representative/Special Administrator:

A. Name: \_\_\_\_\_

B. Is this person or entity an Arizona Licensed Fiduciary?  Yes  No

a. If Yes, write that person or entity's Licensed Fiduciary Number on the line below:

\_\_\_\_\_

C. Mailing Address:\* \_\_\_\_\_

D. Physical Address:\* \_\_\_\_\_

E. Work Telephone Number:\* \_\_\_\_\_

F. Email Address:\* \_\_\_\_\_

*(If the nominated personal representative/special administrator is an Arizona Licensed Fiduciary, or a Financial Institution, proceed to Section 2 below. Otherwise, ~~continue with question G~~complete the remainder of Section 1.)*

G. Home Telephone Number:\* \_\_\_\_\_

H. Cellular Phone Number:\* \_\_\_\_\_

I. Date of Birth: \_\_\_\_\_

J. Social Security Number: \_\_\_\_\_

K. Race: \_\_\_\_\_

L. Height: \_\_\_\_\_

M. Weight: \_\_\_\_\_

N. Eye Color: \_\_\_\_\_

O. Hair Color: \_\_\_\_\_

P. Sex: \_\_\_\_\_

**Section 2:**

**Information About the Decedent:**

A. Name: \_\_\_\_\_

B. Date of Birth: \_\_\_\_\_

C. Date of Death: \_\_\_\_\_

D. Social Security Number: \_\_\_\_\_

I, \_\_\_\_\_ (write your name in this space), under the penalty of perjury, do hereby swear that the foregoing information is true and correct to the best of my knowledge and belief.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(Signature)

**PROBATE FORM 12:**  
**PROBATE INFORMATION FORM FOR**  
**GUARDIANSHIP/CONSERVATORSHIP**

**Name of Person Filing Document:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**City, State, Zip Code:** \_\_\_\_\_

**Telephone Number:** \_\_\_\_\_

**Attorney Bar No. (if applicable):** \_\_\_\_\_

**Licensed Fiduciary No. (if applicable):** \_\_\_\_\_

**Representing  Self or  Attorney for:** \_\_\_\_\_

**IN THE SUPERIOR COURT OF ARIZONA**

**IN AND FOR THE COUNTY OF** \_\_\_\_\_

**IN THE MATTER OF:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Case Number:** \_\_\_\_\_

**PROBATE INFORMATION FORM**

**Updated** *(check this box if this is an updated form)*

**INSTRUCTIONS:**

- 1. Complete this form to the best of your knowledge and ability and then file it with your application or petition.**
- 2. If you later learn of additional information that you omitted or if you later learn that any information in this form is incorrect, you must file an updated probate information form.**
- 3. Items designated with an asterisk (\*) constitutes “contact information” under ~~Rule 6, Arizona~~ **Arizona** ~~Rules of Probate~~ **Probate** ~~Procedure~~. If contact information changes, you must file a notice of change of contact information.**

4. This form is filed as a confidential document so it is *not* available to the general public. In addition, you are *not* required to provide anyone **with this form other than the court** ~~with this form.~~

**Section 1:**

**Information About the Nominated Guardian (if applicable):**

A. Name: \_\_\_\_\_

B. Is this person or entity an Arizona Licensed Fiduciary?  Yes  No

a. If Yes, write that person or entity's Licensed Fiduciary Number on the line below:

\_\_\_\_\_

C. Mailing Address:\* \_\_\_\_\_

D. Physical Address:\* \_\_\_\_\_

E. Work Telephone Number:\* \_\_\_\_\_

F. Email Address:\* \_\_\_\_\_

*(If the nominated guardian is an Arizona Licensed Fiduciary or a Financial Institution, proceed to Section 2 below. Otherwise, complete the remainder of Section 1.)*

~~*(If the nominated guardian is an Arizona Licensed Fiduciary, proceed to Section 2 below. Otherwise, continue with question G of Section 1.)*~~

G. Home Telephone Number:\* \_\_\_\_\_

H. Cellular Phone Number:\* \_\_\_\_\_

I. Date of Birth: \_\_\_\_\_

J. Social Security Number: \_\_\_\_\_

K. Race: \_\_\_\_\_

L. Height: \_\_\_\_\_

M. Weight: \_\_\_\_\_

N. Eye Color: \_\_\_\_\_

O. Hair Color: \_\_\_\_\_

P. Sex: \_\_\_\_\_

Section 2:

Information About the Nominated Conservator (if applicable or if different from Section 1):

A. Name: \_\_\_\_\_

B. Is this person or entity an Arizona Licensed Fiduciary? [ ] Yes [ ] No

a. If Yes, write that person or entity's Licensed Fiduciary Number on the line below:

\_\_\_\_\_

C. Mailing Address:\* \_\_\_\_\_

D. Physical Address:\* \_\_\_\_\_

E. Work Telephone Number:\* \_\_\_\_\_

F. Email Address:\* \_\_\_\_\_

*(If the nominated conservator is an Arizona Licensed Fiduciary or a Financial Institution, proceed to Section 2 below. Otherwise, complete the remainder of Section 2.)*

~~*(If the nominated conservator is an Arizona Licensed Fiduciary, proceed to Section 2 below. Otherwise, continue with question G of Section 2.)*~~

G. Home Telephone Number:\* \_\_\_\_\_

H. Cellular Phone Number:\* \_\_\_\_\_

I. Date of Birth: \_\_\_\_\_

J. Social Security Number: \_\_\_\_\_

K. Race: \_\_\_\_\_

L. Height: \_\_\_\_\_

M. Weight: \_\_\_\_\_

N. Eye Color: \_\_\_\_\_

O. Hair Color: \_\_\_\_\_

P. Sex: \_\_\_\_\_

**Section 3:**

**Information About the Person Who Needs a Guardian or Conservator:**

A. Name: \_\_\_\_\_

B. Mailing Address:\* \_\_\_\_\_

C. Physical Address:\* \_\_\_\_\_

D. Home Telephone Number:\* \_\_\_\_\_

E. Work Telephone Number:\* \_\_\_\_\_

F. Cellular Phone Number:\* \_\_\_\_\_

G. Email Address:\* \_\_\_\_\_

H. Date of Birth: \_\_\_\_\_

I. Social Security Number: \_\_\_\_\_

J. Race: \_\_\_\_\_

K. Height: \_\_\_\_\_

L. Weight: \_\_\_\_\_

M. Eye Color: \_\_\_\_\_

N. Hair Color: \_\_\_\_\_

O. Sex: \_\_\_\_\_

I, \_\_\_\_\_ (write your name in this space), under the penalty of perjury, do hereby swear that the foregoing information is true and correct to the best of my knowledge and belief.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_

**PROBATE FORM 13:**  
**PROBATE INFORMATION FORM FOR TRUST CASE**

**Name of Person Filing Document:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**City, State, Zip Code:** \_\_\_\_\_

**Telephone Number:** \_\_\_\_\_

**Attorney Bar No. (if applicable):** \_\_\_\_\_

**Licensed Fiduciary No. (if applicable):** \_\_\_\_\_

**Representing  Self or  Attorney for:** \_\_\_\_\_

**IN THE SUPERIOR COURT OF ARIZONA**  
**IN AND FOR THE COUNTY OF** \_\_\_\_\_

**IN THE MATTER OF THE ESTATE OF:** \_\_\_\_\_

**Case Number:** \_\_\_\_\_

\_\_\_\_\_,

**PROBATE INFORMATION FORM**

**Deceased.**

**Updated** *(check this box if this is an updated form)*

**INSTRUCTIONS:**

- 1. Complete this form to the best of your knowledge and ability and then file it with your application or petition.**
- 2. If you later learn of additional information that you omitted or if you later learn that any information in this form is incorrect, you must file an updated probate information form.**
- 3. Items designated with an asterisk (\*) constitutes “contact information” under **¶Rule 6, a**Arizona **¶Rules of p**Probate **p**Procedure. If contact information changes, you must file a notice of change of contact information.**

**4. This form is filed as a confidential document so it is *not* available to the general public. In addition, you are *not* required to provide anyone other than the court with this form.**

**Section 1:**

**Information About the Nominated Trustee:**

A. Name: \_\_\_\_\_

B. Is this person or entity an Arizona Licensed Fiduciary?  Yes  No

a. If Yes, write that person or entity's Licensed Fiduciary Number on the line below:

\_\_\_\_\_

C. Mailing Address:\* \_\_\_\_\_

D. Physical Address:\* \_\_\_\_\_

E. Work Telephone Number:\* \_\_\_\_\_

F. Email Address:\* \_\_\_\_\_

*(If the nominated trustee is an Arizona Licensed Fiduciary or a Financial Institution, proceed to Section 2 below. Otherwise, complete the remainder of Section 1.)*

*(If the nominated trustee is an Arizona Licensed Fiduciary, proceed to Section 2 below. Otherwise, continue with question G of Section 1.)*

G. Home Telephone Number:\* \_\_\_\_\_

H. Cellular Phone Number:\* \_\_\_\_\_

I. Date of Birth: \_\_\_\_\_

J. Social Security Number: \_\_\_\_\_

K. Race: \_\_\_\_\_

L. Height: \_\_\_\_\_

M. Weight: \_\_\_\_\_

N. Eye Color: \_\_\_\_\_

O. Hair Color: \_\_\_\_\_

P. Sex: \_\_\_\_\_

**Section 2:**

**Information About the Beneficiaries:**

**Provide the name, mailing address, primary telephone number, e-mail address, and date of birth for each qualified beneficiary (as defined in A.R.S. § 14-10103). If you need additional space, attach more pages to this form.**

A. \_\_\_\_\_  
\_\_\_\_\_

B. \_\_\_\_\_  
\_\_\_\_\_

C. \_\_\_\_\_  
\_\_\_\_\_

D. \_\_\_\_\_  
\_\_\_\_\_

E. \_\_\_\_\_  
\_\_\_\_\_

F. \_\_\_\_\_  
\_\_\_\_\_

G. \_\_\_\_\_  
\_\_\_\_\_

H. \_\_\_\_\_  
\_\_\_\_\_

I. \_\_\_\_\_  
\_\_\_\_\_

J. \_\_\_\_\_  
\_\_\_\_\_

K. \_\_\_\_\_  
\_\_\_\_\_

L. \_\_\_\_\_  
\_\_\_\_\_

M. \_\_\_\_\_  
\_\_\_\_\_

I, \_\_\_\_\_ (write your name in this space), under the penalty of perjury, do hereby swear that the foregoing information is true and correct to the best of my knowledge and belief.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(Signature)

**PROBATE FORM 14:**

**NOTICE OF CHANGE OF FIDUCIARY'S CONTACT INFORMATION**

**Name of Person Filing Document:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**City, State, Zip Code:** \_\_\_\_\_

**Telephone Number:** \_\_\_\_\_

**Attorney Bar No. (if applicable):** \_\_\_\_\_

**Licensed Fiduciary No. (if applicable):** \_\_\_\_\_

**Representing [ ] Self or [ ] Attorney for:** \_\_\_\_\_

**IN THE SUPERIOR COURT OF ARIZONA**

**IN AND FOR THE COUNTY OF** \_\_\_\_\_

**IN THE MATTER OF THE ESTATE OF:** \_\_\_\_\_

**Case Number:** \_\_\_\_\_

\_\_\_\_\_,

**Deceased.**

**NOTICE OF CHANGE OF  
FIDUCIARY'S CONTACT  
INFORMATION**

**INSTRUCTIONS:**

- 1. Complete this form to the best of your knowledge and ability.**
- 2. If any of the information in this form later changes, file a new "notice of change of fiduciary's contact information" form.**
- 3. Unless the court orders otherwise, you must mail or a deliver a copy of this form to all the parties and interested persons in this case.**

NOTICE IS HEREBY GIVEN that, effective \_\_\_\_\_ (insert date), the undersigned fiduciary's contact information is as follows:

A. Name: \_\_\_\_\_

B. Is this person or entity an Arizona Licensed Fiduciary?  Yes  No

a. If Yes, write that person or entity's Licensed Fiduciary Number on the line below:

\_\_\_\_\_

C. Mailing Address: \_\_\_\_\_

D. Physical Address: \_\_\_\_\_

E. Work Telephone Number: \_\_\_\_\_

F. Email Address: \_\_\_\_\_

*(If the fiduciary is an Arizona Licensed Fiduciary, skip items G and H and proceed to the date and signature lines.)*

G. Home Telephone Number: \_\_\_\_\_

H. Cellular Phone Number: \_\_\_\_\_

I, \_\_\_\_\_ (write your name in this space), under the penalty of perjury, do hereby swear that the foregoing information is true and correct to the best of my knowledge and belief.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(Signature)

**PROBATE FORM 15:**

**NOTICE OF CHANGE OF WARD'S CONTACT INFORMATION**

**Name of Person Filing Document:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**City, State, Zip Code:** \_\_\_\_\_

**Telephone Number:** \_\_\_\_\_

**Attorney Bar No. (if applicable):** \_\_\_\_\_

**Licensed Fiduciary No. (if applicable):** \_\_\_\_\_

**Representing [ ] Self or [ ] Attorney for:** \_\_\_\_\_

**IN THE SUPERIOR COURT OF ARIZONA**

**IN AND FOR THE COUNTY OF** \_\_\_\_\_

**IN THE MATTER OF THE ESTATE OF:**

**Case Number:** \_\_\_\_\_

\_\_\_\_\_,

**NOTICE OF CHANGE OF WARD'S  
CONTACT INFORMATION**

**Deceased.**

**INSTRUCTIONS:**

- 1. Complete this form to the best of your knowledge and ability.**
- 2. If any of the information in this form later changes, file a new "notice of change of ward's contact information" form.**
- 3. Unless the court orders otherwise, you must mail or a deliver a copy of this form to all the parties and interested persons in this case.**

**NOTICE IS HEREBY GIVEN that, effective** \_\_\_\_\_ **(insert date), the ward's**  
**contact information is as follows:**

A. Name: \_\_\_\_\_

B. Mailing Address: \_\_\_\_\_

C. Physical Address: \_\_\_\_\_

D. Work Telephone Number: \_\_\_\_\_

E. Home Telephone Number: \_\_\_\_\_

F. Cellular Phone Number: \_\_\_\_\_

G. Email Address: \_\_\_\_\_

I, \_\_\_\_\_ (write your name in this space), under the penalty of perjury, do hereby swear that the foregoing information is true and correct to the best of my knowledge and belief.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(Signature)

## **Rule 6. Probate Information Form and Notice of Change of Contact Information Form.**

**(a) Definitions.** For purposes of this rule,

**(1) “Contact information”** means that information designated on the Probate Information Form as contact information.

**(2) “Fiduciary”** means personal representative, guardian, or conservator, whether temporary or permanent.

### **(b) Probate Information Form**

**(1) Generally.** A party who requests the appointment of a personal representative must file a Probate Information Form that is substantially similar to Form 11 in Rule 38. A party who requests the appointment of a guardian or conservator, whether temporary or permanent, must file a Probate Information Form that is substantially similar to Form 12 in Rule 38.

**(2) ~~Exception.~~** ~~A party does not need to file a Probate Information Form if the nominated fiduciary is 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.~~

**(3) Trust Proceedings.** In a proceeding relating to the internal affairs of a trust, the court may require a party to file a Probate Information Form that is substantially similar to Form 13 in Rule 38 or to provide the court with other information relating to the trustor, the trustee, the trust protector, or the beneficiary.

**(4) Confidentiality.** The court must maintain a Probate Information Form filed under this rule as a confidential document under Rule 7.

**(5) No Service.** Except as required by the court, a party who files a Probate Information Form, including an updated Probate Information form, is not required to provide other parties or interested persons with a copy of the Probate Information Form.

**(6) Non-Compliance.** The clerk may not reject a petition or application because the filing party failed to provide all the information required in the Probate Information Form.

**(c) Notice of Change of Contact Information.**

**(1) Generally.**

**(A) Change in Contact Information for Fiduciary.** If a fiduciary's contact information changes during the fiduciary's appointment in probate case, that fiduciary must file a Notice of Change of Contact Information Form that is substantially similar to Form 14 in Rule 38 within 10 days after such change occurs.

**(B) Change in Contact Information for Ward.** If a ward's contact information changes, the ward's guardian must file a Notice of Change of Contact Information Form that is substantially similar to Form 15 in Rule 38 within 3 days of learning of such change.

**(C) Other Information.** If a fiduciary learns that any other information on the most recently filed Probate Information Form is incomplete or incorrect, the fiduciary must file an updated Probate Information Form within ten days after learning of the missing or incorrect information.

**(D) Trusts.** A trustee appointed by the court must file an updated Probate Information Form as ordered by the court.

**(2) No Confidentiality.** Unless the court orders otherwise, a Notice of Change of Contact Information filed under this rule must be maintained as part of the public record.

**(3) Service.** Unless the court orders otherwise, a person who files the form must mail or deliver a copy of the 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 Notice of Change of Contact Information Form has been filed.

**(4) Non-Compliance.** Absent good cause, the fiduciary must pay all costs of the court or the estate that result from a failure to timely provide a notice of change of contact information.

**PROBATE FORM 11:  
PROBATE INFORMATION FORM FOR DECEDENT'S ESTATE**

**Name of Person Filing Document:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**City, State, Zip Code:** \_\_\_\_\_

**Telephone Number:** \_\_\_\_\_

**Attorney Bar No. (if applicable):** \_\_\_\_\_

**Licensed Fiduciary No. (if applicable):** \_\_\_\_\_

**Representing  Self or  Attorney for:** \_\_\_\_\_

IN THE SUPERIOR COURT OF ARIZONA  
IN AND FOR THE COUNTY OF \_\_\_\_\_

IN THE MATTER OF THE ESTATE OF:

\_\_\_\_\_ ,

Deceased.

Case Number: \_\_\_\_\_

**PROBATE INFORMATION FORM**

**Updated** *(check this box if this is an updated form)*

**INSTRUCTIONS:**

1. Complete this form to the best of your knowledge and ability and then file it with your application or petition.
2. If you later learn of additional information that you omitted or if you later learn that any information in this form is incorrect, you must file an updated probate information form.
3. Items designated with an asterisk (\*) constitutes "contact information" under Rule 6, Arizona Rules of Probate Procedure. If contact information changes, you must file a notice of change of contact information.

4. This form is filed as a confidential document, so it is *not* available to the general public. In addition, you are *not* required to provide anyone with this form, other than the court.

**Section 1:**

**Information About the Nominated Personal Representative/Special Administrator:**

A. Name: \_\_\_\_\_

B. Is this person or entity an Arizona Licensed Fiduciary? [ ] Yes [ ] No

a. If Yes, write that person or entity's Licensed Fiduciary Number on the line below:

\_\_\_\_\_

C. Mailing Address:\* \_\_\_\_\_

D. Physical Address:\* \_\_\_\_\_

E. Work Telephone Number:\* \_\_\_\_\_

F. Email Address:\* \_\_\_\_\_

*(If the nominated personal representative/special administrator is an Arizona Licensed Fiduciary or a Financial Institution, proceed to Section 2 below. Otherwise, complete the remainder of Section 1.)*

G. Home Telephone Number:\* \_\_\_\_\_

H. Cellular Phone Number:\* \_\_\_\_\_

I. Date of Birth: \_\_\_\_\_

J. Social Security Number: \_\_\_\_\_

K. Race: \_\_\_\_\_

L. Height: \_\_\_\_\_

M. Weight: \_\_\_\_\_

N. Eye Color: \_\_\_\_\_

O. Hair Color: \_\_\_\_\_

P. Sex: \_\_\_\_\_

**Section 2:**

**Information About the Decedent:**

A. Name: \_\_\_\_\_

B. Date of Birth: \_\_\_\_\_

C. Date of Death: \_\_\_\_\_

D. Social Security Number: \_\_\_\_\_

I, \_\_\_\_\_ (write your name in this space), under the penalty of perjury, do hereby swear that the foregoing information is true and correct to the best of my knowledge and belief.

DATED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(Signature)

**PROBATE FORM 12:  
PROBATE INFORMATION FORM FOR  
GUARDIANSHIP/CONSERVATORSHIP**

**Name of Person Filing Document:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**City, State, Zip Code:** \_\_\_\_\_

**Telephone Number:** \_\_\_\_\_

**Attorney Bar No. (if applicable):** \_\_\_\_\_

**Licensed Fiduciary No. (if applicable):** \_\_\_\_\_

**Representing  Self or  Attorney for:** \_\_\_\_\_

IN THE SUPERIOR COURT OF ARIZONA  
IN AND FOR THE COUNTY OF \_\_\_\_\_

IN THE MATTER OF:  
\_\_\_\_\_  
\_\_\_\_\_

Case Number: \_\_\_\_\_

**PROBATE INFORMATION FORM**

**Updated** *(check this box if this is an updated form)*

**INSTRUCTIONS:**

1. **Complete this form to the best of your knowledge and ability and then file it with your application or petition.**
2. **If you later learn of additional information that you omitted or if you later learn that any information in this form is incorrect, you must file an updated probate information form.**
3. **Items designated with an asterisk (\*) constitutes “contact information” under Rule 6, Arizona Rules of Probate Procedure. If contact information changes, you must file a notice of change of contact information.**

4. This form is filed as a confidential document so it is *not* available to the general public. In addition, you are *not* required to provide anyone with this form other than the court.

**Section 1:**

**Information About the Nominated Guardian (if applicable):**

A. Name: \_\_\_\_\_

B. Is this person or entity an Arizona Licensed Fiduciary? [ ] Yes [ ] No

a. If Yes, write that person or entity's Licensed Fiduciary Number on the line below:

\_\_\_\_\_

C. Mailing Address:\* \_\_\_\_\_

D. Physical Address:\* \_\_\_\_\_

E. Work Telephone Number:\* \_\_\_\_\_

F. Email Address:\* \_\_\_\_\_

*(If the nominated guardian is an Arizona Licensed Fiduciary or a Financial Institution, proceed to Section 2 below. Otherwise, complete the remainder of Section 1.)*

G. Home Telephone Number:\* \_\_\_\_\_

H. Cellular Phone Number:\* \_\_\_\_\_

I. Date of Birth: \_\_\_\_\_

J. Social Security Number: \_\_\_\_\_

K. Race: \_\_\_\_\_

L. Height: \_\_\_\_\_

M. Weight: \_\_\_\_\_

N. Eye Color: \_\_\_\_\_

O. Hair Color: \_\_\_\_\_

P. Sex: \_\_\_\_\_

**Section 2:**

**Information About the Nominated Conservator (if applicable or if different from Section 1):**

A. Name: \_\_\_\_\_

B. Is this person or entity an Arizona Licensed Fiduciary? [ ] Yes [ ] No

a. If Yes, write that person or entity's Licensed Fiduciary Number on the line below:

\_\_\_\_\_

C. Mailing Address:\* \_\_\_\_\_

D. Physical Address:\* \_\_\_\_\_

E. Work Telephone Number:\* \_\_\_\_\_

F. Email Address:\* \_\_\_\_\_

*(If the nominated conservator is an Arizona Licensed Fiduciary or a Financial Institution, proceed to Section 2 below. Otherwise, complete the remainder of Section 2.)*

G. Home Telephone Number:\* \_\_\_\_\_

H. Cellular Phone Number:\* \_\_\_\_\_

I. Date of Birth: \_\_\_\_\_

J. Social Security Number: \_\_\_\_\_

K. Race: \_\_\_\_\_

L. Height: \_\_\_\_\_

M. Weight: \_\_\_\_\_

N. Eye Color: \_\_\_\_\_

O. Hair Color: \_\_\_\_\_

P. Sex: \_\_\_\_\_

**Section 3:**

**Information About the Person Who Needs a Guardian or Conservator:**

A. Name: \_\_\_\_\_

- B. Mailing Address:\* \_\_\_\_\_
- C. Physical Address:\* \_\_\_\_\_
- D. Home Telephone Number:\* \_\_\_\_\_
- E. Work Telephone Number:\* \_\_\_\_\_
- F. Cellular Phone Number:\* \_\_\_\_\_
- G. Email Address:\* \_\_\_\_\_
- H. Date of Birth: \_\_\_\_\_
- I. Social Security Number: \_\_\_\_\_
- J. Race: \_\_\_\_\_
- K. Height: \_\_\_\_\_
- L. Weight: \_\_\_\_\_
- M. Eye Color: \_\_\_\_\_
- N. Hair Color: \_\_\_\_\_
- O. Sex: \_\_\_\_\_

I, \_\_\_\_\_ (write your name in this space), under the penalty of perjury, do hereby swear that the foregoing information is true and correct to the best of my knowledge and belief.

DATED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_

**PROBATE FORM 13:  
PROBATE INFORMATION FORM FOR TRUST CASE**

**Name of Person Filing Document:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**City, State, Zip Code:** \_\_\_\_\_

**Telephone Number:** \_\_\_\_\_

**Attorney Bar No. (if applicable):** \_\_\_\_\_

**Licensed Fiduciary No. (if applicable):** \_\_\_\_\_

**Representing  Self or  Attorney for:** \_\_\_\_\_

IN THE SUPERIOR COURT OF ARIZONA  
IN AND FOR THE COUNTY OF \_\_\_\_\_

IN THE MATTER OF THE ESTATE OF:

\_\_\_\_\_ ,

Deceased.

Case Number: \_\_\_\_\_

**PROBATE INFORMATION FORM**

**Updated** *(check this box if this is an updated form)*

**INSTRUCTIONS:**

1. Complete this form to the best of your knowledge and ability and then file it with your application or petition.
2. If you later learn of additional information that you omitted or if you later learn that any information in this form is incorrect, you must file an updated probate information form.
3. Items designated with an asterisk (\*) constitute “contact information” under Rule 6, Arizona Rules of Probate Procedure. If contact information changes, you must file a notice of change of contact information.

4. This form is filed as a confidential document so it is *not* available to the general public. In addition, you are *not* required to provide anyone other than the court with this form.

**Section 1:**

**Information About the Nominated Trustee:**

A. Name: \_\_\_\_\_

B. Is this person or entity an Arizona Licensed Fiduciary? [ ] Yes [ ] No

a. If Yes, write that person or entity's Licensed Fiduciary Number on the line below:

\_\_\_\_\_

C. Mailing Address:\* \_\_\_\_\_

D. Physical Address:\* \_\_\_\_\_

E. Work Telephone Number:\* \_\_\_\_\_

F. Email Address:\* \_\_\_\_\_

*(If the nominated trustee is an Arizona Licensed Fiduciary or a Financial Institution, proceed to Section 2 below. Otherwise, complete the remainder of Section 1.)*

G. -Home Telephone Number:\* \_\_\_\_\_

H. Cellular Phone Number:\* \_\_\_\_\_

I. Date of Birth: \_\_\_\_\_

J. Social Security Number: \_\_\_\_\_

K. Race: \_\_\_\_\_

L. Height: \_\_\_\_\_

M. Weight: \_\_\_\_\_

N. Eye Color: \_\_\_\_\_

O. Hair Color: \_\_\_\_\_

P. Sex: \_\_\_\_\_

**Section 2:**

**Information About the Beneficiaries:**

**Provide the name, mailing address, primary telephone number, e-mail address, and date of birth for each qualified beneficiary (as defined in A.R.S. § 14-10103). If you need additional space, attach more pages to this form.**

- A. \_\_\_\_\_  
\_\_\_\_\_
- B. \_\_\_\_\_  
\_\_\_\_\_
- C. \_\_\_\_\_  
\_\_\_\_\_
- D. \_\_\_\_\_  
\_\_\_\_\_
- E. \_\_\_\_\_  
\_\_\_\_\_
- F. \_\_\_\_\_  
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- H. \_\_\_\_\_  
\_\_\_\_\_
- I. \_\_\_\_\_  
\_\_\_\_\_
- J. \_\_\_\_\_  
\_\_\_\_\_
- K. \_\_\_\_\_  
\_\_\_\_\_
- L. \_\_\_\_\_  
\_\_\_\_\_
- M. \_\_\_\_\_  
\_\_\_\_\_

I, \_\_\_\_\_ (write your name in this space), under the penalty of perjury, do hereby swear that the foregoing information is true and correct to the best of my knowledge and belief.

DATED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

---

(Signature)

**PROBATE FORM 14:**  
**NOTICE OF CHANGE OF FIDUCIARY'S CONTACT INFORMATION**

**Name of Person Filing Document:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**City, State, Zip Code:** \_\_\_\_\_

**Telephone Number:** \_\_\_\_\_

**Attorney Bar No. (if applicable):** \_\_\_\_\_

**Licensed Fiduciary No. (if applicable):** \_\_\_\_\_

**Representing  Self or  Attorney for:** \_\_\_\_\_

IN THE SUPERIOR COURT OF ARIZONA  
IN AND FOR THE COUNTY OF \_\_\_\_\_

IN THE MATTER OF THE ESTATE OF:  
\_\_\_\_\_,  
Deceased.

Case Number: \_\_\_\_\_

**NOTICE OF CHANGE OF  
FIDUCIARY'S CONTACT  
INFORMATION**

**INSTRUCTIONS:**

1. Complete this form to the best of your knowledge and ability.
2. If any of the information in this form later changes, file a new "notice of change of fiduciary's contact information" form.
3. Unless the court orders otherwise, you must mail or a deliver a copy of this form to all the parties and interested persons in this case.

NOTICE IS HEREBY GIVEN that, effective \_\_\_\_\_ (insert date), the undersigned fiduciary's contact information is as follows:

A. Name: \_\_\_\_\_

B. Is this person or entity an Arizona Licensed Fiduciary? [ ] Yes [ ] No

a. If Yes, write that person or entity's Licensed Fiduciary Number on the line below:

\_\_\_\_\_

C. Mailing Address: \_\_\_\_\_

D. Physical Address: \_\_\_\_\_

E. Work Telephone Number: \_\_\_\_\_

F. Email Address: \_\_\_\_\_

*(If the fiduciary is an Arizona Licensed Fiduciary, skip items G and H and proceed to the date and signature lines.)*

G. Home Telephone Number: \_\_\_\_\_

H. Cellular Phone Number: \_\_\_\_\_

I, \_\_\_\_\_ (write your name in this space), under the penalty of perjury, do hereby swear that the foregoing information is true and correct to the best of my knowledge and belief.

DATED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(Signature)

**PROBATE FORM 15:**

**NOTICE OF CHANGE OF WARD'S CONTACT INFORMATION**

**Name of Person Filing Document:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**City, State, Zip Code:** \_\_\_\_\_

**Telephone Number:** \_\_\_\_\_

**Attorney Bar No. (if applicable):** \_\_\_\_\_

**Licensed Fiduciary No. (if applicable):** \_\_\_\_\_

**Representing  Self or  Attorney for:** \_\_\_\_\_

IN THE SUPERIOR COURT OF ARIZONA

IN AND FOR THE COUNTY OF \_\_\_\_\_

IN THE MATTER OF THE ESTATE OF:

\_\_\_\_\_,  
Deceased.

Case Number: \_\_\_\_\_

**NOTICE OF CHANGE OF WARD'S  
CONTACT INFORMATION**

**INSTRUCTIONS:**

1. Complete this form to the best of your knowledge and ability.
2. If any of the information in this form later changes, file a new "notice of change of ward's contact information" form.
3. Unless the court orders otherwise, you must mail or a deliver a copy of this form to all the parties and interested persons in this case.

NOTICE IS HEREBY GIVEN that, effective \_\_\_\_\_ (insert date), the ward's contact information is as follows:

A. Name: \_\_\_\_\_

B. Mailing Address: \_\_\_\_\_

C. Physical Address: \_\_\_\_\_

D. Work Telephone Number: \_\_\_\_\_

E. Home Telephone Number: \_\_\_\_\_

F. Cellular Phone Number: \_\_\_\_\_

G. Email Address: \_\_\_\_\_

I, \_\_\_\_\_ (write your name in this space), under the penalty of perjury, do hereby swear that the foregoing information is true and correct to the best of my knowledge and belief.

DATED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(Signature)

**Rule 11. Telephonic or Electronic Appearances and Testimony.**

- (a) **Generally.** On timely motion or on its own, a judicial officer may allow a telephonic appearance or an appearance by any approved electronic means during any proceeding. If more than one participant has requested a telephonic or electronic appearance, the first party requesting a telephonic appearance must arrange for the conference call at that party's expense, unless the court orders otherwise.
- (b) **Time.** Unless a judicial officer authorizes a shorter time, a motion to allow telephonic testimony or argument via telephonic or other approved electronic means must be filed no later than 30 days before the hearing. However, if the notice setting the hearing provides less than 30 days' notice, the motion must be filed no later than 5 days after receiving the hearing notice. The motion must be served on all parties and on any person who has filed a demand for notice, and must be accompanied by a proposed order.
- (c) **Objection.** A party opposing a motion for telephonic or electronic appearance, or for telephonic or electronic testimony, must file a response no later than 5 days after the motion is served.
- (d) **Transmission Quality.** Telephonic or electronic appearances and testimony must be of such quality that the voices of all parties and counsel are audible to each participant, the judicial officer, and, if applicable, the certified reporter or electronic recording device.

[**Staff Note:** Consider adopting language substantially like recently restyled Family Law Rule 8, which provides as follows. Among other things, the Family Law rule makes useful distinctions between appearances at non-evidentiary and evidentiary proceedings, and includes provisions for introducing documents.]

**Rule 811. Telephonic Appearances Attendance and Testimony.**

**(a) Meaning of Definitions.**

- (1) - "**Proceeding.**" When used in this rule, "proceeding" means any court event at which the parties or interested persons or their attorneys are expected to have an opportunity to attend. ~~such as~~ These events include, but are not limited to, a trial, hearing, ~~return non-appearance~~ hearing, oral argument, status conference, ~~or~~ and scheduling conference.

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**Commented [JP1]:** I am suggesting we define "proceeding" for purposes of this rule only because the rest of the Probate Rules use "proceeding" to refer to the claim or cause of action initiated by the filing of a petition or complaint. Thus, we need to distinguish that, for purposes of this rule only, "proceeding" means a court appearance.

(2) “Telephonic.” When used in this rule, “telephonic” ~~includes an appearance or testimony means~~ by telephone, ~~by~~ videoconferencing, or ~~by~~ other available audio or audiovisual ~~and video~~ technology.

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**Commented [JP2]:** The phrase “includes an appearance or testimony” is unnecessary and redundant because the rest of the rule refers to “telephonic attendance” or “telephonic testimony.” In this paragraph, we only need to convey that “telephonic” includes videoconferencing and other electronic means of communication.

~~(a)–~~

(b) ~~When Appearance of a Party at a Non-Evidentiary Proceeding~~ Telephonic Attendance and Testimony Permitted. Parties and their attorneys are expected to appear in open court for court proceedings unless the court, in its discretion, permits telephonic attendance under this rule. The court may allow a person to telephonically attend, or testify at, a proceeding if ~~the court finds~~ both of the following are true:

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(1) That person can be heard by every other person participating in the proceeding, including the judicial officer and, if applicable, the court reporter or an electronic recording system;

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(2) No party will be unfairly prejudiced by the telephonic attendance or testimony.

(c) **How Requested.** Unless otherwise ordered by the court, a person who wishes to telephonically attend, or testify at, a proceeding must ~~either file a written or oral motion or make an oral motion in open court.~~ ~~The request may be for a particular proceeding or for multiple proceedings.~~ A written motion made under this rule must be served on all parties and any person who has filed a demand for written notice, and must be accompanied by a proposed order.

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**Commented [JP3]:** My intent here is to allow a person to make a single, blanket request so as to avoid multiple motions for each proceeding in the case.

(d) **Time for Making Request.** A written or oral motion to allow a telephonic attendance or testimony must be made ~~[#1: in a timely manner considering the attendant circumstances at the time the request was made, and the court has discretion to grant or deny the motion] [#2: -no later than 30 days before the proceeding at which the telephonic attendance or testimony is requested. However, if the notice setting that proceeding provides less than 30 days’ notice, the motion must be made no later than 5 days after receipt of the notice of the proceeding.- For good cause, †The court may modify or waive these time limits.†s.]~~

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(e) **Objection to Request.** A party opposing a written motion made under this rule must file a response no later than 5 days after the motion is served. ~~For good cause, †The court may modify or waive this time limit or may rule on the written motion prior to the filing of a response.~~

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(f) **Reply and Oral Argument.** The court may rule on a written motion made under this rule without a reply or oral argument.

~~(b) Upon written or verbal motion, †the court may allow, in the discretion of the judicial officer, a party person to attend or testify appear telephonically at a non-evidentiary~~

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~~proceeding if each the person will be audible to can be heard by every other person participating in the proceeding, including the judge the judicial officer, and, if applicable, to the court reporter or an electronic recording system. Time limits for the motion may be waived by the judicial officer in his discretion.~~

~~**Testimony of a Party or Witness at an Evidentiary Proceeding.** On request of a party or a witness or on its own, and subject to A.R.S. § 25-1256(F), the court may allow a party or witness to testify telephonically. The order permitting or denying a telephonic appearance or telephonic testimony may be made, in the discretion of the judicial officer, prior to a response being filed.~~

~~(e) if the court finds it would not substantially prejudice any party and the testifying party or witness:~~

~~(1) is not reasonably able to attend the hearing or trial;~~

~~(2) would be unduly inconvenienced by attending the hearing or trial in person; or~~

~~(3) would incur a burdensome expense to attend the hearing or trial in person.~~

~~**(d) Request Motion to Testify by a Allow Telephonic Appearance Attendance or Testimony.**~~

~~**Time.** A party must file a request to have a party or witness give telephonic testimony within a time that allows the opposing party a reasonable opportunity to respond. Unless a judicial officer authorizes a shorter time, a motion to allow telephonic attendance or testimony must be filed no later than 30 days before the hearing. However, if the notice setting the hearing provides less than 30 days' notice, the motion must be filed no later than 5 days after receiving the hearing notice. The motion must be served on all parties and on any person who has filed a demand for notice, and must be accompanied by a proposed order.~~

~~**Objection.** A party opposing the motion must file a response no later than 5 days after the motion is served.~~

~~(1) —~~

~~(2) **Reply and Oral Argument Hearing.** The court may rule on the request motion without a reply or with or without a hearing oral argument.~~

~~**(e)(g) Use of Exhibits Introducing Documents During Telephonic Testimony.** Unless otherwise ordered by the court, bBefore a party may question a person introduce exhibits question a person through a party or witness who testifying ies telephonically about an exhibit, that party must::~~

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- (1) ~~have the party calling every party questioning the witness person about an exhibit must make a good faith effort to contact the opposing all parties party to identify and provided that person and all parties, in advance, with a copy of that exhibits that will be used during the witness's person's testimony, marked so that it can be easily identified by that person, any all parties, and the court; and, party and the person testifying;~~
- (2) ~~the exhibits must be provided in advance to the party or witness;~~
- (2) ~~the party who introduces the exhibits must affirm confirm to the court that the they exhibit provided to the court is are accurate copies identical to of the exhibits provided to the party or witness person who is appearing testifying telephonically.~~
- (3) ~~This subsection may be waived by the judicial officer in the interest of fairness and justice.~~

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**(h) Costs of Telephonic Attendance or Testimony Responsible Party.** ~~The party person requesting a seeking requesting telephonic attendance or testimony appearance, or who presents a witness's testimony telephonically, must arrange it, and pay the related cost, unless the court orders otherwise, pay the related costs.}~~

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### COMMENT

A party should carefully consider a request to present telephonic testimony or arguments in a contested matter. A witness's demeanor while testifying is an important factor used by the court to assess a witness's credibility. A party who offers a witness by telephone may be at a disadvantage if the testimony is contradicted by a witness who testifies in person. Judicial officers may deny an untimely request if it detracts from the court's ability to address other matters on the court's calendar or if it affects the court's ability to judge the demeanor of the witnesses in a contested matter.

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**Note:** In determining timeliness, the court may consider the following factors:

When the party or counsel first knew they would make a telephonic request

The nature of the hearing or proceeding, including whether it is contested or evidentiary

Whether all other parties agree to the telephonic attendance or testimony

The reason why telephonic attendance or testimony is requested

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Logistical factors

**COMMENT**

*[WKGRP CMT: Workgroup suggests removing the first two paragraphs.]*

~~While telephonic appearance and testimony or argument are encouraged as time and cost saving methods of addressing probate matters, a number of issues bear consideration. First, courts throughout the state have different telephone technology, some of which is better suited than others for telephonic appearances. For that reason, the judicial officer assigned to the case must approve the request in advance of the hearing.~~

~~Second, last minute requests are discouraged. Judicial officers may not have an opportunity to consider a last minute request because of the pressure of other court business.~~

~~Finally, a party should carefully consider a request to present telephonic testimony or arguments in a contested matter. A witness's demeanor while testifying is an important factor used by the court to assess a witness's credibility. A party who offers a witness by telephone may be at a disadvantage if the testimony is contradicted by a witness who personally appears. Judicial officers may reject an untimely request if it detracts from the court's ability to address other matters on the court's calendar or if it affects the court's ability to judge the demeanor of the witnesses in a contested matter.~~

(f)

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## **Rule 11. Telephonic Attendance and Testimony.**

### **(a) Definitions.**

- (1) **“Proceeding.”** When used in this rule, “proceeding” means a court event at which interested persons or their attorneys have an opportunity to attend. These events include, but are not limited to, a trial, hearing, non-appearance hearing, oral argument, status conference, and scheduling conference.
- (2) **“Telephonic.”** When used in this rule, “telephonic” means by telephone, videoconferencing, or other available audio or audiovisual technology.

**(b) When Permitted.** Parties and their attorneys are expected to appear in open court for court proceedings unless the court, in its discretion, permits telephonic attendance under this rule. The court may allow a person to telephonically attend, or testify at, a proceeding if both of the following are true:

- (1) That person can be heard by every other person participating in the proceeding, including the judicial officer and, if applicable, the court reporter or an electronic recording system;
- (2) No party will be unfairly prejudiced by the telephonic attendance or testimony.

**(c) How Requested.** Unless otherwise ordered by the court, a person who wishes to telephonically attend, or testify at, a proceeding must either file a written motion or make an oral motion in open court. The request may be for a particular proceeding or for multiple proceedings. A written motion made under this rule must be served on all parties and any person who has filed a demand for written notice, and must be accompanied by a proposed order.

**(d) Time for Making Request.** A written or oral motion to allow telephonic attendance or testimony must be made [#1: in a timely manner considering the attendant circumstances at the time the request was made, and the court has discretion to grant or deny the motion] [#2: no later than 30 days before the proceeding at which the telephonic attendance or testimony is requested. However, if the notice setting that proceeding provides less than 30 days’ notice, the motion must be made no later than 5 days after receipt of the notice of the proceeding. The court may modify or waive these time limits.]

**(e) Objection to Request.** A party opposing a written motion made under this rule must file a response no later than 5 days after the motion is served. The court may modify or waive this time limit or may rule on the written motion prior to the filing of a response.

- (f) **Reply and Oral Argument.** The court may rule on a written motion made under this rule without a reply or oral argument.
- (g) **Use of Exhibits During Telephonic Testimony.** Unless otherwise ordered by the court, before a party may question a person testifying telephonically about an exhibit, that party must:
- (1) have provided that person and all parties, in advance, with a copy of that exhibit, marked so that it can be easily identified by that person, all parties, and the court; and,
  - (2) confirm to the court that the exhibit provided to the court is identical to the exhibit provided to the person who is testifying telephonically.
- (h) **Costs of Telephonic Attendance or Testimony.** The person requesting telephonic attendance or testimony must arrange it, and, unless the court orders otherwise, pay the related costs.

## COMMENT

A party should carefully consider a request to present telephonic testimony or arguments in a contested matter. A witness's demeanor while testifying is an important factor used by the court to assess a witness's credibility. A party who offers a witness by telephone may be at a disadvantage if the testimony is contradicted by a witness who testifies in person. Judicial officers may deny an untimely request if it detracts from the court's ability to address other matters on the court's calendar or if it affects the court's ability to judge the demeanor of the witnesses in a contested matter.

**Note:** In determining timeliness, the court may consider the following factors:

When the party or counsel first knew they would make a telephonic request

The nature of the hearing or proceeding, including whether it is contested or evidentiary

Whether all other parties agree to the telephonic attendance or testimony

The reason why telephonic attendance or testimony is requested

Logistical factors

**Rule 16. Applications in Probate Proceedings.**

~~—~~ **Meaning of “Application.”** “Application” is a written request authorized by statute made to a registrar for an order in a probate proceeding, usually conducted ~~“Application” is a written request to a registrar for an order in an informal probate proceeding, which is usually conducted~~ without advance notice to interested persons.

(a) **Filing.** An interested party may file an application only when requesting the probate registrar to do the followingsuch as to:

- (1) **Informally** admit a will to ~~informal~~ probate or informally appoint a personal representative under A.R.S. §§ 14-3301 to -3311;
- (2) **Informally** appoint a special administrator under A.R.S. § 14-3614(1);
- (3) ~~I~~ issue a certificate **of discharge** under A.R.S. § 14-3937;
- (4) ~~appoint~~ **Informally appoint** a personal representative to administer a later discovered asset under A.R.S. § 14-3938; ~~or~~
- (5) ~~grant~~ **Grant** a conservator the authority to exercise the powers and duties of a personal representative and endorse the conservator’s letters **under A.R.S. § 14-5425(D); or** **[STOP HERE]**

~~(5)~~(6) Enter any other order that the registrar is authorized by statute to issue.

~~(b)~~ **Form of Application.** An application must contain statements required by statute, ~~and and other statements supporting the requested relief. The statements must be in simple, concise, and direct paragraphs, each of which must be separately numbered. The application also:~~

- ~~(1) must contain a short statement of the requested relief;~~
- ~~(2) may request alternative or different types of relief; and~~

~~(b)~~ ~~(3)~~ must comply with Rules 5.2~~(b)~~ and Rules 8 through 11 of the Arizona Rules of Civil Procedure, applicable to ~~complaints-pleadings~~ and claims for relief.

**(c) Probate Registrar’s Action upon Application.** ~~The clerk must immediately file the application. The probate registrar must act promptly, but within two business hours, approve or deny the application, or refer it to a judicial officer. upon a filed application.~~

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~~(e)(d) Service Notice.~~ The ~~person filing the application~~ applicant must provide ~~timely~~ serve a copy of the application notice as required by ~~law statute~~ and must file proof of ~~service notice~~ with the ~~probate registrar~~ court.

~~(d)(a) Probate Registrar's Action upon Application.~~ The probate registrar must act promptly upon a filed application.

(e) **Objection to Application.** Any interested person who opposes the relief requested ~~or granted~~ in an application ~~for informal probate of a will or the appointment of a personal representative~~ must file a petition ~~in accordance with A.R.S. § 14-3401(A) or § 14-3414(A).~~

## CURRENT COMMENT

~~Regarding Rule 16(A). The word "application" is a term of art in probate matters that means a written request to the registrar to issue a statement of informal probate or informal appointment of personal representative under A.R.S. §§ 14-3301 to 3311. See A.R.S. § 14-1201(2); see also Rule 4(A) of these rules. A.R.S. § 14-3614(1) provides that the registrar may appoint a special administrator on the application of any interested person. In addition, A.R.S. § 14-3937 authorizes the filing of an application to obtain a certificate from the registrar that the personal representative appears to have fully administered the estate. A.R.S. § 14-3938 authorizes the filing of an application to appoint a personal representative to administer an asset that is discovered after an estate has been closed. A.R.S. § 14-5425(D) authorizes a conservator to apply to the probate registrar to exercise the powers and duties of personal representative so that the conservator may administer and distribute the protected person's estate without additional or further appointment. Requests to the registrar should be made by application. In some cases, however, the request must be made to a judicial officer and should therefore be made by petition. Thus, a document should be titled "application" only for one of the limited purposes set forth in this rule.~~

~~Although applications usually are presented to the registrar without prior notice to other interested persons, in certain circumstances advance notice of the filing of the application must be given before the registrar acts upon the application. See, e.g., A.R.S. §§ 14-3306, 3310. For example, notice must be provided when an interested person has filed a demand for notice or when a personal representative already has been appointed.~~

~~A challenge to an application for informal probate of will or appointment of personal representative may be made only by filing a petition to do any of the following: (i) set aside an informal probate of a will; (ii) probate a will; (iii) prevent the informal probate of a will that is the subject of a pending application;~~

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~~or (iv) determine whether the decedent died intestate. A.R.S. § 14 3401(A); see also A.R.S. § 14 3302 (“Informal probate is conclusive as to all persons until superseded by an order in a formal testacy proceeding.”); *In re Estate of Torstenson*, 125 Ariz. 373, 375-76, 609 P.2d 1073, 1075-76 (App. 1980) (holding that the exclusive way to contest an informally probated will is to initiate a formal testacy proceeding). A.R.S. § 14 3414(A) addresses a proceeding to contest the qualification or priority of a person who has been informally appointed as personal representative or whose appointment as personal representative has been requested in an informal proceeding.~~

## **Rule 16. Applications in Probate Proceedings.**

- (a) **Meaning of “Application.”** “Application” is a written request authorized by statute made to a registrar for an order in a probate proceeding, usually conducted without advance notice to interested persons, such as to:
- (1) Informally admit a will to probate or informally appoint a personal representative under A.R.S. §§ 14-3301 to -3311;
  - (2) Informally appoint a special administrator under A.R.S. § 14-3614(1);
  - (3) Issue a certificate of discharge under A.R.S. § 14-3937;
  - (4) Informally appoint a personal representative to administer a later discovered asset under A.R.S. § 14-3938;
  - (5) Grant a conservator the authority to exercise the powers and duties of a personal representative and endorse the conservator’s letters under A.R.S. § 14-5425(D);  
or
  - (6) Enter any other order that the registrar is authorized by statute to issue,
- (b) **Form of Application.** An application must contain 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) **Probate Registrar’s Action upon Application.** The clerk must immediately file the application. The probate registrar must promptly, but within two business hours, approve or deny the application, or refer it to a judicial officer.
- (d) **Notice.** The applicant must provide timely notice as required by statute and must file proof of notice with the court.
- (e) **Objection to Application.** Any interested person who opposes the relief requested or granted in an application must file a petition.

## **CURRENT COMMENT**

~~Regarding Rule 16(A). The word “application” is a term of art in probate matters that means a written request to the registrar to issue a statement of informal probate or informal appointment of personal representative under A.R.S. §§ 14-3301 to -3311. See A.R.S. § 14-1201(2); see also Rule 4(A) of these rules. A.R.S. § 14-3614(1) provides that the registrar may appoint a special administrator on the application of any interested person. In addition, A.R.S. § 14-3937 authorizes the filing of an application to obtain a certificate from the registrar that the~~

~~personal representative appears to have fully administered the estate. A.R.S. § 14-3938 authorizes the filing of an application to appoint a personal representative to administer an asset that is discovered after an estate has been closed. A.R.S. § 14-5425(D) authorizes a conservator to apply to the probate registrar to exercise the powers and duties of personal representative so that the conservator may administer and distribute the protected person's estate without additional or further appointment. Requests to the registrar should be made by application. In some cases, however, the request must be made to a judicial officer and should therefore be made by petition. Thus, a document should be titled "application" only for one of the limited purposes set forth in this rule.~~

~~Although applications usually are presented to the registrar without prior notice to other interested persons, in certain circumstances advance notice of the filing of the application must be given before the registrar acts upon the application. See, e.g., A.R.S. §§ 14-3306, 3310. For example, notice must be provided when an interested person has filed a demand for notice or when a personal representative already has been appointed.~~

~~A challenge to an application for informal probate of will or appointment of personal representative may be made only by filing a petition to do any of the following: (i) set aside an informal probate of a will; (ii) probate a will; (iii) prevent the informal probate of a will that is the subject of a pending application; or (iv) determine whether the decedent died intestate. A.R.S. § 14-3401(A); see also A.R.S. § 14-3302 ("Informal probate is conclusive as to all persons until superseded by an order in a formal testacy proceeding."); *In re Estate of Torstenson*, 125 Ariz. 373, 375-76, 609 P.2d 1073, 1075-76 (App. 1980) (holding that the exclusive way to contest an informally probated will is to initiate a formal testacy proceeding). A.R.S. § 14-3414(A) addresses a proceeding to contest the qualification or priority of a person who has been informally appointed as personal representative or whose appointment as personal representative has been requested in an informal proceeding.~~

**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. **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.~~

~~(b) 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.~~

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

~~(d) **Service.** The petitioner ~~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)(e) **Objection-Response to a Petition.** [Note: WG's possible addition from Rule 27: A proceeding becomes contested when a party opposes a petition as follows:]~~

(1) **Generally Written Response.** Any ~~interested person~~party who opposes the relief requested in a petition ~~must~~ ~~may~~should file with the court no later than ~~3-7~~ days before the hearing an objection to the petition ~~or~~ ~~or~~ a motion ~~authorized by~~under Rule 12 of the Arizona Rules of Civil Procedure. ~~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.~~

— **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 Response Objections.** ~~Alf an interested person~~party does not file a written response 7 or more days before the hearing, the person ~~may~~must orally ~~object~~respond to the petition at the hearing, ~~but~~hearing and ~~must~~ file a written ~~objection or motion~~response 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 it.** [Staff Note: Is this provision necessary?]

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(3) **Form of Objection Written Response.** A written 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.

(4) **Service Notice of Response.** Unless the court orders otherwise, a ~~person~~party who files a written ~~objection~~response to a petition must ~~serve~~notify all ~~interested person~~parties 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.~~

(f) **Joinder.** Any ~~interested person~~party who agrees that the court should enter the relief requested in the petition may file ~~a statement of such agreement by filing a motion for~~notice of joinder.

(g) **Reply.** Unless the court directs otherwise, the petitioner may not file a reply in support of the petition.

(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. surecharging 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.

## **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.
- (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) **Hearing Date.** The petitioner must obtain a date and time for a 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) **Response to a Petition.** [Note: WG’s possible addition from Rule 27: 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 no later than 7 days before the hearing an objection to the petition or a motion under Rule 12 of the Arizona Rules of Civil Procedure.
  - (2) **Oral Response.** If an 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 response within 10 days after the hearing or as the court directs.
  - (3) **Form of Written Response.** A written objection must comply with Rule 5.2, 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.
  - (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.** Any party who agrees that the court should enter the relief requested in the petition may file a notice of joinder.
- (g) **Reply.** Unless the court directs otherwise, the petitioner may not file a reply in support of the petition.

## **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.~~

**Rule 18. Motions in Probate Proceedings.**

~~(a) **Generally.** A “motion” is a request to a judicial officer made by a party party requesting seeking procedural rather than substantive relief must do so by motion.~~

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~~(b) **Motion for Appointment of Counsel.** A party requesting the appointment of counsel must make the request by motion, which must state why the appointment is necessary or advisable and what, if any, special expertise that counsel must have.~~

~~(c) **Notice of Repetitive Filing.** ~~[Staff Note: Would a repetitive filing constitute vexatious conduct under Rule 10.5?]~~ **WG NOTE June 4:** WG agrees that the substance of section (c) belongs in Rule 10.5. Strike section (c) in Rule 18]~~

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~~(1) **Grounds.** A party may file a notice of repetitive filing if:~~

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~~(A) the party has a good faith belief that an interested person has filed a motion or petition that requests the same or substantially similar relief to the relief requested in an earlier motion or petition filed within the preceding 12 months by the same interested person; and~~

~~(B) the later filed motion or petition does not describe in detail a change in fact or circumstance that supports the requested relief.~~

~~(2) **Timing and Identification of the Earlier Filing.** A party must file a notice of repetitive filing no later than the response or objection deadline for the allegedly repetitive filing. A notice of repetitive filing must include the title and date of the alleged repetitive filing, the title and date of the earlier filing, and the date of the court’s ruling on the earlier filing.~~

~~(3) **Effect of Notice.** A notice of repetitive filing stays the deadline to respond or object to the alleged repetitive filing until further court order.~~

~~(4) **Court’s Authority.** The court may summarily strike a repetitive motion on its own or after receiving a notice of repetitive filing.~~

**CURRENT COMMENT**

~~Once a petition or application is pending, a party may seek procedural relief by filing a motion. Examples of procedural motions include motions relating to discovery, motions to allow or exclude evidence, motions to continue or accelerate hearings, motions for the appointment of a guardian ad litem, motions for sanctions, and motions specifically authorized by the Rules of Civil Procedure, such as motions to dismiss and motions for summary judgment.~~

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In some cases, relief may be sought by motion even if no petition is pending before

the court. Examples of appropriate motions include motions for additional time to file an inventory, accounting, or annual report of guardian, and motions to extend the appointment of temporary fiduciaries.

The Arizona Rules of Civil Procedure govern the procedure relating to motions including (i) the time for filing response and reply memoranda; (ii) the manner of service of motions and response and reply memoranda; and (iii) requests for and setting of oral argument. In this regard, motions generally should meet the requirements of Rules 7.1(a) and 10(d), Arizona Rules of Civil Procedure. Certain types of motions, however, may have different requirements or time frames. For example, motions for summary judgment are subject to the requirements of Rule 56, Arizona Rules of Civil Procedure.

Regarding Rule 18(B), A.R.S. § 14-1408 and Rule 17(g), Arizona Rules of Civil Procedure, govern when a guardian ad litem may be appointed for a minor, an incapacitated person, an unknown person, or an unascertainable person. This rule is intended to clarify the information that must be provided to the court if the appointment of a guardian ad litem is requested.

## **Rule 18. Motions in Probate Proceedings.**

A “motion” is a request to a judicial officer made by a party seeking procedural rather than substantive relief.

[**WG NOTE June 4:** WG agrees that the substance of section (c) belongs in Rule 10.5. Strike section (c) in Rule 18]

### **CURRENT COMMENT**

~~Once a petition or application is pending, a party may seek procedural relief by filing a motion. Examples of procedural motions include motions relating to discovery, motions to allow or exclude evidence, motions to continue or accelerate hearings, motions for the appointment of a guardian ad litem, motions for sanctions, and motions specifically authorized by the Rules of Civil Procedure, such as motions to dismiss and motions for summary judgment.~~

~~In some cases, relief may be sought by motion even if no petition is pending before the court. Examples of appropriate motions include motions for additional time to file an inventory, accounting, or annual report of guardian, and motions to extend the appointment of temporary fiduciaries.~~

~~The Arizona Rules of Civil Procedure govern the procedure relating to motions including (i) the time for filing response and reply memoranda; (ii) the manner of service of motions and response and reply memoranda; and (iii) requests for and setting of oral argument. In this regard, motions generally should meet the requirements of Rules 7.1(a) and 10(d), Arizona Rules of Civil Procedure. Certain types of motions, however, may have different requirements or time frames. For example, motions for summary judgment are subject to the requirements of Rule 56, Arizona Rules of Civil Procedure.~~

~~Regarding Rule 18(B). A.R.S. § 14-1408 and Rule 17(g), Arizona Rules of Civil Procedure, govern when a guardian ad litem may be appointed for a minor, an incapacitated person, an unknown person, or an unascertainable person. This rule is intended to clarify the information that must be provided to the court if the appointment of a guardian ad litem is requested.~~

W Workgroup 3 Commissioner Julia Connors assigned

**Rule 19. Appointment of an Attorney, Medical Professional, and or Investigator.**

~~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 itself.~~

~~(a) A petitioner must provide a proposed order for for the 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.~~

~~The form of order must be provided no later than 3 days after filing the Petition. The request for appointment of an attorney, investigator and medical professional may be by separate motion or as part of the petition itself. e. for the appointment of an attorney, investigator and medical professional **Request and Proposed Order.** A petitioner seeking appointment of a guardian for an adult under A.R.S. §14-5303(C) must request that court appointment of an attorney to represent the alleged incapacitated/protected adult (or "subject person" as defined in Rule 2 (R), Arizona Rules of Probate Procedure), an investigator and a medical professional (a physician, psychologist or registered nurse.)~~

~~(2) A petitioner seeking appointment of a conservator for an adult under A.R.S. §14-5407(B) must request that the court appoint an attorney to represent the subject person and an investigator, unless the alleged disability is confinement, detention by a foreign power or disappearance. An interested person may request, or the court on its own motion may order, the appointment of a medical or psychological evaluation.~~

~~(a)~~

~~(b) 3 The arty may include petitioner may include the requests to the appointment the of an attorney, medical professional, and investigator and medical professional in the pin the petition for appointment of the a guardian or conservator, rather than making the requests by a separate motion.~~

~~(e) 4 A party requesting the appointment of an attorney, a medical professional, or an investigator The petitioner must lodge a a separate proposed order to the court for appointment of the attorney, investigator and medical professional Pof an attorney,~~

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medical professional, and investigator no later than 3 days after filing the petition. the petition. hi MarkWorkgroup hi Mark

**(b) Nomination of an Attorney. 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) A party seeking the appointment of a guardian or conservator may not nominate a specific attorney to represent the subject person unless the attorney has an existing or prior attorney-client relationship with the subject person, or unless other good cause exists. If a party-petitioner nominates requests appointment of a specific attorney to represent the subject person, the petition for appointment of a guardian or conservator or 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 If a petitioner indicates that the subject person has an attorney of his or her own choosing, but that attorney counsel may be given 5 days from tto file must file a notice of appearance in the guardianship or protective proceeding within 5 days. Otherwise, .If may be given the petitioner must promptly submit a proposed Order for the appointment of counsel by the court.;~~

~~(43) — An attorney representing at the subject person, whether by court appointment or participating based upon an attorney-client relationship, is subject to the oversight authority of the Court and may be ordered to complete the training provided in Rule 10(E)(1) and (2) under these Rules, Arizona Rules of Probate Procedure.~~

**(c) Dual-Prohibited Representation.** The court may not appoint an attorney, and an attorney may not accept an appointment or remain appointed, as the attorney or guardian ad litem for the subject person, if the attorney has an existing attorney-client relationship with the nominated or appointed fiduciary, unless the court orders otherwise for good cause. [Staff Note: The substance of this rule seems to require “good cause” to appoint an attorney notwithstanding its provisions, so the draft rule includes that phrase.]

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Alternative suggested paragraph: An attorney who has an existing attorney-client relationship with the proposed or appointed guardian or conservator, the nominated or appointed fiduciary, 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.

**Nomination of (d) Requesting Appointment of a Medical Professional.** ~~{JWR Note: The changes were intended to break up the rule into two sentences and to parallel the structure of (b).}~~

A party requesting the appointment of a guardian or conservator may nominate a specific medical professional to evaluate the subject person. ~~If the party does so, the party must describe the medical professional's prior relationship, if any, with the petitioner and the subject person alleged incapacitated person or the person alleged to be in need of protection. "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.

~~(e)~~

~~(f)~~ **(e) Noncompliance.** The court may continue a hearing on a petition for appointment of a guardian or conservator based on noncompliance if the petitioner fails to comply with this rule. ~~{Staff Note: Is this provision necessary? Isn't this inherent in the court's authority?}~~

**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,~~

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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.~~

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### **Workgroup 3 Commissioner Julia Connors assigned**

#### **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.

**(e) 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 14-5407(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.~~

Workgroup 3 Aaron Nash assigned

**Rule 22. Order Appointing ~~Conservator~~, Guardian, Conservator, ~~or~~ Personal Representative, or Special Administrator.**

**(a) Orders,**

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- (1) **Required Warning.** Every order appointing a ~~conservator~~, guardian, conservator, ~~or~~ personal representative, or special administrator must include the following language: “Warning: This appointment is not effective until the clerk of the superior court issues the letters of appointment.”
- (2) **Guardianship Finding.** Every order appointing a guardian must include a specific finding as to whether the guardian’s appointment is due solely to the ward’s physical incapacity.
- (3) **Bond Amount.** ~~If the court orders a bond, the order must state the bond amount, and Every order appointing a conservator or a personal representative must plainly~~ **[Staff Note: This rule mentions “plainly state” more than once, but is that any more instructive that simply saying “state?”]** state the amount of bond, if any, required. The court will not issue letters will not issue of conservator or letters of personal representative until the the required bond has been filed.

Commented [li1]: I think by adding this language, we can remove the entire second comment below. The way the rule is currently written suggests the court must always set bond.

**(b) Bonds,**

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- (1) **Statutory Agent.** A ~~fiduciary~~ bond filed with the court clerk of court must state on the bond or on an attachment the name and address of the bonding company’s statutory agent or other person authorized to accept service of process for the bonding company in Arizona.
- (2) **Change in Statutory Agent or Agent’s Address.** The bonding company must promptly notify the ~~clerk of court~~ clerk of any change in the company’s statutory agent or in the statutory agent’s address.

**~~(c) Restrictions on Authority and Restricted Accounts,~~**

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- ~~(1) **Restrictions on Management Authority.** Every order appointing a guardian, conservator or, personal representative, or special administrator, or that authorizes a single transaction or other protective arrangement under A.R.S. § 14-5409, must plainly state any restrictions on the fiduciary’s authority to manage the estate’s assets.~~
- ~~(2) **Restrictions on Financial Authority.** If the restriction affects the fiduciary’s authority to manage the estate’s monetary assets, and, unless the court orders otherwise, any letters the court issues must describe the restriction, contain such~~

~~as the following language: “Funds must be deposited into an interest-bearing, federally insured restricted account at a financial institution engaged in business in Arizona. No withdrawals of principal or interest may be made without a certified order of the superior court. Unless the court orders otherwise, reinvestment may be made without further court order so long as funds remain insured and restricted in this institution at this branch.”~~

~~(3) **Proof of Restricted Account.** Unless the court orders otherwise, the fiduciary must file proof of any restricted account no later than 30 days after the court first issues enters an temporary or permanent order or letters restricting the account.~~

~~{Staff Note: Should the following provision be relocated to Rule 37?}~~

~~(4) **Attorney Responsibilities.** Unless the court orders otherwise, an attorney who represents the fiduciary, ward, protected person, or insurance company and who is the recipient of any proceeds to be restricted for the benefit of a minor, incapacitated person, or protected person, must ensure that the restricted account is established and properly titled, and that the restricted funds are safely deposited into the account. The attorney must file a properly executed proof of restricted account form executed by an authorized representative of the financial institution no later than 30 days after letters are issued or a single transaction order is entered.~~

~~(d) **Restricted Real Property,**~~

~~(1) **Restrictions on Transactional Authority.** Every order appointing a conservator or a personal representative, or that authorizes a single transaction or other protective arrangement under A.R.S. § 14-5409, must plainly state any restrictions on the authority to sell, lease, encumber, or convey the estate’s real property. The court will not issue any letters of conservator or personal representative to any person unless the letters contain the language restricting the fiduciary’s authority.~~

~~(c) **Restrictions on Management Authority.** If the restriction limits the fiduciary’s authority to manage real property, the order appointing the conservator or personal representative, or that authorizes or ratifies the transaction, must contain the following language unless the court orders otherwise: “No realty may be leased for more than one year, sold, encumbered, or conveyed without a prior court order authorizing Restrictions on Authority and Restricted Accounts.”~~

~~(1) **Restrictions on Authority**Generally. Every order appointing a guardian, conservator, personal representative, or special administrator, or that authorizes a single transaction or other protective arrangement, must state any restrictions on~~

Commented [li2]: Which is it – the order or the LOA as the filing dates may be different.

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the fiduciary's authority to manage the estate's assets. Any such restriction shall must be included, in the same language, in the L-letters.

**(2) Restrictions on Management Authority.** If the restriction limits the fiduciary's authority to manage real property, the order appointing the conservator or personal representative, or that authorizes or ratifies the transaction, ~~may~~ must contain the following language similar to the following: "No realty may be leased for more than one year, sold, encumbered, or conveyed without a prior court order authorizing it."

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**(3) Restrictions on Financial Authority.** If the restriction affects the fiduciary's authority to manage the estate's monetary assets, the order ~~may be in the following~~ must contain language similar to the following: "No withdrawals of principal or interest may be made without a certified order of the superior court. Unless the court orders otherwise, reinvestment may be made without further court order so long as funds remain restricted in this institution at this branch."

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**(4) Proof of Restricted Account.** If a restriction on financial authority has been ordered, the fiduciary must file proof of any restricted account no later than 30 days after the court enters an order restricting the account.

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**(5) Attorney Responsibilities.** Unless the court orders otherwise, an attorney who represents the fiduciary who is the recipient of any proceeds to be restricted for the benefit of a minor, incapacitated person, or protected person, must ensure that the restricted account is established and properly titled, and that the restricted funds are safely deposited into the account. The attorney must assure that the fiduciary files the properly executed proof of restricted account form.

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**(6) Modification of Terms or Responsibilities.** The court may modify the terms of any restriction provided for by this Rule, and may, at the time of entry of the order restricting authority, direct that other parties or counsel ensure that the restrictions are properly ~~effected~~ implemented and proof ~~appropriately~~ is filed.

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## COMMENT

~~Generally, a person appointed as a conservator or as a personal representative shall obtain and file a fiduciary bond before letters of appointment are issued. Certain exceptions, however, exist. These exceptions, as well as how the amount of bond is to be calculated, are set by statute. See A.R.S. §§ 14-3603 to 3606 (bonds for personal representatives); A.R.S. §§ 14-5411 and 5412 (bonds for~~

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conservators);

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~~This rule is not intended to expand or narrow the circumstances in which a bond is required of a conservator or personal representative. Instead, its purpose is to require that the form of order clearly state whether a bond is required and, if so, the amount of the bond and to clarify that letters should not be issued until any required bond has been filed with the clerk of court.~~

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Because A.R.S. § 14-1201 defines “personal representative” as including a special administrator, this rule also applies to the appointment of a special administrator.

## **Rule 22. Order Appointing Guardian, Conservator, Personal Representative, or Special Administrator.**

### **(a) Orders.**

- (1) ***Required Warning.*** Every order appointing a guardian, conservator, personal representative, or special administrator must include the following language: “Warning: This appointment is not effective until the clerk of the superior court issues the letters of appointment.”
- (2) ***Guardianship Finding.*** Every order appointing a guardian must include a specific finding as to whether the guardian’s appointment is due solely to the ward’s physical incapacity.
- (3) ***Bond Amount.*** If the court orders a bond, the order must state the bond amount, and letters will not issue until the bond has been filed.

### **(b) Bonds.**

- (1) ***Statutory Agent.*** A bond filed with the court clerk must state on the bond or on an attachment the name and address of the bonding company’s statutory agent or other person authorized to accept service of process for the bonding company in Arizona.
- (2) ***Change in Statutory Agent or Agent’s Address.*** The bonding company must promptly notify the court clerk of any change in the company’s statutory agent or in the statutory agent’s address.

### **(c) Restrictions on Authority and Accounts.**

- (1) ***Generally.*** Every order appointing a guardian, conservator, personal representative, or special administrator, or that authorizes a single transaction or other protective arrangement, must state any restrictions on the fiduciary’s authority to manage the estate’s assets. Any such restriction must be included, in the same language, in the letters.
- (2) ***Restrictions on Management Authority.*** If the restriction limits the fiduciary’s authority to manage real property, the order appointing the conservator or personal representative, or that authorizes or ratifies the transaction, must contain language similar to the following: “No realty may be leased for more than one year, sold, encumbered, or conveyed without a prior court order authorizing it.”
- (3) ***Restrictions on Financial Authority.*** If the restriction affects the fiduciary’s authority to manage the estate’s monetary assets, the order must contain

language similar to the following: “No withdrawals of principal or interest may be made without a certified order of the superior court. Unless the court orders otherwise, reinvestment may be made without further court order so long as funds remain restricted in this institution at this branch.”

(4) ***Proof of Restricted Account.*** If a restriction on financial authority has been ordered, the fiduciary must file proof of any restricted account no later than 30 days after the court enters an order restricting the account.

(5) ***Attorney Responsibilities.*** Unless the court orders otherwise, an attorney who represents the fiduciary who is the recipient of any proceeds to be restricted for the benefit of a minor, incapacitated person, or protected person, must ensure that the restricted account is established and properly titled, and that the restricted funds are safely deposited into the account. The attorney must assure that the fiduciary files the properly executed proof of restricted account form.

(6) ***Modification of Terms or Responsibilities.*** The court may modify the terms of any restriction provided for by this Rule, and may, at the time of entry of the order restricting authority, direct that other parties or counsel ensure that the restrictions are properly implemented and proof is filed.

[OBJ]

## COMMENT

~~Generally, a person appointed as a conservator or as a personal representative shall obtain and file a fiduciary bond before letters of appointment are issued. Certain exceptions, however, exist. These exceptions, as well as how the amount of bond is to be calculated, are set by statute. See A.R.S. §§ 14-3603 to 3606 (bonds for personal representatives); A.R.S. §§ 14-5411 and 5412 (bonds for conservators).~~

Because A.R.S. § 14-1201 defines “personal representative” as including a special administrator, this rule also applies to the appointment of a special administrator.

Workgroup 3 Judge David Mackey assigned

**Rule 35. ~~Arrest Warrants and Orders to Show Cause, Enforcement of Court Orders in Probate Cases~~**

~~(a) Generally. The court has the power to enforce compliance with court orders. In addition to that power, the sanctions provided in statute, and the sanctions in Rule 37, Arizona Rules of Civil Procedure, the court may issue arrest warrants and orders to show cause as set forth below. This rule does not govern criminal contempt sanctions imposed to punish an offender or to vindicate the authority of the court.~~

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~~— Civil Arrest Warrants. Rule 64.1 of the Arizona Rules of Civil Procedure governs civil arrest warrants. The court may issue a civil arrest warrant to obtain the appearance of a person before the court when that person has failed to appear in court after receiving actual notice of an order or subpoena to appear at a specific time and location that included a warning that the failure to appear might result in the issuance of a civil arrest warrant.~~

Commented [MDH1]: Adding the comment from below into the rule with a couple of modifications.

Commented [MDH2]: Attempted to be consistent with the language in the fiduciary arrest warrants section. Both Rule 64.1 and ARS 14-5701 – 5704 require actual notice of the prior order to appear, refer to the place and time of appearance and require a warning that the failure to appear might result in the issuance of an arrest warrant.

~~(a)(b) Alternate a: Pursuant to Rule 64.1, Arizona Rules of Civil Procedure, the court may issue a civil arrest warrant to obtain the appearance of a person before the court when that person has failed to appear in court after receiving actual notice of an order or subpoena to appear at a specific time and location that included a warning that the failure to appear might result in the issuance of a civil arrest warrant.~~

~~— Fiduciary Arrest Warrants. A.R.S. §§ 14-5701 through 5704 govern fiduciary arrest warrants. The court may issue a fiduciary arrest warrant to obtain the appearance of a fiduciary before the court when that fiduciary has failed to appear in court after receiving actual notice of an order to appear at a specific time and location that included a warning that the failure to appear might result in the issuance of a fiduciary arrest warrant. address the failure of a fiduciary to appear for a probate proceeding after being ordered to appear.~~

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~~(b)(c) Alternate b: Pursuant to A.R.S. §§ 14-5701 through 5704, the court may issue a fiduciary arrest warrant to obtain the appearance of a fiduciary before the court when that fiduciary has failed to appear in court after receiving actual notice of an order to appear at a specific time and location that included a warning that the failure to appear might result in the issuance of a fiduciary arrest warrant.~~

~~— Orders to Show Cause. Rule 7.3 of the Arizona Rules of Civil Procedure governs orders to show cause. The court may issue use an order to show cause to address problems arising from a party's failure to discharge duties or obligations required by court order, court rule, or statute.~~

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~~(e)(d) Alternate e: Pursuant to Rule 7.3, Arizona Rules of Civil Procedure, the court may issue an order to show cause to address problems arising from a party's failure to discharge duties or obligations required by court order, court rule, or statute.~~

**Commented [li4]:** The fiduciary is a party

**COMMENT**

~~The court has the power to ensure compliance with court orders. This rule sets forth tools in addition to the sanctions provided in statute and in Rule 37, Arizona Rules of Civil Procedure. The rule does not govern criminal contempt sanctions imposed to punish an offender or vindicate the authority of the court.~~

**Commented [MDH5]:** Moving this into the rule.

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

~~A.R.S. § 14-5651(D) governs the required notification by the superior court of any fiduciary who has violated any rule adopted by the supreme court and the required investigation by the supreme court.~~

**Commented [MDH6]:** I suggest this be a part of a rule regarding fiduciaries. I am just not sure it belongs in this section. The following is the rule language I suggest.

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## **Workgroup 3 Judge David Mackey assigned**

### **Rule 35. Enforcement of Court Orders in Probate Cases**

- (a) **Generally.** The court has the power to enforce compliance with court orders. In addition to that power, the sanctions provided in statute, and the sanctions in Rule 37, Arizona Rules of Civil Procedure, the court may issue arrest warrants and orders to show cause as set forth below. This rule does not govern criminal contempt sanctions imposed to punish an offender or to vindicate the authority of the court.
- (b) **Civil Arrest Warrants.** Pursuant to Rule 64.1, Arizona Rules of Civil Procedure, the court may issue a civil arrest warrant to obtain the appearance of a person before the court when that person has failed to appear in court after receiving actual notice of an order or subpoena to appear at a specific time and location that included a warning that the failure to appear might result in the issuance of a civil arrest warrant.
- (c) **Fiduciary Arrest Warrants.** Pursuant to A.R.S. §§14-5701 through 5704, the court may issue a fiduciary arrest warrant to obtain the appearance of a fiduciary before the court when that fiduciary has failed to appear in court after receiving actual notice of an order to appear at a specific time and location that included a warning that the failure to appear might result in the issuance of a fiduciary arrest warrant.
- (d) **Orders to Show Cause.** Pursuant to Rule 7.3, Arizona Rules of Civil Procedure, the court may issue an order to show cause to address problems arising from a party's failure to discharge duties or obligations required by court order, court rule, or statute.

Workgroup 3 Robert Fleming assigned

**Rule 37. Settlements Involving Minors or ~~Incapacitated~~ Adults in Need of Protection.**

**(a) Generally.** 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.

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**(b) Petitioner.** Any petition for ~~such~~ approval may be brought by a court-appointed guardian, a guardian *ad litem*, ~~a next friend~~ or other interested party.

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**(c) Procedure on hearing.** 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, and
- (4) The proper apportionment of settlement proceeds among the various litigants.

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**(d) Orders.** The court hearing ~~such the~~ petition may enter any appropriate order under the authority of A.R.S. ~~secs. §§~~ 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:

- (1) ~~order~~ establishment of an appropriate trust with or without continuing court supervision, as authorized by ARS §14-5409(B),
- (2) 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") ~~or~~,
  - (B) 26 U.S.C. 529A ("qualified ABLE programs"), or
  - (C) 42 U.S.C. 1396p(d)(4)(C) (a pooled special needs trust), ~~or~~

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~~((3) in the case of a minor claimant,)~~ distributed ~~the proceeds~~ to a custodian pursuant to ~~under~~ A.R.S. ~~§ see-~~ 14-7656(B) (the Uniform Transfers to Minors Act); or

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~~(4) distribute the proceeds~~ to an appropriate person pursuant to ~~under~~ A.R.S. ~~§ see-~~ 14-5103 (“Facility of payment or delivery”).

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~~—Note: Robert will add language to accommodate 5103 transactions; and possibly provisions regarding a GAL or special master.~~

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~~(a) Settlement of Claims on Behalf of Minors. Except as provided in A.R.S. § 14-5103(A), any settlement of a personal injury or wrongful death claim brought on behalf of or against a minor 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 appointed a conservator for the minor. [Staff Note: Why is it necessary for the court to approve a personal injury claim brought against a minor? An insurance company will indemnify the minor in most of those claims, and the minor will have no personal responsibility to pay. Or at least the minor will be released from any further responsibility to pay. And claims against a minor are not mentioned in the statute.]~~

~~(b) — Settlement of Claims on Behalf of Incapacitated Adults or Protected Person. Any settlement of a personal injury or wrongful death claim brought on behalf of an incapacitated adult or protected person 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 appointed a conservator for the incapacitated adult.~~

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## COMMENT

~~This rule is intended to clarify the requirement that whenever a settlement is reached in a civil proceeding brought on behalf of or against a minor or incapacitated adult to recover damages for personal injury or wrongful death, the proposed settlement must be submitted for review and approval to a judicial officer assigned to hear probate matters. In most instances, either a conservatorship or trust will need to be established for the minor or incapacitated adult to receive and manage the funds distributed from the settlement. Because of the minority or incapacity of the recipient of the funds, the court should review the terms of the settlement to ensure that its terms and conditions appear to be in the minor’s or incapacitated person’s best interests. An exception is recognized pursuant to A.R.S. § 14-5103, which provides that payment or delivery of money or personal property to minors in amounts not exceeding \$10,000 per annum may be facilitated without the establishment of a conservatorship estate or other protective proceeding.~~

### **Workgroup 3 Robert Fleming assigned**

#### **Rule 37. Settlements Involving Minors or Adults in Need of Protection.**

- (a) **Generally.** 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.
- (b) **Petitioner.** A petition for approval may be brought by a court-appointed guardian, a guardian *ad litem*, or other interested party.
- (c) **Procedure on hearing.** 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, and
  - (4) 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:
- (1) order establishment of an appropriate trust with or without continuing court supervision, as authorized by ARS §14-5409(B),
  - (2) 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”), or
    - (C) 42 U.S.C. 1396p(d)(4)(C) (a pooled special needs trust),
  - (3) 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); or

(4) distribute the proceeds to an appropriate person under A.R.S. § 14-5103 (“Facility of payment or delivery”).