

## ARIZONA JUDICIAL COUNCIL

### Request for Council Action

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**Date Action Requested:**

June 23, 2020

**Type of Action Requested:**

Formal Action/Request  
 Information Only  
 Other

**Subject:**

Probate Subcommittee Report and Recommendations

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**FROM:**

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**DISCUSSION:**

The Arizona Supreme Court has adopted case processing standards for probate cases; however, subcommittees are sometimes formed to review and examine particular case types and associated time standards more closely.

Accordingly, the probate subcommittee was formed and tasked with making recommendations as to (1) what types of probate events should be tracked, (2) whether additional time standards should be recommended to capture additional filings/proceedings in probate cases, and (3) whether the existing probate time standards are adequate/appropriate.

The subcommittee identified and made recommendations as to several events that should be tracked in probate cases, additional filings that should have an associated time standard, and modifying/eliminating existing probate time standards.

**RECOMMENDED COUNCIL ACTION:**

Adopt the report and recommendations of the Probate Subcommittee, which include:

- Creating reports for additional tracking when IT resources become available;
- Eliminating the Probate Administration of Estates time standard; at a minimum removing the Affidavit for Collection of Real Property case type filing; and
- Create additional time standards for:
  - Guardianship/Conservatorship cases (Motions for Renewal of G/C)
  - Trust cases (All petitions)
  - Mental Health cases (Application for Renewal of Court-Ordered Treatment)

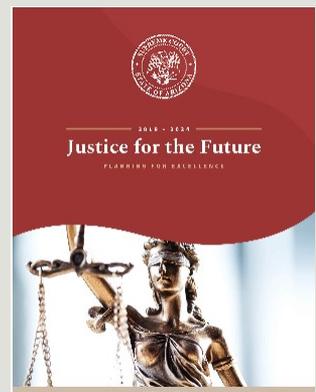
# Probate Subcommittee

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## Probate Subcommittee

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- Tasked with making recommendations as to:
  - What types of probate events should be tracked
  - Whether additional time standards are necessary
  - Whether existing time standards are appropriate



## Probate Subcommittee

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### Issues identified:

- Several post-appointment filings that the time standards do not capture
- Other case types filed within a probate case
- Created wish list/roadmap

## Probate Subcommittee

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- Identified events that should be tracked for all Decedent's Estates, Trust, and Guardianship Conservatorship cases
  - All petitions and entry of order that rules on the petition
  - Contested petitions (i.e., objections or responses to petitions)
  - Setting initial hearing on the petition
- Identified events that should be tracked specific to case type
  - See pages 5-6 of report

# Probate Subcommittee

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## Time Standard Recommendations

- **Decedent's Estates**
  - Eliminate existing time standard for appointment of PR to close of estate
  - Eliminate inclusion of Affidavit for Collection of Real Property

# Probate Subcommittee

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## Time Standard Recommendations

- **Guardianship/Conservatorship**
  - All petitions filed until entry of order
    - Current time standards should remain unchanged
  - Motions for renewal of inpatient mental health authority for adult guardianship
    - Time standard should be developed

# Probate Subcommittee

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## Time Standard Recommendations

- **Trusts**
  - All petitions filed until entry of order
  - Time standard should be developed

# Probate Subcommittee

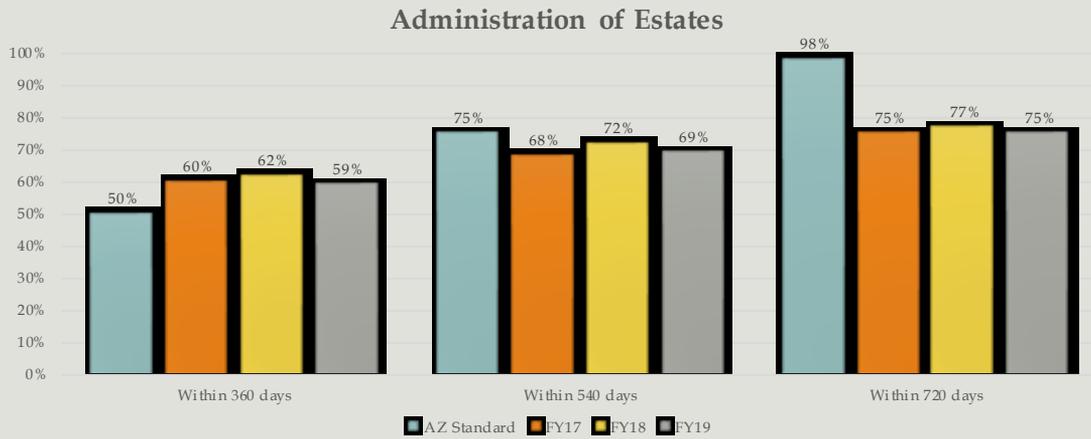
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## Time Standard Recommendations

- **Mental Health**
  - Initial petition for Court-Ordered Treatment until order granting/ denying/ dismissing
    - Current time standard should remain unchanged
  - Ruling on application for renewal of Court-Ordered Treatment order
    - Time standard should be developed

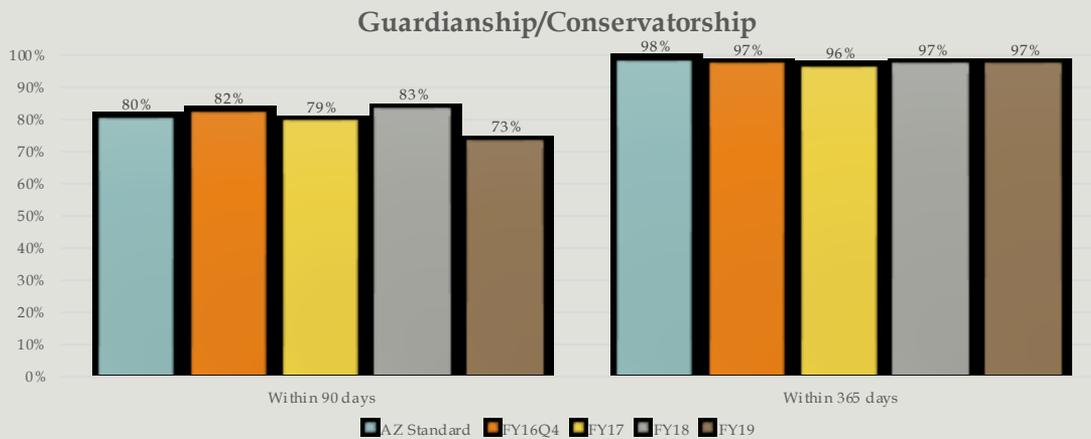
### Administration of Estates

50% within 360 days  
 75% within 540 days  
 98% within 720 days



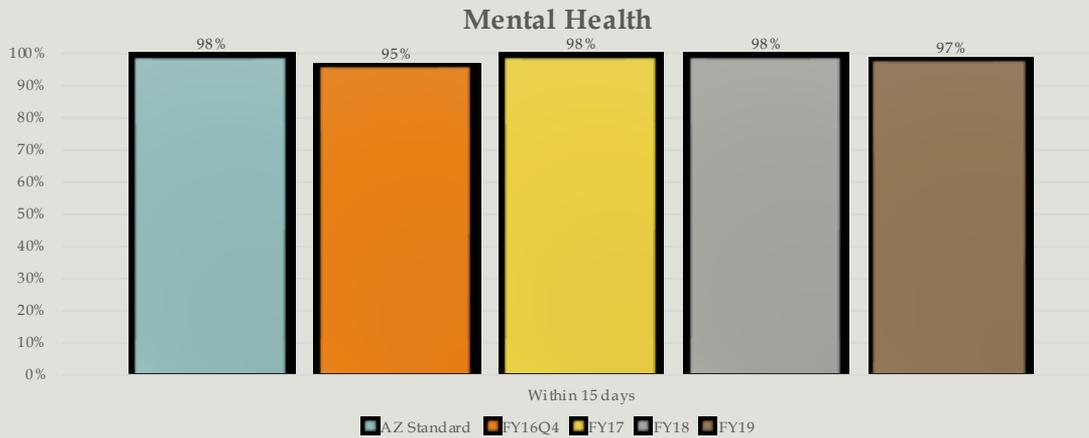
### Guardianship/Conservatorship

80% within 90 days  
 98% within 365 days



## Mental Health

98% within 15 days



## *Workgroup Recommendation – Action Request*

- Adopt the report and recommendations of the Probate Subcommittee:
  - Create reports for additional tracking when IT resources become available
  - Eliminate Probate Administration of Estates time standard; at a minimum remove Affidavit for Collection of Real Property
  - Create additional time standards for:
    - Guardianship/Conservatorship cases (Motions for Renewal of G/C)
    - Trust cases (All petitions)
    - Mental Health cases (Application for Renewal of Court-Ordered Treatment)

## *Requested Action*

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- Adopt final case processing standards for Family Law Post Judgment Motions and LJ Appeals
- Adopt the report and recommendations of the Probate Subcommittee

## Transition to New Committee

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- Annually review Arizona case management data to assess conformance with time standards
- As necessary, recommend adjustments to existing time standards
- Identify court data necessary to make data-based decisions related to case processing, court management, and allocation of court resources
- Develop data standards and make recommendations regarding data governance, implementing the data standards, and improving data quality



# Time Standards Probate Subcommittee Report & Recommendations

October 2019

Table of Contents

MEMBERS ..... 1

EXECUTIVE SUMMARY ..... 2

*Overview of this Report* ..... 2

*The Workgroup and the Workgroup Process* ..... 2

DISCUSSION ..... 4

*Events That Should Be Tracked* ..... 5

*Case Events That Should Have Time Standards* ..... 6

*Case Events That Should Exclude Time* ..... 7

*Adequacy/Appropriateness of Existing Time Standards* ..... 8

*Conclusion* ..... 9



## *Probate Subcommittee Workgroup*

### *MEMBERS*

#### **Honorable Jay Polk, Chair**

Associate Presiding Judge, Probate and Mental Health Department  
Superior Court of Maricopa County

#### **Honorable David Mackey**

Presiding Judge, Superior Court of Yavapai  
County

#### **Ms. Michelle Matiski**

Attorney, Aetna Legal Group

#### **Ms. Lisa Price**

Fiduciary, Entrust Fiduciary Services, Inc.

#### **Ms. Catherine Robbins**

Fiduciary, Maricopa County Public  
Fiduciary

#### **Ms. Denice Shepherd**

Attorney, Law Office of Denice R.  
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#### *AOC Staff*

#### **Ms. Marretta Mathes**

Court Services Division Project Specialist,  
Administrative Office of the Courts

#### **Ms. Cathy Clarich**

Court Services Division Manager,  
Administrative Office of the Courts

# Time Standards Probate Subcommittee Report & Recommendations

October 2019

## EXECUTIVE SUMMARY

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The Steering Committee on Arizona Case Processing Standards (“Time Standards Committee”) was established in October 2012 by Administrative Order 2012-80. This committee was charged with “review[ing] the national time standards for processing all major case types in limited and general jurisdiction courts and develop[ing] and recommend[ing] state case processing standards for Arizona.” The Arizona Supreme Court has adopted case processing standards for probate cases; however, subcommittees are sometimes formed to review and examine particular case types and associated time standards more closely.

Accordingly, the probate subcommittee was formed and tasked with making recommendations as to (1) what types of probate events should be tracked, (2) whether additional time standards should be recommended to capture additional filings/proceedings in probate cases, and (3) whether the existing probate standards are adequate/appropriate.

*Subcommittees are sometimes formed to review and examine particular case types and associated time standards more closely.*

### *Overview of this Report*

This report begins with the membership of the workgroup, a summary of the workgroup meeting discussions, and a summary of the recommendations related to the events that should be tracked in probate cases, case events that should have associated time standards, case events that should exclude time, and the adequateness/appropriateness of the existing probate time standards.

### *The Workgroup and the Workgroup Process*

The workgroup held three meetings -January 22, 2019, February 15, 2019, and March 25, 2019. During these meetings, the workgroup learned about and discussed various

issues, gathered and shared relevant information, considered approaches to use and recommendations to make.

## DISCUSSION

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The workgroup met three times. The first meeting provided members with a background and the purpose of this workgroup. One issue brought to the group's attention was that there are many "post-appointment" filings in probate cases that the time standards do not capture or count. Specifically, while the time standards capture post-decree filings for family law cases, they do not do the same for probate cases.

There was also concern about how probate cases sometimes have other case types filed within the probate case, e.g., a Title 25 family (annulment, dissolution, legal separation, or paternity) petition or a civil complaint filed under an existing probate case number. The time standards do not measure the proceedings separately if a proceeding is filed in this manner.

This group discussed whether revisions to the current time standards should be recommended to the Time Standards Committee based on these concerns.

At the second meeting, an overview of the existing time standards for probate cases and an explanation of how time is measured was provided. Data for each case type was provided for FY18, and the time standards summary chart was explained. Additionally, an overview of which events start/stop time in the statewide case management system was provided.

The group discussed which events should be tracked in probate cases. The members began by walking through the life of a decedent's estate case to determine which events are meaningful. One member indicated that he would like to see IT resources allocated to the implementation of the statewide case management system (AJACS) generally instead of making changes to the time standards reports. The group agreed, but also agreed that it would be helpful to provide a wish list/roadmap for tracking these events when the resources become available and allocation for this purpose becomes realistic. The group identified the following case types for which to provide a wish list/roadmap: decedents' estates, guardianship/conservatorship, trusts, and mental health.

At the third and final meeting, the workgroup discussed case events that should have time standards, events that should stop the clock on time standards, and events that should exclude time. The group did not identify specific standards for each event but did identify events that should exclude time. The group agreed that more data is needed before time standards can be assigned.

Lastly, the group discussed the adequacy/appropriateness of the existing time standards for probate cases.

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The text that follows details the recommendations that resulted from these workgroup discussions.

## *Events That Should Be Tracked*

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Workgroup members identified the events that should be tracked for the following probate matters:

1. **All Decedents' Estates, Trusts, and Guardianship/Conservatorship Cases (not Mental Health cases)**
  - a. All petitions, regardless of type/name of petition, and entry of a final order ruling on that petition.
  - b. Contested petitions (i.e., objections or responses to petitions)
  - c. Setting initial hearing on the petition
  
2. **Decedents' Estates**
  - a. All applications and issuance of statement granting or denying the application<sup>1</sup>
  - b. Time from initial appointment of personal representative or special administrator (issuance of letters) to close of estate (by closing statement (or one year later?) or court order)
  - c. Accounts if estate is ordered supervised
  
3. **Guardianship/Conservatorship**
  - a. Annual Guardian Reports
  - b. Inventory & Appraisalment, Consumer Credit Report, and Budget
  - c. Inpatient authority granted to guardian, expiration date, whether motion for renewal is filed, and results of that motion
  - d. Proof of restricted account
  - e. Proof of recording letters (if required)
  - f. Annual accounts and orders approving the accounts
  - g. When minor wards/protected persons turn 18 (both for guardianships and conservatorships)
  - h. In adult guardianship only, a notice of death of the ward
  - i. In conservatorship (regardless of minor or adult), an order terminating the conservatorship and releasing and discharging the conservator
  - j. Notice of minor ward turning 18 years of age or order terminating guardianship for the minor
  - k. Some other order terminating the guardianship or conservatorship

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<sup>1</sup> This should be removed from the general probate time standards and a separate time standard should be created.

- I. Requests for appointment of temporary guardian or conservator
- 4. **Trusts**
  - a. Petitions and orders resolving petitions
  - b. Accounts if trust is court-supervised (until court terminates supervision of trust)
- 5. **Mental Health**
  - a. Petition for court-ordered treatment (COT) and order granting/denying/dismissing the petition
  - b. Application for renewal of COT and order granting/denying/dismissing the petition
  - c. Date when the COT is due to expire
  - d. Reason(s) for COT (danger to self, danger to others, persistently or acutely disabled, and/or gravely disabled)

### *Case Events That Should Have Time Standards*

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From the list of events that should be tracked, workgroup members identified which case events should have a designated time standard.

- 1. **Decedent's Estates**
  - a. Appointment of PR to close of estate.<sup>2</sup>
- 2. **Guardianship/Conservatorship**
  - a. Time from filing petition until entry of order on that petition (regardless of type of petition). Initially, this would be regardless of uncontested or contested but later might lead to different time standards for uncontested and contested cases (and/or for certain types of petitions that occur regularly, such as a petition for appointment of guardian/conservator and petition for approval of annual account).
  - b. Ruling on a motion for renewal of inpatient mental health authority for adult guardianship. Trigger event should be the expiration date of existing inpatient mental health authority.

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<sup>2</sup> The Supreme Court has adopted a time standard for this case type, but the consensus of the workgroup members was that this standard should be eliminated.

- c. The consensus of workgroup member was that there should NOT be time standards for any specific events or types of petitions in guardianship/conservatorship cases, including minor guardianship/conservatorship cases. Adult guardianship/conservatorship cases can go on indefinitely, and minor guardianship/conservatorship cases can be extended past age of majority.
- 3. Trusts**
- a. Time from filing petition until entry of order on that petition (regardless of type of petition). Initially, this would be regardless of whether the case is uncontested or contested but later might lead to different time standards for uncontested and contested cases.
- 4. Mental Health**
- a. Petition for initial COT to order granting/denying/dismissing the petition. Court-ordered evaluation (COE) hearing requests are made in small minority of cases, and COEs expire by statute. Thus, the workgroup is NOT proposing a time standard for COE petitions.
  - b. Ruling on Application for Renewal of COT. This time standard would be triggered by the expiration date of the existing court order rather than the filing of the application for renewal to protect rights and to be consistent with the statutory expiration date.

### *Case Events That Should Exclude Time*

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After reviewing the current events that exclude time, workgroup members identified other events that should exclude time from the time standards calculation.

- 1. Decedent's Estates (Opening Estate to Closing Estate)**
  - a. Bankruptcy for one of the parties (including the personal representative) or an entity in which the estate owns interest
  - b. Special actions/appeals
  - c. Estate tax audit
  - d. Any civil, family, juvenile or other non-probate litigation involving the estate, regardless of whether filed under the probate case number or as a separate case number. This includes wrongful death, medical practice, and vulnerable adult abuse claims.
- 2. Conservatorships (Filing Petition for Appointment to Ruling on That Petition)**

- a. Bankruptcy filed for the protected person/person alleged to be in need of protection (applies only to conservatorship for an adult)
- 3. Guardianships**
- a. For minor guardianship, pending juvenile or family court case relating to the proposed minor ward
- 4. Trusts**
- a. Bankruptcy for one of the parties (including the trustee) or an entity in which the estate owns interest
- 5. Mental Health**
- a. None

### *Adequacy/Appropriateness of Existing Time Standards*

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Workgroup members reviewed the time standards currently adopted for probate cases, and make the following recommendations:

**1. Decedent's Estates**

Eliminate the time standards for probate administration of estates in their entirety because they give the wrong impression that the court controls (or can control) the timeliness of the administration of the estate when, in fact, neither the statute nor the rules allow the court, *sua sponte*, to do anything prior to two years from opening of the estate. The only place to apply a standard for a decedent's estate administration is for a supervised administration. Additionally, cases in which the only document filed is an affidavit for collection of real property are being captured for purposes of the current time standard, but those cases do not involve the opening or closing of an estate.

**2. Adult Guardianship/Conservatorship**

Leave existing time standards as is.

**3. Mental Health (Initial COT)**

Leave existing time standards as is.

## *Conclusion*

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The workgroup recognizes that tracking additional events and creating additional time standards would require the allocation of additional IT resources. Members agreed that its recommendations related to additional event tracking/time standards are more of a wish list/roadmap until resource allocation is appropriate/realistic. Additionally, members agreed that more data is needed before specific time standards can be assigned.