

SUPREME COURT OF ARIZONA

In the Matter of)	Arizona Supreme Court
)	No. R-07-0012
PETITION FOR ADOPTION OF THE)	
ARIZONA RULES OF PROBATE)	
PROCEDURE)	
)	
)	
)	
_____)	

CORRECTIVE ORDER

On September 16, 2008, the Court issued an order adopting the Arizona Rules of Probate Procedure. Inadvertent errors have been discovered in the order, necessitating further amendment of the probate rules and rescission of certain Rules of the Supreme Court. Therefore,

IT IS ORDERED rescinding Section XIII, Probate Rules of Practice, Rules 126 through 129, Rules of the Supreme Court.

IT IS FURTHER ORDERED amending Rules 4, 30, and 35, and Forms 1 through 4, Arizona Rules of Probate Procedure, as set forth in the attachment hereto, effective January 1, 2009.

DATED this _____ day of October, 2008.

RUTH V. MCGREGOR
Chief Justice

TO:
Rules Distribution List

Arizona Rules of Probate Procedure

Table of Contents

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RULE 30. GUARDIANSHIPS/CONSERVATORSHIPS – SPECIFIC PROCEDURES

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RULE 35. CIVIL CONTEMPT AND SANCTIONS-ARREST WARRANTS, ORDERS TO SHOW CAUSE,
AND FIDUCIARY ARREST WARRANTS

* * *

ARIZONA RULES OF PROBATE PROCEDURE

PREAMBLE [No change in text.]

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

**RULE 4. COMMENCEMENT AND DURATION OF PROBATE CASES AND
PROBATE PROCEEDINGS, AND CIVIL ACTIONS, FAMILY LAW
PROCEEDINGS, AND JUVENILE PROCEEDINGS FILED WITHIN OR
CONSOLIDATED WITH A PROBATE CASE**

A. [No change in text.]

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

3. Commencement and Duration of Trust Case. A probate case relating to the internal affairs of a trust is initiated by filing a petition in accordance with A.R.S. §§ 14-10201 to 10204, or a petition for declaratory judgment in accordance with A.R.S. §§ 12-1801 to -1867. A probate case relating to the internal affairs of a trust continues until the court takes either of the following actions:

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

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

Comment

* * *

Regarding Rule 4(A)(3). Pursuant to A.R.S. §§ 14-10201 to 10204, a proceeding commenced to address a specific issue relating to the internal affairs of a trust does not result in continuing court supervision of the trust's administration after the court has resolved the specific issue for which the proceeding was initiated.

* * *

RULES 5-29. [No change in text.]

RULE 30. GUARDIANSHIPS/CONSERVATORSHIPS-SPECIFIC PROCEDURES

A. Inventories.

1. [No change in text.]

2. If the conservator is unable to file the inventory within 90 days after the conservator's letters of ~~permanent appointment~~ conservator, whether temporary or permanent, are first issued, the conservator shall, before the deadline, file a motion that requests additional time to file the inventory. Such motion shall state why additional time is required and how much additional time is required to file the inventory.

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

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

Comment [No change in text.]

RULES 31-34. [No change in text.]

RULE 35. ~~CIVIL CONTEMPT AND SANCTIONS~~ ARREST WARRANTS, ORDERS TO SHOW CAUSE, AND FIDUCIARY ARREST WARRANTS

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

Comment

* * *

~~Regarding Rule 35(B). If the person subject to an order to show cause is a fiduciary, that person may be subject to a fiduciary arrest warrant under A.R.S. § 14-5701.~~

* * *

FORM 1

[ORDER TO PERSONAL REPRESENTATIVE AND ACKNOWLEDGEMENT AND INFORMATION TO HEIRS/DEVISEES]

[No change in heading/caption]

* * *

DUTIES OF THE PERSONAL REPRESENTATIVE

The duties of the Personal Representative are found in Chapter 3, Title 14 of the Arizona Revised Statutes (from now on called "A.R.S."). You are responsible for knowing and doing your duties according to these statutes. Some of the duties are as follows:

1. [No change in text.]

2. **Fiduciary Duties.** As Personal Representative you are a fiduciary. This means you have a legal duty of ~~undivided loyalty~~ fairness and impartiality to the beneficiaries and the creditors of the estate. You must be cautious and prudent in dealing with estate assets. As Personal Representative, the estate assets do not belong to you and must never be used for your benefit or mixed with your assets or anyone else's assets. Arizona law prohibits a Personal Representative from participating in transactions that are a conflict of interest between you, as Personal Representative, and you as an individual. Other than receiving reasonable compensation for your services as Personal Representative, you may not profit from dealing with estate assets.

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

[No change in remainder of form.]

FORM 2

[ORDER TO GUARDIAN AND ACKNOWLEDGEMENT]

[No change in heading/caption]

The welfare and best interest of the person named above ("your ward") are matters of great concern to this Court. By accepting appointment as guardian you have subjected yourself to the power and supervision of the Court. Therefore, to assist you in the performance of your duties, this order is entered. You are required to be guided by it and comply with its provisions, as it relates to your duties as guardian of your ward to your duties as his/her guardian as follows:

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

10. You are required to report annually, in writing, with respect to your ward's residence, physical and mental health, whether there still is a need for a guardian, and (if there is no conservator) your ward's financial situation. Your report is due each year on the anniversary date of your appointment. ~~In addition to sending copies to the other persons named in the statute, you are directed to lodge a copy of your annual report with the Presiding Judge of this Court.~~

11.-15. [No change in text.]

This is only an outline of some of your duties as guardian. It is your responsibility to obtain proper legal advice about your duties. Failure to do so may result in personal financial liability for any losses.

[No change in remainder of form.]

FORM 3

[ORDER TO CONSERVATOR AND ACKNOWLEDGEMENT]

[No change in heading/caption]

The welfare and best interest of the person named above (“your protected person”) are matters of great concern to this Court. By accepting appointment as conservator you have subjected yourself to the power and supervision of the Court. Therefore, to assist you in the performance of your duties, this order is entered. You must be guided by it and comply with its provisions, as it relates to your duties as conservator of your protected person. As conservator, you must:

1. [No change in text.]

2. Immediately begin to take title to all of the protected person's property. The property should be titled in the name of the conservatorship: “(Your name), as Conservator(s) of the estate of (protected person's name)” or “(protected person's name), by (your name), Conservator.” Unless otherwise ordered by the court, ~~do~~ Do not put the protected person's funds into joint accounts, trust accounts (“in trust for”), or payable on death (POD) accounts. Do not list yourself as beneficiary on any bank accounts or other assets belonging to the protected person.

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

5. File your formal inventory with the Court no more than 90 days after your Letters of ~~Permanent~~ Conservator, whether temporary or permanent, were first ~~have been~~ issued. If you are filing it without an attorney, be sure to put the case name and number on all papers you file with the Court.

6.-9. [No change in text.]

10. **NEVER** use any of the protected person's money or property for any reason other than for the protected person's direct benefit. You may not profit in any way from access to the protected person's assets. You have a legal duty of ~~undivided loyalty~~ fairness and impartiality to the protected person. Neither you, your friends, nor other family members may profit by dealing in the assets of the conservatorship estate. You must be cautious and prudent in investing the protected person's assets.

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

This is an outline of only some of your duties as conservator. It is your responsibility to obtain proper legal advice about your duties. Failure to do so may result in personal financial liability for any losses.

[No change in remainder of form.]

FORM 4

[ORDER TO GUARDIAN AND CONSERVATOR AND ACKNOWLEDGEMENT]

[No change in heading/caption]

The welfare and best interest of the person named above ("your ward" and "protected person") are matters of great concern to this Court. By accepting appointment as guardian and conservator you have subjected yourself to the power and supervision of the Court. Therefore, to assist you in the performance of your duties, this order is entered. You are required to be guided by it and comply with its provisions because it relates to your duties as guardian of your ward and conservator of your protected person, as follows:

GUARDIAN(S)

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

10. You are required to report annually, in writing, with respect to your ward's residence, physical and mental health, whether there still is a need for a guardian, and your ward's financial situation. Your report is due each year on the anniversary date of your

appointment. ~~In addition to sending copies to the other persons named in the statute, you are directed to lodge a copy of your annual report with the Presiding Judge of the Probate Department of this Court.~~

11.-15. [No change in text.]

CONSERVATOR(S)

1. [No change in text.]

2. Immediately take title to all of the protected person's property. The property should be titled in the name of the conservatorship: "(Your name), as Conservator(s) of the estate of (protected person's name)" or "(protected person's name), by (your name), Conservator." Unless otherwise ordered by the court, do not put the protected person's funds into joint accounts, trust accounts ("in trust for"), or payable on death (POD) accounts. Do not list yourself as beneficiary on any bank accounts or other assets belonging to the protected person.

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

5. File your formal inventory with the Court no more than 90 days after your letters of ~~permanent~~ conservator, whether temporary or permanent, were first ~~are~~ issued. If you are filing it without an attorney, be sure to put the case name and number on all papers you file with the Court.

6.-9. [No change in text.]

10. **NEVER** use any of the protected person's money or property for any reason other than the protected person's direct benefit. You may not profit in any way from access to the protected person's assets. You have a legal duty of ~~undivided loyalty~~ fairness and impartiality to the protected person. Neither you, your friends, nor other family members may profit by dealing in the assets of the conservatorship estate. You must be cautious and prudent in investing the protected person's assets.

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

This is an outline of only some of your duties as conservator. It is your responsibility to obtain proper legal advice about your duties. Failure to do so may result in personal financial liability for any losses.

[No change in remainder of form.]