



accordance with Attachment B to this order, effective September 29, 2021.

**IT IS FURTHER ORDERED** that, consistent with this Court's order of July 6, 2021, the Court will consider whether to adopt these rule amendments and this new rule on a permanent basis during its December 2021 Rules Agenda.

DATED this 30th day of August, 2021.

\_\_\_\_\_  
/s/  
ROBERT BRUTINEL  
Chief Justice

TO:

Rule 28 Distribution  
David K Byers

## ATTACHMENT A<sup>1</sup>

### ARIZONA RULES OF FAMILY LAW PROCEDURE

#### Rule 3. Definitions

**(a) Adult in Need of Protection.** “Adult in need of protection” means a person 18 years of age or older for whom the court could appoint, or has appointed, a conservator or enter another protective order under A.R.S. § 14-5401(A)(2).

**(b) Conservator.** “Conservator” is defined in A.R.S. § 14-1201.

~~(a)-(c)~~ [No change in text]

~~(b)-(d)~~ [No change in text]

**(e) Incapacitated Person.** “Incapacitated person” is defined in A.R.S. § 14-5101.

~~(e)(f)~~ [No change in text]

~~(d)(g)~~ [No change in text]

~~(e)(h)~~ [No change in text]

~~(f)(i)~~ [No change in text]

~~(g)(i)~~ [No change in text]

#### Rule 36. Real Party in Interest

(a) [No change]

**(b) Minor or an Incompetent Person-Incapacitated Person or Adult in Need of Protection.** A guardian, or conservator, child’s attorney, or similar fiduciary may bring or defend an action, or otherwise act on behalf of, a minor or an incompetent person incapacitated person or an adult in need of protection.

**(c) Minor.** A guardian, conservator, or a best interests attorney may bring or defend an action, or otherwise act on behalf of, a minor.

~~(e)-(d)~~ **Compensation.** The court may allocate between the parties the fees and expenses of the ~~minor or incompetent person’s~~ representative under ~~(b)(c)~~ as the court deems appropriate.

~~(d)-(e)~~ [No change in text]

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<sup>1</sup> Additions to the text of the rule are shown by underscoring and deletions are shown by ~~strike-through~~.

**Rule 37. Substitution of Parties: Death, ~~Incompetency~~, Incapacity, and Transfer of Interest**

(a) [No change]

(b) ~~Incompetency or~~ **Incapacity**. If a party becomes incompetent ~~On motion or stipulation~~, the court may ~~of the parties and the incompetent party's representative~~ continue an action by or against the party's representative of an incapacitated person or of an adult in need of protection. Anyone filing such a motion must serve the motion on the parties as provided in Rule 43 and on the ~~incompetent or incapacitated party's person's~~ representative in the same manner that a summons and pleading are served under Rule 40(f)(1) or 41, as applicable.

(c) [No change]

## **ATTACHMENT B**

### **NEW RULE 37.1**

#### **ARIZONA RULES OF FAMILY LAW PROCEDURE**

##### **Rule 37.1 Appointment of a Guardian ad Litem for an Alleged Incapacitated Person or an Adult in Need of Protection**

**(a) Appointment.** Any party, including the attorney for a party who might be incapacitated or in need of protection, may move for the appointment of a guardian ad litem (hereinafter referred to as a “GAL”). On such motion, or on its own initiative, the court may appoint a GAL for a party if the court finds reasonable cause to believe that the party is, or may be, an incapacitated person or an adult in need of protection and the party is or may be in need of a guardian or conservator, or both, or other protective order under Chapter 5 of Title 14 of the Arizona Revised Statutes. The court must notify the parties and the GAL of the appointment within 3 days.

**(b) GAL’s Qualifications.** A GAL appointed under this rule must be an attorney licensed to practice in Arizona. A GAL must not have ever represented any of the parties; must not be related to any party or to a party’s attorney; and must have no personal interest in the family law case.

**(c) Stay of Proceedings Upon Appointment.** Unless the court orders otherwise, the court’s appointment of a GAL under this rule automatically stays the family law proceeding, except that all previously issued orders, including a preliminary injunction, remain in effect. This stay remains in effect until the court enters an order lifting the stay.

**(d) Role.** The role of a GAL appointed under this rule is limited to investigating whether the adult party for whom the GAL was appointed (hereinafter referred to as the “subject person”) may be in need of a guardian, conservator, or other protective order under Title 14 of the Arizona Revised Statutes, and, if so, to initiate and prosecute proceedings under Chapter 5 of Title 14 of the Arizona Revised Statutes. The GAL does not represent the subject person in the family law proceeding and may not be called to testify in that proceeding or be asked to advise the subject person or the court on any pending issue in the family law case except on whether the subject person may be in need of a guardian, conservator, or other protective order under Title 14 of the Arizona Revised Statutes.

**(e) Authority.** The GAL may perform the following acts:

(1) Communicate with, and obtain and review records from, any person or entity who has knowledge or information relevant to whether the subject person is in need of a guardian, a conservator, or other protective order under Title 14 of the Arizona Revised Statutes. This power to obtain records includes access to all medical, substance abuse,

psychiatric, psychological, and counseling records of the subject person, including records that are otherwise privileged or confidential.

(2) Meet with the subject person at any location where that person may be located and meet and interview other individuals living in the same household as the subject person or, if the subject person is at a care facility, treatment agency, or hospital, the persons in charge of providing treatment to, or care of, the subject person.

(3) Obtain and review court records in any case, including a court-ordered mental health care and treatment case, filed in any court, concerning the subject person.

(4) Obtain and review financial records, including records of the subject person that are otherwise privileged or confidential.

(5) Consult with any person who may be entitled to initiate, or has initiated, guardianship, conservatorship, or other protective proceedings under Chapter 5 of Title 14 of the Arizona Revised Statutes, and investigate and review the background of any person who is interested in becoming the guardian or conservator, including but not limited to the person's criminal arrests and convictions and credit history.

(6) Initiate and prosecute proceedings under Chapter 5 of Title 14 of the Arizona Revised Statutes.

(7) Any other acts specifically authorized by the court.

**(f) Order of Appointment.** The order appointing the GAL must set forth the basis for the GAL's appointment, the scope and duration of the GAL's appointment, and the GAL's powers, including those described in Rule 37.1(e).

**(g) Privileges and Confidentiality.**

(1) *No Privilege Between the GAL and the Subject Person.* The subject person has no privilege concerning the person's communication with the GAL. When the GAL first communicates with the subject person, the GAL must inform the subject person that their communications are not privileged.

(2) *Confidentiality.* Notwithstanding (g)(1), the GAL may not disclose any communication with the subject person except as is necessary to investigate and advise whether the subject person may be in need of a guardian, conservator, or other protective order under Title 14 of the Arizona Revised Statutes, or to initiate and prosecute proceedings under Chapter 5 of Title 14 of the Arizona Revised Statutes.

(3) *Subject Person's Privileges and Confidentiality.* The appointment of a GAL for a subject person and the receipt of otherwise privileged or confidential documents or information by the GAL does not waive any of that person's privileges or rights of confidentiality. As a result, the GAL may not be compelled by any party to the family law case to produce any privileged documents the GAL obtains.

**(h) Independent Evaluation.** On the GAL's motion, or on its own initiative, the court may order an evaluation of the subject person by a licensed physician to assist the GAL in determining whether the adult party is an incapacitated person or an adult in need of protection. The physician must provide the results of that evaluation only to the guardian ad litem, and the evaluation is not subject to discovery in the family law case.

**(i) Report.** Within the time set by the court, the GAL must file in the family law case a report regarding the status and results of the GAL's investigation, including whether the GAL, or anyone else, intends to or has initiated guardianship proceedings, conservatorship proceedings, or both. If the report contains privileged or confidential information, the GAL must request to file the report under seal. The GAL must provide the parties to the family law case with a copy of the report but not any privileged or confidential information.

**(j) Fees and Costs of GAL and Physician.** A GAL and any physician appointed under this rule are entitled to receive reasonable compensation for the work they performed and costs they incurred. The court must determine what, if any, portion of their reasonable fees and costs should be paid by the subject person and what, if any, portion should be paid from community property. If the court determines that the subject person and the marital community have insufficient funds to pay fees and costs, the court may order all or any part of the reasonable fees and costs to be paid as a county expense.