

SUPREME COURT OF ARIZONA

In the Matter of) Arizona Supreme Court
) No. R-21-0034
RULES OF PROBATE PROCEDURE)
RULES 2, 8, 13, 32, 33,) **FILED: 12/8/2021**
34, AND 53)
)
)
)
_____)

**ORDER ADOPTING ON A PERMANENT BASIS
AMENDMENTS TO RULES 2, 8, 13, 32, 33, 34, AND 53
OF THE ARIZONA RULES OF PROBATE PROCEDURE**

On June 29, 2021, David K. Byers, Administrative Director of the Administrative Office of the Courts, filed a petition to amend Rules 2, 8, 13, 32, 33, 34, and 53 of the Arizona Rules of Probate Procedure on an emergency basis. On August 25, 2021, this Court entered an order: (a) adopting the proposed amendments, as modified, on an emergency basis in accordance with the attachment to that order; and (b) opening the petition for public comment about whether the amendments should be adopted permanently at the Court's December 2021 Rule Agenda. As the Court has not received any comments and as the Court remains convinced that the rule amendments are appropriate,

IT IS ORDERED that the amendments to Rules 2, 8, 13, 32, 33, 34, and 53 of the Arizona Rules of Probate Procedure which the Court adopted on an emergency basis on August 25, 2021, are hereby adopted permanently, in accordance with the attachment to this order, effective January 1, 2022. The attachment is the

same as the attachment to this Court's August 25, 2021 order.

DATED this 8th day of December, 2021.

_____/s/_____
ROBERT BRUTINEL
Chief Justice

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TO:

Rule 28 Distribution List
David K Byers

ATTACHMENT¹

ARIZONA RULES OF PROBATE PROCEDURE

Rule 2. Definitions

(a)–(j) [No change]

(k) “Guardian ad litem” is defined in Rule 32.

~~(kl)~~ [No change in text]

~~(lm)~~ [No change in text]

~~(mn)~~ [No change in text]

~~(no)~~ [No change in text]

~~(op)~~ [No change in text]

~~(pq)~~ [No change in text]

~~(qr)~~ [No change in text]

~~(rs)~~ [No change in text]

~~(st)~~ [No change in text]

~~(tu)~~ [No change in text]

~~(uv)~~ [No change in text]

~~(vw)~~ [No change in text]

~~(wx)~~ [No change in text]

~~(xy)~~ [No change in text]

~~(yz)~~ [No change in text]

* * *

Rule 8 Confidential Documents and Information

(a) [No change]

(b) Access to Confidential Documents.

(1) [No change]

(2) *Probate Information Form.* Only the following persons may access the Rule 13 Probate Information Form:

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

(A) an attorney or a ~~statutory representative~~ guardian ad litem appointed by the court to represent the subject person of a guardianship or protective proceeding in which the document has been filed;

(B)–(F) [No change]

(3) [No change]

(c)–(g) [No change]

Rule 13. Probate Information Form and Notice of Change of Contact Information Form

(a)–(b) [No change]

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

(1)–(2) [No change]

(3) *Service.* Unless the court orders otherwise, a person who files the Notice of Change of Contact Information Form must mail or deliver a copy to the subject person’s court-appointed attorney, the subject person’s statutory representative, guardian ad litem, and all parties to the probate case in which the form has been filed.

(4) [No change]

* * *

Rule 32. Guardians ad Litem and Statutory Representatives

(a) **Definitions.**

(1) “Guardian ad litem” means a person appointed under A.R.S. § 14-1408.

(2) “Statutory representative” means a person appointed under A.R.S. § ~~14-1408~~ 14-10302 and ~~includes the role traditionally described as a guardian ad litem.~~

(b) **Generally.** The court may appoint a guardian ad litem or statutory representative as authorized by A.R.S. § 14-1408 ~~follows.~~

(1) Guardian ad litem. In any proceeding brought under title 14, the court may appoint a guardian ad litem as authorized by A.R.S. § 14-1408.

(2) Statutory representative. In a trust proceeding brought under chapter 11 of title 14, the court may appoint a statutory representative for a trust beneficiary as authorized by A.R.S. § 14-10302. The court’s authority to appoint a statutory representative in a trust proceeding is in addition to its authority to appoint a guardian ad litem.

(c) **How Requested.** If a party requests the appointment of a guardian ad litem or a statutory representative, the party must file a verified petition that states with specificity the following:

(1) whether the person for whom the guardian ad litem or the statutory representative is requested is a minor, an incapacitated person, an unborn ~~child~~ or unascertained person, or a person whose identity or location is unknown; and

(2) why that person's interest is not represented ~~under A.R.S. §§ 14-1404 through 14-1407~~, or why otherwise available representation is inadequate.

(d) Notice of Hearing. The petitioner must give notice of the hearing to all interested persons as set forth in A.R.S. § 14-1401. In addition:

(1) *Minor.* If the petitioner requests appointment of a guardian ad litem or a statutory representative for a minor, the petitioner must give notice as set forth in A.R.S. § 14-5207(A).

(2) *Incapacitated Person.* If the petitioner requests appointment of a guardian ad litem or a statutory representative for an alleged incapacitated person, the petitioner must give notice as set forth in A.R.S. § 14-5309.

(3) *Person Whose Identity or Location is Unknown.* If the petitioner requests appointment of a guardian ad litem or a statutory representative for a person whose identity or location is unknown, the petitioner must give notice as set forth in A.R.S. § 14-1401(A)(3).

(e) Appointment of Guardian ad Litem ~~Statutory Representative~~ for Subject Person of Adult Guardianship or Protective Proceeding. The court must not appoint a guardian ad litem ~~statutory representative~~ for the subject person of an adult guardianship or protective proceeding unless the court, after notice and hearing, has found that the subject person is an incapacitated person as defined in A.R.S. § 14-5101 or is a person in need of protection under § 14-5401(A)(2).

(f) Order.

(1) *Required Provisions.* An order appointing a guardian ad litem or a statutory representative must state:

(A) the basis for the appointment;

(B) the appointment's scope and duration;

(C) that the guardian ad litem or the statutory representative represents the person's interest, not the person ~~whether the representative will represent the person or the best interests of the person~~; and

(D) any applicable terms of compensation.

(2) *Additional Provisions.* An order appointing a guardian ad litem or a statutory representative may grant immediate access to the person for whom the guardian ad litem or the statutory representative has been appointed and to medical and financial records pertaining to such person, including records and information that are otherwise privileged or confidential.

(g) Participation in Court Proceedings. A guardian ad litem and a statutory representative ~~is a party~~ are parties to the probate case in which they ~~are~~ are ~~statutory representative was appointed and has~~ have the same rights and responsibilities of any other party.

COMMENT TO THE 2020 AMENDMENTS

The position formerly known as “guardian ad litem” was replaced in probate proceedings by that of a statutory “representative.” *See* A.R.S. § 14-1408(A) (eff. 2009); *Unif. Trust Code* § 305 cmt. The official Comment to Uniform Trust Code section 305, from which A.R.S. § 14-1408 is derived, explains that the powers of a representative may be broader than the powers of a guardian ad litem.

COMMENT TO THE 2021 AMENDMENT

When Arizona adopted the Uniform Trust Code in 2009, the position formerly known as “guardian ad litem” was replaced by that of statutory “representative.” See A.R.S. § 14-1408(A) (2009); Unif. Trust Code § 305 cmt. Thus, the 2020 Amendments to the Probate Rules likewise replaced “guardian ad litem” with “statutory representative.” Laws 2021 Chapter 248 (SB1390) restored the position of “guardian ad litem” to all proceedings brought under Title 14 and limited the position of “representative” to only trust proceedings. Compare A.R.S. § 14-1408 with A.R.S. § 14-10302. The official Comment to Uniform Trust Code section 305, from which A.R.S. § 14-1408 is derived, explains that the powers of a representative may be broader than the powers of a guardian ad litem. For example, while the duration of a guardian ad litem’s appointment can be no longer than the case in which the guardian ad litem was appointed, the duration of a statutory representative’s appointment can extend beyond the case in which the statutory representative is appointed.

Rule 33. Compensation for Fiduciaries, Attorneys, Guardians ad Litem, and Statutory Representatives

(a) Generally.

- (1) *Guardianships and Conservatorships.* A request for approval of fees for a guardian, a conservator, an attorney, a guardian ad litem, or a statutory representative to be paid from an estate of a ward or protected person, or a trust that the ward or protected person established, must be made in a petition filed under section (c) or section (d) of this rule.
- (2) *Decedents’ Estates and Trusts.* A personal representative, a trustee, a guardian ad litem, a statutory representative, or an attorney for any of them, is not required to request court approval of fees to be paid from the estate or trust, unless the court orders otherwise. If approval is requested, the request must be made in a petition filed under section (c) or section (d).

(b) [No change]

(c) Approval in an Account. If a petition requests approval of a fiduciary's account and the account lists fees paid to a fiduciary, an attorney, a guardian ad litem, or a statutory representative, the petition must request the court's approval of those fees paid during the accounting period. Statements that document the fees paid and conform with section (b) must be submitted with the petition.

(d) Approval by Separate Petition. If a request for approval of fees is not included in a petition for approval of the fiduciary's account, a fiduciary, an attorney, a guardian ad litem, or a statutory representative may file a separate petition for approval of compensation.

(e) Waiver. An attorney, a guardian ad litem, or a statutory representative waives compensation from the estate of a ward or protected person if a request is not timely submitted under A.R.S. §14-5110.

(f)-(g) [No change]

Rule 34. Prudent Management of Costs

The following are in addition to the duties imposed by A.R.S. § 14-1104 and A.C.J.A. § 3-303.

(a) Disclosure When Cost Exceeds Benefits. A guardian ad litem, statutory representative, guardian, conservator, personal representative, attorney for a fiduciary, or an attorney for a ward or protected person must timely disclose to the court and the other parties any reasonable belief that the projected cost of complying with a court order may exceed the likely benefit to the ward, protected person, decedent's estate, or trust.

(b) [No change]

(c) Market Rates. In appointing a fiduciary, attorney, guardian ad litem, or statutory representative, in ruling on or considering a budget objection, and in ruling on a request to substitute a court-appointed fiduciary, attorney, guardian ad litem, or statutory representative, the court and the fiduciary should not pay more than market rates for a good or service.

(d) [No change]

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Rule 53. Settlements of Claims for Minors and Adults in Need of Protection

(a)-(b) [No change]

(c) Appointment of a ~~Statutory Representative~~ Guardian ad Litem or Master. The court may appoint a ~~statutory representative~~ guardian ad litem pursuant to A.R.S. § 14-1408 or a master pursuant to Civil Rule 53, with instructions to address specific items,

including any of the following:

(1)–(5) [**No change**]

(d) [**No change**]