

Honorable Jay M. Polk
Probate and Mental Health Department Presiding Judge
Superior Court in Maricopa County
101 W. Jefferson Street
Phoenix, Arizona, 85003
(602) 372-0879

IN THE SUPREME COURT
STATE OF ARIZONA

In the Matter of :

PETITION TO AMEND RULE 45,
ARIZONA RULES OF PROBATE
PROCEDURE

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}
} Supreme Court No. R-____
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Pursuant to Rule 28 of the Rules of the Supreme Court of Arizona, the Presiding Judge of the Probate and Mental Health Department of the Superior Court in Maricopa County petitions this Court to amend Rule 45, Arizona Rules of Probate Procedure, as proposed below in Attachment “A”.

Probate Rule 45 governs a conservator’s inventory, budgets, and accounts regarding a protected person’s estate. As currently written, Probate Rule 45(e)(2) requires the conservator, on an annual basis, to provide to the court actual copies of bank/brokerage statements to show the balance of each account as of the end date of the account. However, Rule 45(c) does *not* require the conservator to provide statements, appraisals, or other documentation to support the conservator’s *initial* inventory, which is supposed to list all of the protected person’s assets as of the date of the conservator’s appointment. The proposed amendment would add a new subpart (3) to Rule 45(c) requiring the conservator to provide documentation with the inventory. Specifically, these documents would include statements for each bank and brokerage (securities) account;

1 appraisals, broker price opinions, or similar documentation for real property; and
2 copies of any appraisals obtained by the conservator for tangible personal
3 property (e.g., appraisals of vehicles, jewelry, coin collections, gold, silver, etc.).

4 In addition, this petition proposes to amend Rule 45(e)(2) to require the
5 conservator to attach to the annual account a copy of any HUD-1 or similar
6 settlement statement for any real property that was sold during the account
7 period. This will ensure documentation is provided regarding the estate's real
8 property, as well as regarding bank and securities account statements.

9 The purpose of these amendments is to assist probate judicial officers in
10 ensuring that the estates of protected persons are being managed with complete
11 transparency and to the utmost benefit of the protected persons. Because the
12 amendments merely require the conservator to supply the court with
13 documentation that already should be in the conservator's possession, the
14 amendments will not cause the protected person's estate to incur any additional
15 cost.

16 For these reasons, I respectfully request this Court amend Rule 45 of the
17 Arizona Rules of Probate Procedure as detailed in the Attachment.

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19 RESPECTFULLY SUBMITTED this 10th day of January, 2022.

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21 /s/ Jay M. Polk

22 Hon. Jay M. Polk, Presiding Judge
23 Probate and Mental Health Department
24 Superior Court in Maricopa County
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1 Original and six (6) copies delivered this
2 ____ day of January, 2020 to:

3 Clerk of the Arizona Supreme Court
4 1501 W. Washington, Suite 402
5 Phoenix, AZ 85007

6 //

7 Electronically filed this
8 10th day of January, 2020 to:

9 David K. Byers, Director
10 Administrative Office of the Courts
11 1501 W. Washington St.
12 Phoenix, Arizona 85007
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ATTACHMENT "A"

(new language is underlined and deletions are ~~struck through~~)

Arizona Rules of Probate Procedure

Rule 45. Conservator's Inventory, Budget, and Account

(a) Court Authority. The court may order a variation of this rule's requirements for an inventory, budget, or account, or the form thereof, if the court finds the variation is consistent with prudent management and oversight of the case.

(b) Date of Conservator's Appointment. For purposes of this rule, the conservator's appointment is the date the court first issues letters of appointment.

(c) Conservator's Inventory.

(1) *Timing.* A conservator must file an inventory of a protected person's estate no later than 90 days after the date of the conservator's appointment.

(2) *Contents.* The inventory must contain the information specified in A.R.S. § 14-5418(A).

(3) Required Attachments.

(A) Bank and Securities Accounts. For each bank or securities account listed in the inventory, the conservator must attach to the inventory a complete copy of the statement that shows the balance of such account as of the date of the conservator's appointment.

(B) Real Property. For each parcel of real property listed in the inventory, the conservator must attach to the inventory documentation, such as an appraisal or a broker price opinion, showing the fair market value of the real property as of the date of the conservator's appointment.

(C) Tangible Personal Property. If the value of any tangible personal property listed in the inventory is based on an appraisal

1 conducted by someone other than the conservator, the conservator
2 must attach that appraisal to the inventory.

3 (34) *Consumer Credit Report.* The conservator must file the
4 consumer credit report required by A.R.S. § 14-5418(A) with the inventory.

5 **(d) Conservator's Budget.**

6 (1) *Necessity and Timing.* The conservator must file an initial budget
7 no later than the date the conservator's inventory is due. The conservator
8 must file a subsequent budget with each account.

9 (2) *Contents and Format.* The budget must include a reasonable
10 estimate of all anticipated income and expenditures related to the protected
11 person's estate. The conservator must use Form 5, 6, or 7, as applicable.

12 (3) *Amendments.* The conservator must file an amended budget no
13 later than 30 days after reasonably projecting the expenditures for any
14 specific category will exceed the budget by a threshold stated in the
15 instructions to Form 5.

16 (4) *Copies to Interested Persons.* The conservator must provide a
17 copy of the budget, including any amended budget, to all persons entitled to
18 notice of the conservator's accounts under A.R.S. § 14-5419(C).

19 (5) *Presumptions, Objections, and Court Action.*

20 (A) *Presumption; Objection.* A timely filed budget is presumed
21 reasonable unless there is an objection. An interested person may file
22 an objection no later than 14 calendar days after the budget or
23 amendment was filed.

24 (B) *Hearings and Resolving Objections.* The court may
25 summarily overrule the objection, order the conservator to file a
26 response, or set a hearing on the objection. The court may set a
27 hearing even in the absence of an objection. The conservator has the
28 burden of proving that a contested budget item is reasonable,
29 necessary, and in the best interests of the protected person.

30 (C) *Court Action.* If the court reviews the budget, it may
31 approve, disapprove, or modify the budget to further the protected
32 person's best interests.

1 **(e) Conservator's Account.**

2 (1) *Timing.* The conservator must file an annual account on or before
3 the anniversary date of the issuance of the conservator's permanent letters of
4 appointment.

5 (2) *Required Attachments.*

6 (A) Bank and Securities Account. For each bank or securities
7 account listed on the ending balance schedule, the conservator must
8 attach to the account a complete copy of the statement that
~~corresponds to~~ shows the ending balance of such account.

9 (B) Real Property. For any real property that was sold during
10 the account period, the conservator must attach to the account the
11 final HUD-1 or final HUD-1A settlement statement or similar final
12 settlement statement for the sale.

13 (3) *Sustainability.* The account must state whether the
14 conservatorship's recurring expenses exceed its recurring income, and

15 (A) if so, whether the assets available to the conservator less
16 the estate's liabilities are sufficient to sustain the conservatorship for
the protected person's foreseeable needs; and

17 (B) if the estate is not sustainable, the conservator must include
18 a discussion of the available options.

19 (4) *First Account.* The conservator's first account must reflect all
20 activity relating to the conservatorship estate from the date of appointment
21 through, and including, the last day of the 9th month after the date the
22 conservator's letters of permanent appointment were issued, or other date
set by the court.

23 (5) *Later Accounts.* All later accounts must reflect all activity relating
24 to the conservatorship estate from the ending date of the most recently filed
25 account through, and including, the last day of the 12th month thereafter, or
26 other date set by the court.

27 (6) *Final Account.* Except as provided in A.R.S. § 14-5419(F) or as
28 ordered by the court, the conservator must file a final account of the
protected person's estate no later than 90 days after protected person's death

1 or court order terminating the conservatorship. The final account must
2 reflect all activity between the ending date of the most recently approved
3 account and the date of termination of the conservatorship. The court may
4 extend the date for filing the account or relieve the conservator from filing a
5 final account.

6 (7) *Format of Account.* The conservator must use Form 6, 7, or 8, as
7 applicable, unless the court allows the conservator to use Form 9. Nothing
8 in this rule precludes the court from requiring an alternative form of
9 account or, in appropriate circumstances, waiving an account.

10 (f) **Motion for Additional Time.** If the conservator is unable to comply
11 with a deadline established by this rule or court order, the conservator must file a
12 motion for additional time before the deadline. The motion must state why the
13 conservator needs additional time and how much additional time is needed.

14 (g) **Confidentiality.** The court must maintain the inventory, the consumer
15 credit report, the budget, and the account as confidential documents under Rule 8.
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