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IN THE SUPREME COURT

STATE OF ARIZONA

In the Matter of

PETITION TO AMEND RULE 45,
RULES OF PROBATE PROCEDURE

Supreme Court No. R-22-_____

RULE 28 PETITION

Pursuant to Rule 28, Rules of the Supreme Court of Arizona, Aaron Nash, Director, Certification & Licensing Division (Division) of the Administrative Office of the Courts, respectfully requests this Court amend Rule 45, Rules of Probate Procedure, concerning conservators' obligations. The Division, in support of the Fiduciary Board, investigates licensed fiduciaries, including their obligations as conservators.

I. Purpose of the Proposed Rule Amendment.

The Arizona Supreme Court's Task Force on the Arizona Rules of Probate Procedure (Task Force) filed a petition under R-18-0044 to "amend the Arizona Rules of Probate Procedure to conform to modern usage and to clarify and simplify

language.” This Court adopted the changes as modified, effective January 1, 2020. When new Rule 45 was adopted, it did not include the provisions of former Probate Rule 30(A)(3) that required conservators to amend the conservator’s inventory if circumstances changed after filing the initial inventory.

The Division receives and investigates complaints against licensed fiduciaries. During its investigative process, the Division may review court records, interview interested individuals, and audit the licensed fiduciary’s records. Restoring the requirement that conservators amend their inventory when additional assets are discovered or when the value of an asset is erroneous or misleading is in the best interest of protected persons.

When an amended inventory is filed with the court, the assigned judicial officer or court accountant is in the best position to take timely corrective action. In the context of an investigation or audit, an amended inventory or lack of filing of an amended inventory informs the Division on the course of its investigation—whether to check for a pattern of conduct across cases or to determine when the conservator became aware of additional assets or the value of those assets and reported them to the court. Failure to require an amended inventory can result in substantial undisclosed assets, such as real property or valuable personal property like rare metals, collectibles, and vehicles.

The Task Force eliminated the former Rule 30 requirement of an amended inventory because later-discovered assets would be included in the first account. In practice, the initial inventory must be filed within 90 days of the initial appointment. The first account is not due until one year after permanent letters of appointment issue. In a best-case scenario, the first account would be filed nine months after the initial inventory. Even in this nine-month timeframe, the value of real and personal property can change dramatically between the value at the time of initial inventory and the value at the time of filing the first account or at the time of sale. The potential issues compound when the permanent appointment is contested, extending the time before filing a first account.

Delays in reporting additional assets or the value of those assets can disadvantage the protected person. Timely amendments that accurately reflect the value of a protected person's assets allows the court to adjust the conservator's bond accordingly, further protecting vulnerable persons.

II. The Proposed Rule Change.

Amending Rule 45 to require filing an amended inventory.

The proposed amendment to add Rule 45(c)(4) restores a tool the courts and the Division can use to monitor and enforce conservators' actions on behalf of protected persons. Accordingly, restoring this provision supports the Court's

APPENDIX

Additions are shown by underline; deletions are shown by ~~striketrough~~.

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

(a) through (b) [No change]

(c) Conservator's Inventory.

(1) through (3) [No change]

(4) Amendments. If, after filing the inventory but before filing the conservator's first account, the conservator discovers an additional asset or discovers that the value of an asset on the inventory, whether appraised or not, is erroneous or misleading, the conservator must file an amended inventory. If the conservator files an amended inventory because the conservator has discovered an additional asset and if the additional asset is not already subject to a court-ordered restriction, the conservator must, with the amended inventory, file a petition requesting the court to either increase the amount of the conservator's bond or enter an order restricting the sale, conveyance, or encumbrance of the additional asset.

(d) through (g) [No change]