

ATTACHMENT A¹
RULES OF CIVIL PROCEDURE

Rule 17. Plaintiff and Defendant; ~~Capacity; Public Officers~~

(a) Definitions.

(1) “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 entered another protective order under A.R.S. § 14-5401(A)(2).

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

(3) “Guardian” is defined in A.R.S. § 14-1201 and includes a guardian appointed pursuant to A.R.S. title 8, chapter 4, article 12.

(4) “Incapacitated person” is defined in A.R.S. § 14-5101(3).

(5) “Joint legal decision-making” is defined in A.R.S. § 25-401.

(6) “Legal decision-making” is defined in A.R.S. § 25-401. A parent has legal decision-making, whether joint or sole, for that parent’s minor child only if a court of competent jurisdiction has awarded that parent legal decision-making.

(7) “Legal parent” is defined in A.R.S. § 25-401.

(8) “Personal representative” is defined in A.R.S. § 14-1201.

(9) “Sole legal decision-making” is defined in A.R.S. § 25-401.

(b) Real Party in Interest.

(1) *Designation Generally.* An action must be prosecuted in the name of the real party in interest. The following may sue in their own names without joining the person or entity for whose benefit the action is brought:

(A) a personal representative ~~or executor~~;

(B) ~~an administrator~~ a conservator;

(C) a guardian;

(D) a bailee;

(E) a trustee of an express trust;

(F) a party with whom or in whose name a contract has been made for another’s benefit; and

(G) a party authorized by statute.

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

(2) *Action in the Name of the State for Another's Use or Benefit.* When a state statute so provides, an action for another's use or benefit must be brought in the name of the State of Arizona.

(3) *Joinder of the Real Party in Interest.* The court may not dismiss an action for failure to prosecute in the name of the real party in interest until, after an objection, a reasonable time has been allowed for the real party in interest to ratify, join, or be substituted into the action. After ratification, joinder, or substitution, the action proceeds as if it had been originally commenced by the real party in interest.

(bc) Actions by ~~Personal Representative~~ or Against a Decedent; Setting Aside Judgment. ~~An executor, administrator, or guardian~~ A personal representative may commence or maintain any action that ~~the testator or intestate~~ a decedent could have commenced or maintained, and an action may be brought against ~~an executor, administrator, or guardian~~ a personal representative if it could have been brought against ~~the testator or intestate~~ a decedent. The judgment in such an action is as conclusive as if it was rendered in favor of or against the ~~testator or intestate~~ decedent. An interested person may apply to set aside the judgment on the ground that it resulted from fraud or collusion by the ~~executor, administrator, or guardian~~ personal representative.

(ed) Actions by or Against a County, City, or Town. An action brought by or against a county or an incorporated city or town must use its corporate name when identifying it as a party.

(de) Public Officer's Title and Name. A public officer who sues or is sued in an official capacity may be identified as a party by the officer's official title, rather than by name, if it is sufficient to identify the particular public officer being sued, but the court may require the officer's name to be used or added to identify the officer as the party.

(ef) Actions Against a Surety, Assignor, or Endorser. A plaintiff may sue a contractual assignor, endorser, guarantor, surety, or the drawer of a bill that has been accepted, without joining the maker, acceptor, or other principal obligor if:

(1) the latter resides outside Arizona, or in a part of Arizona where it cannot be served under Rule 4, 4.1, or 4.2;

(2) the latter's residence is unknown and cannot be ascertained through reasonable diligence;

(3) the latter is dead; or

(4) the latter is insolvent.

(fg) ~~Minor or Incompetent Person~~ Actions by or Against a Minor, an Incapacitated Person, or an Adult in Need of Protection.

(1) ~~With a Representative. By or Against a Minor.~~ The following representatives may sue or defend on behalf of a minor or an incompetent person. An action may be brought by, or defended against, a minor as follows.

(A) Conservator or Guardian. Notwithstanding any provision of this rule to the contrary:

(i) if the minor has a conservator, only the conservator may bring, or defend against, the action unless the court that appointed the conservator orders otherwise; and

~~(A) a general guardian;~~

~~(B) a conservator; or~~

~~(C) a similar fiduciary.~~

~~(2) Without a Representative.~~

~~(A) Generally. A minor or incompetent person who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem. The court must appoint a guardian ad litem or issue another appropriate order to protect a minor or incompetent person who is unrepresented in action.~~

~~(B) Consent. No person may be appointed guardian ad litem unless that person files a written consent to the appointment.~~

~~(C) Bond. If a next of friend or guardian ad litem brings an action on behalf of a minor, that person may not receive any of the minor's money or property without filing a bond as security in an amount and under such terms as the court approves.~~

(ii) if the minor has a guardian, but not a conservator, only the guardian may bring, or defend against, the action, unless the court that appointed the guardian orders otherwise.

(B) Guardian Ad Litem Appointed in Dependency Proceeding. Notwithstanding any provision of this rule to the contrary, if a court of competent jurisdiction has adjudicated the minor to be dependent as to both of the minor's legal parents, and if the minor does not have either a conservator or a guardian, but that same court has appointed a guardian ad litem and granted the guardian ad litem the authority to do so, only the guardian ad litem may bring, or defend against, the action.

(C) Parents Married to Each Other and Not Legally Separated. If the minor's legal parents are married to each other and not legally separated, an action may be brought, or defended against, only by both legal parents jointly. One of the parents may bring, or defend against, the action only if one or both parents file with the court a written agreement signed by both parents authorizing it, or if the court in which the action is pending enters an order authorizing it.

(D) Parents Married to Each Other but Legally Separated.

(i) Joint Legal Decision-Making Authority. If a minor's legal parents are married to each other, but are legally separated and have joint legal decision-making authority for the minor, an action may be brought, or defended against, only by both legal

parents jointly. One of the parents may bring, or defend against, the action only if one or both parents file with the court a written agreement signed by both parents authorizing it, or if the court in which the action is pending enters an order authorizing it.

(ii) Sole Legal Decision-Making Authority. If the minor's legal parents are married to each other, but are legally separated, and one legal parent has sole legal decision-making authority for the minor, only the legal parent with sole legal decision making authority for the minor may bring, or defend against, the action.

(E) Parents Not Married to Each Other.

(i) Joint Legal Decision-Making Authority. If the minor's legal parents are not married to each other and have joint legal decision-making authority for the minor, an action may be brought, or defended against, only by both legal parents jointly. One of the parents may bring, or defend against, the action only if one or both parents file with the court a written agreement signed by both parents authorizing it, or if the court in which the action is pending enters an order authorizing it.

(ii) Sole Legal Decision-Making Authority. If the minor's legal parents are not married to each other and one legal parent has sole legal decision-making authority for the minor, only the legal parent with sole legal decision making authority for the minor may bring, or defend against, the action.

(iii) Without Court Order for Legal Decision-Making Authority. If the minor's legal parents are not married to each other, and a court of competent jurisdiction has not entered a legal decision-making order for the minor, an action may be brought, or defended against, by both legal parents jointly. One of the parents may bring, or defend against, the action only if one or both file with the court a written agreement signed by both parents authorizing it, or if the court in which the action is pending enters an order authorizing it.

(F) One Living Parent. If the minor has only one living legal parent, only that legal parent may bring, or defend against, the action.

(G) Termination or Suspension of Parental Rights. Notwithstanding any provision of this rule to the contrary, a parent whose parental rights have been terminated by court order, or suspended by the appointment of a guardian for the parent's minor child, may not bring, or defend against, the action.

(H) Judgment in Minor's Favor. If an action results in a judgment in favor of a minor in an amount greater than \$10,000.00, the minor's parent or guardian may not receive any part of the judgment in an amount greater than \$10,000.00 per annum unless a court of competent jurisdiction has either appointed the parent or guardian as the minor's conservator or entered another protective order under A.R.S. §§ 14-5408 or 14-5409.

(2) *By or Against an Incapacitated Person or an Adult in Need of Protection.* An action involving a party who is an incapacitated person or an adult in need of protection

may be brought, or defended against, only by the party's conservator, or, if no conservator has been appointed, by the party's guardian. If the incapacitated person or person in need of protection does not have a conservator or guardian but has a valid durable power of attorney that authorizes the agent to bring, or defend against, an action on behalf of the incapacitated person or person in need of protection, only the agent may bring, or defend against, the action on that person's behalf

(3) *Determining When a Person May Be an Incapacitated Person or an Adult in Need of Protection.* If the court has reasonable grounds to believe that a party is an incapacitated person or an adult in need of protection, and that party does not have a guardian or conservator, the court may appoint a guardian ad litem as prescribed in Rule 17.1.

~~(D4) *Liability for Costs.* *No Liability for Costs.* Unless the court orders otherwise, a next of friend or guardian ad litem may not be held~~ neither a minor's parent, a conservator or guardian of a minor, an incapacitated person or adult in need of protection, a guardian ad litem appointed in a dependency proceeding, nor a guardian ad litem appointed under Rule 17.1 is personally liable for the taxable costs incurred by any party in an action by or against the minor or adult in need of protection.

~~(E) *Compensation.* The court may award reasonable compensation to a next friend or a guardian ad litem for their services, which must be taxed as part of the action's costs.~~

(gh) Partnerships. A partnership may sue and be sued in the name that it has adopted or by which it is known.

State Bar Committee Note

1966 Amendment to Rule 17(a)(3)

~~The provision that no action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed, after the objection has been raised, for ratification, substitution, etc., is added simply in the interests of justice. In its origin the rule concerning the real party in interest was permissive in purpose: it was designed to allow an assignee to sue in his own name. That having been accomplished, the modern function of the rule in its negative aspect is simply to protect the defendant against a subsequent action by the party actually entitled to recover, and to insure generally that the judgment will have its proper effect as res judicata.~~

~~The provision is intended to prevent forfeiture when determination of the proper party to sue is difficult or when an understandable mistake has been made. It does not mean, for example, that, following an airplane crash in which all aboard were killed, an action may be filed in the name of John Doe (a fictitious person), as personal representative of Richard Roe (another fictitious person), in the hope that at a later time the attorney filing~~

~~the action may substitute the real name of the real personal representative of a real victim, and have the benefit of suspension of the limitation period. It does not even mean, when an action is filed by the personal representative of John Smith, of Buffalo, in the good faith belief that he was aboard the flight, that upon discovery that Smith is alive and well, having missed the fatal flight, the representative of James Brown, of San Francisco, an actual victim, can be substituted to take advantage of the suspension of the limitation period. It is, in cases of this sort, intended to insure against forfeiture and injustice—in short, to codify in broad terms the salutary principle of *Levinson v. Deupree*, 73 S. Ct. 914, 345 U.S. 648, 97 L. Ed. 1319 (1953), and *Link Aviation, Inc. v. Downs*, 325 F.2d 613 (D.C. Cir. 1963). The amendment does not alter the results of existing Arizona decisions.~~

Comment to 2023 Amendment

The 2023 amendments are not intended to disturb “the usual rule—that parents who are not attorneys may not bring a pro se action on their child’s behalf” See *Byers-Watts v. Parker*, 199 Ariz. 466, 471 ¶ 19 (App. 2001).

ATTACHMENT B

NEW RULE 17.1

RULES OF CIVIL PROCEDURE

Rule 17.1. Appointment of a Guardian ad Litem for an Alleged Incapacitated Person or an Adult in Need of Protection

(a) Appointment. Any party in a civil proceeding governed by the Rules of Civil Procedure may move for the appointment of a guardian ad litem (hereinafter referred to as a “GAL”) for a party who might be incapacitated or in need of protection (hereinafter referred to as the “subject person”), including the attorney for the subject person. 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 (as defined in Rule 17(a)(4)) or an adult in need of protection (as defined in Rule 17(a)(1)) 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 ever have 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 civil proceeding.

(c) Stay of Proceedings Upon Appointment. Unless the court orders otherwise, the court’s appointment of a GAL under this rule automatically stays the civil proceeding, except that all previously issued orders 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 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 civil 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 civil proceeding 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:

(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 for, 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; and

(7) perform any other act 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 17.1(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 Rule 17(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 the subject person's privileges or rights of confidentiality. As a result, the GAL may not be compelled by any party to the civil proceeding 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 physician, psychologist, or

registered nurse to assist the GAL in determining whether the subject person is an incapacitated person or an adult in need of protection. The physician, psychologist, or registered nurse must provide the results of that evaluation only to the guardian ad litem, and the evaluation is not subject to discovery in the civil proceeding.

(i) Report. Within the time set by the court, the GAL must file a report in the civil proceeding 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 civil proceeding with a copy of the report, but not any privileged or confidential information.

(j) Fees and Costs of GAL and Physician, Psychologist, or Registered Nurse. A GAL and any physician, psychologist, or registered nurse appointed under this rule are entitled to receive reasonable compensation for the work they performed and costs they incurred. Such compensation must be taxed as part of the action's costs.

ATTACHMENT C²

RULES OF CIVIL PROCEDURE

Rule 4.1. Service of Process Within Arizona

(a)-(f) [No change]

(g) Serving an Incapacitated Person Adjudicated Incompetent or an Adult in Need of Protection Who Has a Guardian or Conservator. If a court ~~has declared a person to be insane, gravely disabled, incapacitated, or mentally incompetent to manage that person's property and has appointed a guardian or conservator for the person~~ an incapacitated person or an adult in need of protection, the incapacitated person or the adult in need of protection ~~the person~~ must be served by serving the guardian or conservator in the manner set forth in Rule 4.1(d) for serving an individual, and separately serving the person in that same manner. If a court has appointed both a guardian and a conservator for the person, the person must be served by serving the conservator in the manner set forth in Rule 4.1(d) for serving an individual.

(h)-(m) [No change]

Rule 4.2. Service of Process Outside Arizona

(a)-(d) [No change]

(e) Service on a Nonresident Under the Nonresident Motorist Act.

(1) *Generally.* In an action involving the operation of a motor vehicle in Arizona, a party may serve a nonresident—including a minor, ~~insane, or incompetent person~~ an incapacitated person, or an adult in need of protection—as provided in A.R.S. § 28-2327.

(2)-(3) [No change]

(f)-(h) [No change]

(i) Serving an Individual in a Foreign Country. Unless federal law provides otherwise, an individual—other than a minor, an ~~incompetent~~ incapacitated person, an adult in need of protection, or a person whose waiver has been filed under Rule 4.2(d)—may be served at a place not within any judicial district of the United States:

(1) by any internationally agreed means of service that is reasonably calculated to give notice, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents;

² Additions to the text of the rule are shown by underscoring and deletions are shown by ~~strike-through~~.

(2) if there is no internationally agreed means, or if an international agreement allows but does not specify other means, by a method that is reasonably calculated to give notice:

(A) as set forth by the foreign country's law for service in that country in an action in its courts of general jurisdiction;

(B) as the foreign authority directs in response to a letter rogatory or letter of request;

(C) unless prohibited by the foreign country's law, by:

(i) delivering a copy of the summons and of the pleading being served to the individual personally; or

(ii) using any form of mail that the clerk addresses and sends to the individual and that requires a signed receipt; or

(D) by other means not prohibited by international agreement, as the court orders.

(j) Serving a Minor, ~~or Incompetent~~ Incapacitated Person, or Adult in Need of Protection in a Foreign Country. A party may serve a ~~minor, a minor with a guardian or conservator, or an incompetent person who is~~ the following persons, if not located in a place not within any judicial district of the United States, in the manner set forth in Rule 4.2(i)(2)(A) or (B) or by such means as the court may otherwise order: a minor, a minor with a guardian or conservator, or an adult in need of protection.

(k)-(m) [No change]

* * *

Rule 25. Substitution of Parties

(a) [No change]

(b) ~~Incompetency~~ Incapacitated Person or Adult in Need of Protection. ~~If a party becomes incompetent, the court may—on motion or on stipulation of the parties and the incompetent party's representative—permit the action to be continued by or against the party's representative. Anyone filing such a motion must serve the motion on the parties as provided in Rule 5(c) and on the incompetent party's representative—if a nonparty—in the same manner that a summons and pleading are served under Rule 4, 4.1, or 4.2, as applicable. If the court has reasonable grounds to believe that a party has become an incapacitated person or an adult in need of protection, and that party does not have a guardian or conservator, the court may appoint a guardian ad litem as prescribed in Rule 17.1. If a court of competent jurisdiction has appointed a conservator or guardian for a party, the action may be continued by or against the conservator or guardian on behalf of the incapacitated person or adult in need of protection.~~

(c)-(d) [No change]

* * *

Rule 27. Discovery Before an Action Is Filed or Pending an Appeal

(a) Before an Action Is Filed.

(1)-(2) [No change]

(3) *Notice and Service.* Unless the court orders otherwise for good cause, the petitioner must serve each expected adverse party with a copy of the petition and a notice stating the time and place of the hearing at least 20 days before the hearing date. If an expected adverse party is a minor, ~~or incompetent~~ an incapacitated person, or an adult in need of protection, Rule 17(fg) applies. The petition and notice may be served either inside or outside Arizona in the same manner that a summons and pleading are served under Rule 4, 4.1, or 4.2, as applicable. If the petition seeks an order under Rule 35 for a physical or mental examination, the petition and notice must be served on the expected adverse party whose examination is sought or who has custody or legal control of the person whose examination is sought. In all other instances, if service cannot be made with reasonable diligence on an expected adverse party, the court may order service by publication or otherwise.

(4)-(5) [No change]

(b) [No change]

* * *

Rule 55. Default; Default Judgment

(a) [No change]

(b) Default Judgment.

(1) *Default Judgment by Motion Without Hearing.*

(A) Generally. If the plaintiff's claim is for a sum certain or a sum that can be made certain by computation, the court—on the plaintiff's motion, with an affidavit showing the amount due and without a hearing—may enter judgment for that amount and costs against a defendant who has been defaulted for not appearing and who is ~~neither not~~ an incapacitated ~~nor an incompetent~~ person, or an adult in need of protection.

(B)-(C) [No change]

(2) *Default Judgment by Hearing.*

(A) [No change]

(B) Default Against a Minor, ~~or an Incompetent~~ Incapacitated Person, or an Adult in Need of Protection. A default judgment may be entered against a minor, ~~or incompetent~~ an incapacitated person, or adult in need of protection only if the

person's ~~is represented by a general guardian, parent, conservator, or other like fiduciary who~~ guardian—as specified in Rule 17(g)—has appeared.

(C)-(D) [No change]

(3) [No change]

(c)-(e) [No change]