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SUPREME COURT

STATE OF ARIZONA

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| In the Matter of:<br><br>PETITION TO AMEND RULES 2, 6, 7, 9, 10, 17, 33, 35, 36, and 38, ARIZONA RULES OF PROBATE PROCEDURE. | No. R-10-0020<br><br>**AMENDED PETITION[1] TO AMEND RULES 2, 6, 7, 9, 10, 17, 33, 35, 36, AND 38, ARIZONA RULES OF PROBATE PROCEDURE** |

Pursuant to Rule 28, Rules of the Supreme Court of Arizona, Jay M. Polk ("Petitioner") respectfully requests that this Court adopt the amendments to Rules 2(B), 6, 7, 9(D), 10, 17(D), 33, 35, 36(A), and 38, Arizona Rules of Probate Procedure (the "Probate Rules"), and the comments to Probate Rules 6, 7, 33, and 35 as proposed in Appendix A attached hereto.

[1]This amended petition is being filed to correct several typographical errors that appear in the *Petition to Amend Rules 2, 6, 7, 9, 10, 17, 33, 35, 36, and 38, Arizona Rules of Probate Procedure*, that Petitioner filed on or about January 10, 2010. In addition, Petitioner has added a new section (V) in which he requests the addition of new subsection E to Probate Rule 10 to clarify the role of court-appointed counsel after the subject person of a guardianship/conservatorship proceeding has died.

## BACKGROUND

By Administrative Order Number 2006-87, then-Chief Justice Ruth V. McGregor established the Probate Rules Committee (the "Committee") for the purpose of recommending a set of uniform, statewide rules of procedure to be used in probate proceedings. The Committee, both as a committee of the whole and in subcommittees, met on many occasions between October 2006 and October 2007 and, in the process, drafted a set of proposed statewide rules of procedure for probate proceedings. In October 2007, the Committee formally petitioned this Court to adopt those proposed rules. On September 16, 2008, after a public comment period, this Court entered Order Number R-07-0012, by which it formally adopted the Probate Rules, effective January 1, 2009.

Petitioner is a member of the Committee. Since September 2008, Petitioner has spoken about the Probate Rules at no fewer than ten seminars. In addition, Petitioner has attended several Bench-Bar meetings in Maricopa County during which the subject of the Probate Rules was discussed. Based on the discussions at those Bench-Bar meetings and the audience feedback during the seminars, Petitioner has identified several areas of the Probate Rules that need to be amended. Those amendments are contained in Appendix A hereto. In many cases, the proposed amendments are simply "housekeeping" changes to ensure that the Probate Rules conform to the Committee's original intent or to recent statutory changes. In other cases, the

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proposed amendments are more substantive and are proposed to address issues that have arisen in the implementation of the Probate Rules.

## SUMMARY OF PROPOSED AMENDMENTS

### I. Change "Certified Fiduciary" to "Licensed Fiduciary" and "Certification" to "License"

When the Probate Rules were adopted, Arizona Revised Statutes ("A.R.S.") section 14-5651(A) provided a "certification" requirement and scheme for professional fiduciaries. Effective September 30, 2009, however, that statute was amended to provide for a "licensure" requirement and scheme for professional fiduciaries. *See* 2009 Ariz. Sess. Laws Ch. 138. Consequently, Probate Rules 2(B), 6(B), 6(C), 7(G)(6), 7(H)(5), 10(C)(1)(b), and 33(E), and the comments to Probate Rules 6 and 35 need to be amended to reflect the change in terminology from "certified" fiduciaries to "licensed" fiduciaries. Likewise, Forms 1, 2, 3, and 4 of Probate Rule 38 need to be amended to reflect this change. The changes are merely housekeeping in nature as they are necessary to ensure that the Probate Rules conform to the statutes.

### II. Rule 7(A)(1)(c): Remove Inventories in Decedent's Estates from Definition of "Confidential Document"

As currently drafted, Probate Rule 7(A)(1)(c) defines a "confidential document" as including an inventory and appraisement of a decedent's estate. This could be problematic because, pursuant to Probate Rule 7(G), only a "party," which is defined in Probate Rule 2(M) as a person who has

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filed a notice of appearance in the case, is entitled to obtain a copy of the inventory from the clerk of court. Thus, interested persons who have not formally appeared in the case but who have a legitimate right to know what assets were owned by the decedent at the time of death (e.g., creditors) are not able to obtain a copy of the inventory from the clerk of court.

When it drafted Probate Rule 7(A), the Committee believed inventories for conservatorship estates should be considered confidential to guard against financial exploitation of protected persons, who typically are vulnerable to such exploitation. No such rationale exists, though, for decedents' estates. Consequently, Petitioner proposes that inventories for decedents' estates be removed from the definition of "confidential document" in Rule 7(A)(1)(c) and that the comment to Rule 7 be amended to explain the reason for this change.

## III. Rules 6(E) and 10(C)(1): Notices of Change of Address

Pursuant to Probate Rule 10(C)(1)(c), a fiduciary is required to file an updated probate information form when the address or telephone number of the ward, protected person, or fiduciary changes. However, pursuant to Rule 6(E), the fiduciary is not required to provide a copy of the updated probate information form to any of the parties. Thus, a fiduciary is not required to notify the court-appointed attorney for the ward/protected person when ward's/protected person's contact information has changed, nor is the fiduciary required to notify any of the parties if the fiduciary's contact information has changed. This result was an oversight on the Committee's

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part. Accordingly, Petitioner proposes amending Probate Rules 6(E) and 10(C)(1) to require a fiduciary to provide a copy of the updated probate information form to the ward's/protected person's attorney and to all parties if the updated probate information form reflects a change in the ward's, the protected person's, or the fiduciary's contact information.

## IV. Rule 9(D): Notices of Hearing for Sales of Real Property

Probate Rule 9(D) permits the trial court to require that notice of a hearing on a petition for the confirmation for sale of real property be posted on the property. However, the existing rule does not specify where the notice is to be posted. Thus, the notice arguably could be posted in a location not readily visible, such as a place inside of a structure where it cannot be seen from outside the structure, thereby defeating the purpose of posting the notice on the property. Consequently, to correct this oversight, Petitioner proposes amending Probate Rule 9(D) so it specifies that, if the court orders a notice of hearing to be posted on real property, the notice must be posted in a place where it will be visible from the front of the property and, if the property is a structure, that the notice be visible from outside the structure.

## V. Rule 10(E): Clarification of Court-Appointed Counsel's Role After Subject Person Dies

Generally, the trial court is required to appoint an attorney to represent the subject person in a guardianship proceeding and protective proceeding. *See* Ariz. Rev. Stat. §§ 14-5303(C) and -5407(B). Over the years, confusion has arisen as to whether court-appointed counsel's role automatically

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terminates upon the subject person's death or whether, because the subject person's counsel has been appointed by the court, a specific court order discharging court-appointed counsel is necessary. In some cases, this has resulted in extra work for both the parties and the trial court because court-appointed counsel has gone through the exercise of filing a motion for discharge. In other cases, this has resulted in litigation over whether the court-appointed counsel may continued to act on behalf of the deceased subject person.

Because a client's death terminates the attorney-client relationship, *see* The American College of Trust and Estate Counsel Foundation, *Commentaries on the Model Rules of Professional Conduct* MRPC 1.16 (4th ed. 2006), and because the reasons underlying the need for court-appointed counsel (e.g., protection of the subject person's civil liberties) no longer exist after the subject person has died, Petitioner proposes amending Probate Rule 10 by adding new subsection E to clarify that court-appointed counsel's role automatically terminates upon the subject person's death, and amending the comment to Probate Rule 10 to provide an explanation for the reasoning behind the proposed Probate Rule 10(E).

## VI. Rule 17(D): Service of an Objection to a Petition

Nothing in the Probate Rules specifies upon whom an objection to a petition must be served. Thus, questions have been raised as to whether the objection need be served only upon the party who filed the petition, whether the objection need be served upon all the parties (i.e., those persons who have

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formally appeared in the case), or whether the objection need be served upon all interested persons (regardless of whether they have made a formal appearance in the case).

An interested person who has not formally appeared in the case (and, thus, is not a party), might want to appear in the case if such person learns of an objection to a petition. For example, an interested person might not formally appear in a case if the person supports a petition; however, that same person might want to file a formal joinder in the petition if someone files an objection to the petition (to show his support of the petition and opposition to the objection). Likewise, an interested person who has not yet appeared in the case might want to file a formal joinder in the objection to the petition. For this reason, Petitioner recommends that Rule 17(D) be amended to provide that a copy of an objection to a petition be served upon all interested persons.

## VII. Rule 33: Corrections & Clarifications

Probate Rule 33 deals with an issue that is the frequent source of confusion in probate cases, namely the approval of attorney fees and fiduciary fees. Over the course of the past year, practitioners and judicial officers have alerted Petitioner to several deficiencies in Probate Rule 33, almost all of which fall into the category of “housekeeping” changes.

First and foremost, Probate Rule 33(A) does not expressly state that the trial court may excuse a party from its requirements. In some cases, the filing of a fee statement is impractical (such as when, in a contested case, the parties have already reached an agreement as to the payment of fees) or would be inefficient (such as when the fees in question are *de minimis*). The omission of an introductory phrase such as "Unless otherwise ordered by the court," from Probate Rule 33(A) was most likely an oversight by the Committee. Consequently, Petitioner recommends that the Court amend Probate Rule 33(A) to include such an introductory provision so as to clarify that the trial court has the discretion to excuse a party from filing a Rule 33 fee statement.

In its current form, Probate Rule 33(A) applies to all petitions requesting approval of compensation for "personal representatives, trustees, guardians, conservators, or their attorneys." If the language of the rule is taken literally, the rule does not apply to attorneys representing wards in guardianship proceedings, attorneys representing protected persons in conservatorship proceedings, or guardians ad litem. Such ommissions were a drafting oversight and not intentional. Accordingly, Probate Rule 33(A) should be amended to correct such omissions.

Probate Rule 33(A)(1) is based on former Rule 5.7, Local Rules of Practice for the Superior Court of Arizona for Maricopa County ("Maricopa Rule"). Maricopa Rule 5.7 expressly provided that "each task" be separately described; however, Probate Rule 33(A)(1) does not contain such a requirement. Thus, Probate Rule 33(A)(1) arguably could be interpreted to permit "block billing," which was not the Committee's intent. Consequently, Petitioner proposes that Probate Rule 33(A)(1) be amended to refer to "each

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task" so as to eliminate any confusion as to whether "block billing" is permissible.

Probate Rule 33(A)(2) requires the fee statement to contain an "itemization of costs for which reimbursement is sought," thereby implying that other methods for reimbursement of costs are impermissible. However, lawyers and fiduciaries may have alternative methods of charging costs. For example, some lawyers and fiduciaries charge costs as a percentage of fees.[2] Probate Rule 33(A) was not intended to be substantive. That is, it was never intended to limit the basis of a party's right to compensation. Instead, as noted in the comment to the rule, Rule 33(A)'s purpose was to clarify what information might be required to help the trial court determine whether the compensation in question was reasonable. Thus, just as Probate Rule 33(A)(3) allows for compensation arrangements that are not based on hourly rates, so too should Probate Rule 33(A) allow for alternative methods for charging costs.

Confusion also has arisen as to when a fee statement must be filed and by whom. Consequently, Petitioner recommends amending the comment to Probate Rule 33 to clarify that, generally, if a fiduciary is seeking approval of an accounting, the fiduciary is implicitly seeking approval of any fiduciary

[2]In Ethics Opinion 94-10, the Arizona Committee on Rules of Professional Conduct found such an arrangement to be ethically permissible so long as the billing practice is clearly disclosed to the client, the amount charged is reasonable and approximates the actual expenses associated with such costs, and the client consents in writing at the outset of the representation.

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and attorney fees paid during the accouting period; therefore, the burden is on the fiduciary to supply the information required by Probate Rule 33(A). Because such a comment simply would provide elucidation of the Committee's intent in creating Rule 33, this change would fall within the "housekeeping" category of amendments.

## VIII. Rule 36(A): Time Within Which a Guardian Must File Motion to Extend Authority for Inpatient Mental Health Care and Treatment

Probate Rule 36(A) currently provides that if a guardian who has been granted the authority to consent for the ward to receive inpatient mental health care and treatment in a level one behavorial health facility wishes to renew such authority before it expires, the guardian must, "[w]ithin thirty days before the anniversary date of the guardian's appointment" file a motion requesting that the court renew such authority. Thus, under a strict reading of the rule, the guardian could file such motion only one day before the anniversary date of the guardian's appointment. This, however, would not allow sufficient time for the ward to file a response to the motion or for the guardian to file a reply. For this reason, Petitioner believes Probate Rule 36(A) was intended to read "No later than thirty days before the anniversary date of the guardian's appointment" rather than "Within thirty days before the anniversary date of the guardian's appointment," and Petitioner recommends that Probate Rule 36(A) be changed accordingly.

## CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court adopt the proposed amendments to the Probate Rules as set forth in Appendix A hereto.

RESPECTFULLY SUBMITTED this ___ day of January, 2010.

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By ______/s/______________________
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# APPENDIX A

## (Text of Proposed Rule Changes)

# TEXT OF PROPOSED RULE CHANGES[1]

**Rule 2. Definitions**

Unless a term is defined differently in these rules, the definitions in A.R.S. § 14-1201 shall apply to these rules. In addition, unless the context otherwise requires, the following definitions shall apply:

A. "Application" means a written request to the probate registrar that complies with Rule 16 of these rules.

B. "~~Certified~~ Licensed fiduciary" means a person or entity that is certified by the Supreme Court of Arizona pursuant to A.R.S. § 14-5651.

C.- R. [No change in text.]

**Rule 6. Probate Information Form**

A. [No change in text.]

B. If the nominated fiduciary is a ~~certified~~ licensed fiduciary, a national banking association, a holder of a banking permit under Arizona law, a savings and loan association authorized to conduct trust business in Arizona, a title insurance company qualified to do business in Arizona, or a trust company holding a certificate to engage in trust business from the superintendent of financial institutions, none of the information required in section A(1) of this rule need be provided.

C. If the nominated fiduciary is a ~~certified~~ licensed fiduciary, the nominated fiduciary's ~~certification~~ license number shall be included on the probate information form.

D. [No change in text.]

E. Unless otherwise ordered by the court and except as provided in Rule 10(C)(1)(d), a party who files an information form pursuant to this rule is not required to provide other parties or interested persons with a copy of the information form.

F. [No change in text.]

[1]Changes or additions in text are indicated by underlining, and deletions from text are indicated by ~~strikeouts~~.

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**COMMENT**

[No change in first two paragraphs.]

As to the requirement in Rule 6(C), if the nominated ~~certified~~ licensed fiduciary is an entity, only the entity's fiduciary ~~certification~~ license number need be provided. The fiduciary ~~certification~~ license number of an individual is required only if the nominated ~~certified~~ licensed fiduciary is an individual rather than an entity.

Pursuant to Rule 10(C) of these rules, court-appointed fiduciaries have a duty to update the information contained in the information form filed pursuant to this rule. Although, pursuant to Rule 6(E), the person filing the probate information form typically is not required to send a copy of the probate information form to other parties or interested persons, Rule 10(C)(1)(d) requires that, if a person is filing an updated information form to update the address or telephone number of a ward, a protected person, or a fiduciary, the person must send a copy of the updated probate information form to the attorney for the ward or protected person, the ward or protected person's guardian ad litem, and all other parties.

**Rule 7. Confidential Documents and Information**

A. Definitions.

1. For purposes of this rule, "confidential document" means the following:

a.-b. [No change in text.]

c. inventories and appraisements filed pursuant to A.R.S. §~~§~~ 14-~~3706(B) or~~ 5418(A);

d.-f. [No change in text.]

2.-4. [No change in text.]

B.-F. [No change in text.]

G. The clerk of the court shall disclose confidential documents, except for the probate information form described in Rule 6, and confidential information only to the following persons:

1.-5. [No change in text.]

6. staff from the Administrative Office of the Courts for the purpose of conducting a compliance audit of a fiduciary or an investigation into alleged misconduct by a ~~certified~~ licensed fiduciary, pursuant to the Arizona Code of Judicial Administration § 7-201.

H. The clerk of court shall disclose the probate information form described in Rule 6 only to the following persons:

1.-4. [No change in text.]

5. staff from the Administrative Office of the Courts for the purpose of conducting a compliance audit of a fiduciary or an investigation into alleged misconduct by a ~~certified~~ licensed fiduciary, pursuant to the Arizona Code of Judicial Administration § 7-201.

I. [No change in text.]

**COMMENT**

[No change in first four paragraphs.]

~~For purposes of s~~Section A(1)(c)~~,~~ applies only to inventories filed in connection with conservatorship estates. Because protected persons are typically vulnerable to exploitation, inventories in such cases are maintained as confidential documents to safeguard the financial information from those who might take advantage of the vulnerable adults. These same considerations do not apply in decedents' estates; therefore, inventories for decedents' estates do not fall within the definition of "confidential document." As to inventories in conservatorship cases, only the inventory itself should be treated as confidential; ~~however,~~ any cover sheet should not be treated as confidential. Thus, only the inventory, including any appraisals or financial documents, should be filed as confidential.

[No change in remainder of comment.]

**Rule 9. Notice of Hearing**

A.-C. [No change in text.]

D. When a petition for confirmation of the sale of real estate is filed,

1. Notice of the hearing on the petition shall contain the following information:

a. the proposed sales price and the name and telephone number of the petitioner or the petitioner's attorney; and

b. a statement that, at the hearing, the court may consider other bids.

2. Unless otherwise ordered by the court, the notice of the hearing shall be provided to all interested persons in accordance with A.R.S. § 14-1401(A). The court may also require that the notice of hearing be posted on the property to be sold and published in a newspaper of general circulation in the county in which the property is located at least

fourteen days before the scheduled hearing for the sale of the property. If the court orders that notice of the hearing be posted on the property to be sold, the notice shall be posted in a place that is visible from the front of the property and, if the property is a structure, in a place that is visible outside the structure.

E. [No change in text.]

**Rule 10. Duties Owed to the Court**

A.-B. [No change in text.]

C. Duties of Court-Appointed Fiduciaries.

1. A court-appointed fiduciary shall

a. review all documents filed with the court that are prepared on the fiduciary's behalf;

b. if the fiduciary is a ~~certified~~ licensed fiduciary who is not also an active member of the State Bar of Arizona, place the fiduciary's ~~certification~~ license number on all documents signed by the fiduciary and filed with the court;~~ and~~

c. file an updated probate information form that contains the information required by Rule 6 of these rules within ten days after any changes in such information, except that if the ward's physical address changes, the ward's guardian shall file the updated probate information form within three days of learning of the change in address~~.~~; and

d. in the case of an updated probate information form that reflects a change of a subject person’s address or telephone number or a change of the fiduciary’s address or telephone number, mail or deliver a copy of the updated probate information form to the subject person’s court-appointed attorney, the subject person’s guardian ad litem, and all parties to the probate case in which the updated probate information form has been filed.

2.-3 [No change in text.]

D. [No charge in text.]

E. Duties of Counsel for Subject Person of Guardianship/Conservatorship Proceeding.

In a guardianship or conservatorship proceeding, the participation of an attorney representing the subject person shall terminate upon the subject person’s death. In extraordinary situations, the court, for good cause shown, may authorize the limited participation of the subject person’s attorney after the subject person’s death. In such cases, the court shall set forth, in its order authorizing the attorney’s continued participation, the basis for the continued participation and the scope of the attorney's participation.

**COMMENT**

[No change to first five paragraphs.]

Rule 10(E) applies not only to attorneys appointed by the court pursuant to A.R.S. §§ 14-5303(C) and -5407(B) but also to counsel of the subject person's own choosing, as well as counsel nominated pursuant to Rule 19(B). The purpose of a court-appointed attorney in guardianship and conservatorship proceedings is to represent the interests of the subject person and to protect the subject person's civil liberties. Upon the death of the subject person, the subject person no longer has an interest in his or her estate. Therefore, the subject person's attorney's role in the case is no longer necessary. Moreover, a client's death ordinarily terminates the lawyer's representation of the client. *See* The American College of Trust and Estate Counsel Foundation, *Commentaries on the Model Rules of Professional Conduct* MRPC 1.16 (4th ed. 2006). Accordingly, the subject person's death terminates the representation of that person's attorney. Nothing in the rule, however, is intended to preclude the subject person's attorney from participating in the case as a creditor of the subject person's estate.

**Rule 17. Petitions**

A.-C. [No change in text.]

D. Objection to Petition. Any interested person who opposes the relief requested in the petition shall file with the court, at least three days before the hearing, either an objection to the petition or a motion authorized by Rule 12, Arizona Rules of Civil Procedure, or the person may appear at the hearing and orally object to the petition.

1. If a party files an objection to the petition or a motion under Rule 12 of the Arizona Rules of Civil Procedure fewer than three days before the hearing date, the objection or motion shall not be stricken solely for failure to comply with this rule. The objecting party shall attend the hearing and inform the court that a written objection or Rule 12 motion has been filed.

2. If the person objecting to the relief requested in the petition does not file an objection or motion with the court before the hearing date but instead orally objects to the petition at the hearing, the person objecting shall subsequently file a written objection or motion, as directed by the court or agreed to by the parties, setting forth the grounds for the person's objection.

3. A written objection to a petition shall comply with the provisions of Rules 8 through 11, Arizona Rules of Civil Procedure.

4. Unless otherwise ordered by the court, a person who files a written objection to a petition shall serve a copy of the objection upon all interested persons and shall file proof of such service with the court. Service of the objection may be made in any of the manners allowed by A.R.S. § 14-1401(A) for service of a notice of hearing.

E.-G. [No change in text.]

**Rule 33. Compensation for Fiduciaries and Attorney's Fees**

A. Unless otherwise ordered by the court, ~~All~~ a petition~~s~~ that request~~ing~~s approval ~~for payment~~ of compensation ~~to~~ for a personal representative~~s~~, trustee~~s~~, guardian~~s~~, conservator~~s~~, guardian ad litem, attorney representing such fiduciary, or an attorney representing the subject person in a guardianship or conservatorship proceeding ~~their attorneys~~ for services rendered in proceedings under A.R.S. Title 14 shall be accompanied by a statement that includes the following information:

1. If compensation is requested based on hourly rates, a detailed statement of the services provided, including the tasks performed, the date each task was performed~~dates that such services were rendered~~, the time expended in performing each task ~~for performing the services~~, the name and position of the person who performed each task ~~the services~~, and the hourly rate charged for such services;

2. An itemization of costs for which reimbursement is sought that identifies the cost item, the date the cost was incurred, the purpose for which the expenditure was made, and the amount of reimbursement requested, or, if reimbursement of costs is based on some other method, an explanation of the method being used for reimbursement of costs; and

3. If compensation is not based on hourly rates, an explanation of the fee arrangement and computation of the fee for which approval is sought.

B.-D. [No change in text.]

E. The superior court may adopt fee guidelines designating compensation rates that may be used in determining the reasonableness of fees payable to ~~certified~~ licensed fiduciaries in cases under A.R.S. Title 14.

F. [No change in text.]

**COMMENT**

This rule is not intended to require court approval of fiduciary fees or attorneys' fees in all circumstances. Instead, this rule clarifies that if approval of fees is requested, the court may require that certain information be provided to assist the court in determining the reasonableness of the fees. In many circumstances, especially with respect to decedents' estates and trusts, court approval of fiduciary fees and attorneys' fees is not required unless an interested person specifically requests that the court review the reasonableness or propriety of compensation paid to a fiduciary or attorney. *See, e.g.*, A.R.S. § 14-3721.

When a fiduciary asks the court to approve an accounting, the fiduciary necessarily is asking the court to approve, among other things, all the disbursements made by the fiduciary during the accounting period, including any fiduciary or attorney fees paid during the accounting period. Consequently, when a fiduciary files a petition requesting approval of the fiduciary's accounting, the burden is on the fiduciary to supply the information required by Rule 33(A), not just with respect to the fiduciary's fees but also with respect to all fiduciary and attorney fees paid during the accounting period. Pursuant to Rule 33(D), in such cases, the fiduciary should supply fee statements that match the disbursements reported in the accounting. The fee statements may take the form of the invoices paid during the accounting period so long as those invoices contain the information required by Rule 33(A).

A.R.S. § 14-5651 limits the classes of persons or entities who are entitled to receive compensation for acting as a guardian, a conservator, or a personal representative.

This rule is not intended to apply when a party has requested that the court award the party attorneys' fees against another party, such as an award of sanctions or an award of attorneys' fees in a matter arising out of contract. Instead, this rule applies only to those circumstances in which a fiduciary or an attorney seeks compensation from the estate of a ward or protected person, a decedent's estate, or a trust.

Pursuant to Rule 7(A), fee statements are not confidential documents or information.

In assessing whether compensation paid to or requested by a fiduciary or an attorney is reasonable, the court should consider a variety of factors, not just the amount of time spent on a particular task. *See Schwartz v. Schwerin*, 85 Ariz. 242, 245-46, 336 P.2d 144, 146 (1959) (holding that in determining the reasonableness of attorneys' fees, the court should not give undue weight to any one factor). For example, when reviewing the fiduciary's compensation, the court also should consider the amount of principal and income received and disbursed by the fiduciary, the fees customarily paid to agents or employees for performing like work in the community, the success or failure of the administration of the fiduciary, any unusual skill or experience that the particular fiduciary may have brought to the work, the fidelity or disloyalty displayed by the fiduciary, the degree of risk and responsibility assumed by the fiduciary, the custom in the community as to allowances to trustees by settlers or courts and as to fees charged by trust companies and banks, the nature of the services performed in the course of administration (whether routine or involving skill and judgment), and any estimate that the fiduciary has given of the value of the services. *See* Mary F. Radford, George G. Bogert & George T. Bogert, *The Law of Trusts &*

*Trustees* § 977 (3d ed. 2006). Similarly, when reviewing the attorney's compensation, the court should consider, among other factors, the attorney's ability, training, education, experience, professional standing, and skill; the character of the work performed by the attorney (its difficulty, intricacy, and importance, time and skill required, and the responsibility imposed); the work actually performed by the attorney (the skill, time, and attention given to the work by the attorney); and the success of the attorney's efforts and the benefits that were derived as a result of the attorney's services. *See Schwartz*, 85 Ariz. at 245-46, 336 P.2d at 146.

The purpose of requiring a detailed statement of services that describes each task performed, the date each task was performed, the amount of time spent on each task, and the person performing each task is to assist the court in determining whether the amount of time spent on a particular task was reasonable. Such requirement is intended to prevent "block billing," which occurs when a timekeeper provides only a daily total amount of time spent working on the case rather than an itemization of the tiem expended on specific tasks. *See, e.g.*, *Hawaii Ventures, LLC, v. Otaka, Inc.*, 173 P.3d 1122, 1132 (Haw. 2007). "Block billing" makes it difficult, if not impossible, for the court to determine the reasonableness of the time spent on a particular task because all the tasks are lumped together in a single entry that provides only a total amount of time spent. *Id.* That is not to say, however, that the combining of related tasks in a single time entry is prohibited, especially if the time involved for each such task is minimal. For example, if reading an e-mail takes one minute and drafting the response to that e-mail takes four minutes, a single time entry of one-tenth of an hour for both tasks is more appropriate than two time entries of one-tenth of an hour each. Thus, lawyers and fiduciaries should exercise "billing judgment" when writing time entries to ensure that the court can determine whether the time expended was reasonable.

**Rule 35. Civil Arrest Warrants, Orders to Show Cause, and Fiduciary Arrest Warrants**

A.-C. [No change in text.]

**COMMENT**

[No change in first paragraph.]

The superior court must notify the supreme court if it appears that a ~~certified~~ licensed fiduciary has violated any rule adopted by the supreme court. *See* A.R.S. § 14-5651(D).

**Rule 36. Renewal of Guardian's Inpatient Mental Health Authority**

A. Renewal Prior to Expiration of Authority

1. ~~Within~~ No later than thirty days before the anniversary date of the guardian's appointment, a guardian who has been granted the authority to consent for the ward to receive inpatient mental health care and treatment in a level one behavioral health facility licensed by the Arizona Department of Health Services, and who wishes to renew such authority before it expires, shall file with the court the annual report of guardian and physician's or psychologist's evaluation report required by A.R.S. § 14-5312.01(P) and a motion requesting that the court renew the guardian's authority to consent for the ward to receive inpatient mental health care and treatment in a level one behavioral health facility licensed by the Arizona Department of Health Services. In addition, the guardian shall lodge a form of order renewing such authority. The guardian shall serve a copy of the annual report of guardian, a copy of the physician's or psychologist's evaluation report, a copy of the motion, and a copy of the form of order upon both the ward and the ward's court-appointed attorney.

2. [No change in text.]

B. [No change in text.]

## Rule 38. Appendix of Forms

A.-B. [No change in text.]

**Form 1. Order to Personal Representative and Acknowledgement and Information to Heirs/Devisees**

**Name of Person Filing Document:** ____________________________________________

**Address:** _______________________________________________________________

**City, State, Zip Code:** ____________________________________________________

**Telephone Number:** ________________________________________________________

**Attorney Bar Number (if applicable):** ________________________________________

**~~Certified~~ Licensed Fiduciary Number (if applicable):** __________________________________

**Representing [] Self or [] Attorney for:** ______________________________________

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF <<COUNTY>>

| | |
|---|---|
| In the Matter of the Estate of | No. <<CaseNo.>> |
| | |
| <<DECEDENT'S NAME>>, | **ORDER TO PERSONAL REPRESENTATIVE AND** |

| | | |
|---|---|---|
| Deceased. | | **ACKNOWLEDGEMENT AND INFORMATION TO HEIRS/DEVISEES** |

[No changes to text.]

**Form 2. Order to Guardian and Acknowledgement**

**Name of Person Filing Document:** ______________________________________________

**Address:** ____________________________________________________________________

**City, State, Zip Code:** ______________________________________________________

**Telephone Number:** ___________________________________________________________

**Attorney Bar Number (if applicable):** __________________________________________

**~~Certified~~ <u>Licensed</u> Fiduciary Number (if applicable):** ______________________________

**Representing [] Self or [] Attorney for:** ______________________________________

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF <<COUNTY>>

| | | |
|---|---|---|
| In the Matter of the Guardianship of | | No. <<CaseNo.>> |
| <<Ward's Name>>, | | **ORDER TO GUARDIAN AND ACKNOWLEDGEMENT** |
| [] a Minor | | |
| [] an Adult | | (Assigned to the Honorable <<Judicial Officer>>) |

[No change in first paragraph.]

1.-14. [No change in text.]

15. If you are not a ~~certified~~ licensed fiduciary and are not related by blood or marriage to the ward, you are not entitled to compensation for your services as the ward's guardian. *See* A.R.S. § 14-5651(J)(1).

[No change in remainder of form.]

**Form 3. Order to Conservator and Acknowledgement**

**Name of Person Filing Document:** ______________________________________________

**Address:** _________________________________________________________________

**City, State, Zip Code:** ____________________________________________________

**Telephone Number:** ________________________________________________________

**Attorney Bar Number (if applicable):** ________________________________________

**~~Certified~~ Licensed Fiduciary Number (if applicable):** ______________________________

**Representing [] Self or [] Attorney for:** ______________________________________

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF <<COUNTY>>

| | |
|---|---|
| In the Matter of the Conservatorship for | No. <<CaseNo.>> |
| <<Protected Person's Name>>, | **ORDER TO CONSERVATOR AND ACKNOWLEDGEMENT** |
| [] a Minor | (Assigned to the Honorable <<Judicial Officer>>) |
| [] an Adult | |

[No change in first paragraph.]

1.-13. [No change in text.]

14. If you are not a ~~certified~~ licensed fiduciary and are not related by blood or marriage to the protected person, you are not entitled to compensation for your services as the ward's conservator. *See* A.R.S. § 14-5651(J)(1).

[No change in remainder of form.]

**Form 4. Order to Guardian and Conservator and Acknowledgement**

**Name of Person Filing Document:** ______________________________________________

**Address:** ____________________________________________________________________

**City, State, Zip Code:** _______________________________________________________

**Telephone Number:** ___________________________________________________________

**Attorney Bar Number (if applicable):** __________________________________________

**~~Certified~~ <u>Licensed</u> Fiduciary Number (if applicable):** __________________________________

**Representing [] Self or [] Attorney for:** ________________________________________

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF <<COUNTY>>

| | |
|---|---|
| In the Matter of the Guardianship of and Conservatorship for | No. <<CaseNo.>> |
| <<Ward's Name>>, | **ORDER TO GUARDIAN AND CONSERVATOR AND ACKNOWLEDGEMENT** |
| [] a Minor<br>[] an Adult | (Assigned to the Honorable <<Judicial Officer>>) |

[No change in first paragraph.]

**GUARDIAN(S)**

1. -14. [No change in text.]

15. If you are not a ~~certified~~ <u>licensed</u> fiduciary and are not related by blood or marriage to the ward, you are not entitled to compensation for your services as the ward's guardian and conservator. *See* A.R.S. § 14-5651(J)(1).

[No change in remainder of form.]