

David K. Byers
Administrative Director
Administrative Office of the Courts
1501 W. Washington, Suite 411
Phoenix, AZ 85007-3327
Phone: (602) 452-3301
Projects2@courts.az.gov

ARIZONA SUPREME COURT

In the matter of:	)	
	)	
PETITION TO AMEND RULES 16 AND	)	Supreme Court No. 23-_____
17 OF THE ARIZONA RULES OF	)	(expedited consideration
PROBATE PROCEDURE	)	and emergency adoption
	)	requested)
_____	)	

Pursuant to Rule 28 of the Rules of the Supreme Court of Arizona, David K. Byers, Administrative Director, Administrative Office of the Courts, respectfully petitions this Court to amend the rules specified above as proposed in the Appendix. The proposed amendments implement the enactment of Senate Bill (SB) 1291 from the First Regular Session of the Fifty-sixth Legislature, as more particularly described below.

SB 1291 is expected to become effective in November or December 2023. Accordingly, Petitioner seeks expedited consideration of this petition and emergency adoption of the proposed amendments with an effective date that coincides with the general effective date of legislation from the First Regular Session of the Fifty-sixth Legislature.

I. Purpose of the Proposed Rule Amendments.

SB 1291, Conservatorship; Guardianship; Policies; Procedures (Laws 2023, Ch. 195)

Among other things, SB 1291 amends A.R.S. §§ 14-5309 and 14-5405 to require that the notice for hearing in certain guardianship and conservatorship proceedings include a notice regarding the right to a jury trial as provided by A.R.S. § 14-1306(A). Accordingly, Petitioner proposes amending Probate Rule 16(a) as set forth in the Appendix to include this notice in the list of required content for the Notice of Hearing on the Petition required by Probate Rule 15(d).

SB 1291 also creates a new subsection D of A.R.S. § 14-5401 that prohibits the court from appointing a conservator or entering a protective order under A.R.S. § 14-5401(A)(2) if the person allegedly in need of protection has not appeared before the court either in person or by virtual means, unless the alleged basis for the appointment of a conservator or entry of a protective order is that the person is confined, detained by a foreign power, or missing. Accordingly, Petitioner proposes amending Probate Rule 17(a), which currently does not require an interested person to attend the initial hearing if they do not oppose the relief requested, to add verbiage requiring attendance by an interested person “as provided by A.R.S. § 14-5401(D).” Petitioner also proposes amending the required notice verbiage in Probate Rule 16(b) to clarify that the court may grant relief when no interested person has opposed “unless the court is otherwise prohibited by law” from doing so.

II. Preliminary Comments.

This petition has not been sent to the court community for pre-filing comments because of its technical nature and due to the short period of time since the enactment of the new statutory provisions.

III. Request for Expedited Consideration and Emergency Adoption.

SB 1291 is expected to become effective in November or December 2023. Therefore, as permitted by Supreme Court Rule 28(h), Petitioner respectfully requests that this Court expedite its consideration of this petition for inclusion on the August 2023 Rules Agenda, consider adoption of the proposed amendments as set forth in the Appendix on an emergency basis at that Agenda, open the petition for comment, and consider adopting the proposed amendments on a permanent basis at this Court's December 2023 Rules Agenda.

Respectfully submitted this 5th day of July, 2023.

By /s/ David K. Byers
David K. Byers, Administrative Director
Administrative Office of the Courts
1501 W. Washington, Suite 411
Phoenix, Arizona 85007
(602) 452-3301
Projects2@courts.az.gov

APPENDIX

Arizona Rules of Probate Procedure

(deletions shown with ~~strikethrough~~, new language is underlined)

Rule 16. Notice of Initial Hearing on Petition

(a) Required Content. The notice of an initial hearing on a petition required by Rule 15(d) must state:

(1) through (3) [No change]

(4) if the court has authorized virtual attendance at the initial hearing,

(A) a statement that specifies whether the court has permitted, or required, virtual attendance, and

(B) instructions for virtually attending the initial hearing; ~~and~~

(5) if the court has not authorized virtual attendance at the initial hearing, the following statement: “If you wish to attend this hearing virtually, you must request permission from the court as described in Rule 12(c), Arizona Rules of Probate Procedure.”; and

(6) if required by A.R.S. §§ 14-5309 and 14-5405, the right to a jury trial as provided by A.R.S. § 14-1306(A).

(b) Required Warning. The notice must include the following warning:

This is a legal notice; your rights may be affected. [Éste es un aviso legal. Sus derechos podrían ser afectados.]

You are not required to attend this hearing except as provided by A.R.S. § 14-5401(D). However, if you oppose any of the relief requested in the petition that accompanies this notice, you must file with the court a written response at least 7 calendar days before the hearing date or you or your attorney must attend the hearing. Any written response must comply with Rule 15(e) of the Arizona Rules of Probate Procedure. If you do not file a timely response or attend the hearing:

(1) the court may grant the relief requested in the petition unless otherwise prohibited by law and without further proceedings, and

(2) you will not receive additional notices of court proceedings relating to the petition unless you file a demand for notice pursuant to Title 14, Arizona Revised Statutes.

(c) through (e) [No changes]

Rule 17. Initial Hearing on a Petition

(a) Attendance at the Initial Hearing.

(1) [No change]

(2) *Other Interested Persons and Their Attorneys.*

(A) No Opposition to Relief Requested in Petition. Unless the court has specified otherwise and except as provided by A.R.S. § 14-5401(D), an interested person who does not oppose the relief requested in the petition is not required to attend the initial hearing.

(B) [No change]

(b) and (c) [No change]