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ARIZONA SUPREME COURT

In the matter of:	)	
	)	
PETITION TO AMEND RULES 16 AND	)	Supreme Court No. 23-0039
17 OF THE ARIZONA RULES OF	)	
PROBATE PROCEDURE	)	REPLY
	)	
_____	)	

David K. Byers, Administrative Director, Administrative Office of the Courts, and Petitioner in this matter, hereby replies pursuant to Rule 28(e)(5), Rules of the Supreme Court of Arizona and this Court's Order dated August 24, 2023.

I. Procedural History

On July 5, 2023, Petitioner filed a petition to amend Rules 16(a) and (b) and 17(a) of the Arizona Rules of Probate Procedure to implement Senate Bill (SB) 1291 from the First Regular Session of the Fifty-sixth Legislature related to required notices in guardianship and conservatorship cases and circumstances in which a court is prohibited from appointing a conservator or entering a protective order under A.R.S. § 14-5401.

On August 24, 2023, this Court adopted on an emergency basis amendments to Probate Rules 16(a) and (b) and 17(a). This Court will consider whether to adopt these amendments on a permanent basis at its December 2023 Rules agenda. This petition was open for public comment until October 2, 2023, with any reply due by October 16, 2023.

II. Discussion of Comments

This petition received two comments. The first comment was from Mr. David Redkey. He correctly points out that SB 1291 takes effect on October 30, 2023 and indicates support of the changes made by SB 1291. Mr. Redkey did not indicate opposition to Petitioner's proposed rule amendments.

The second comment received was submitted by the Honorable Dean M. Fink, Presiding Judge of the Probate and Mental Health Department of the Superior Court in Maricopa County and Honorable Jay M. Polk, Former Presiding Judge of the Probate and Mental Health Department of the Superior Court in Maricopa County (hereinafter collectively referred to as "Commentors").

A. Probate Rule 16(a)

The petition proposed one amendment to Rule 16(a) to add verbiage related to the right to a jury trial to the required content of a notice of initial hearing. Petitioner and Commentors support the verbiage adopted by this Court in its August

24, 2023 Order. Petitioner therefore recommends that this Court permanently adopt the amendments to Rule 16(a) as set forth therein and as reflected in the Appendix.

B. Probate Rule 16(b)

The petition proposed two amendments to Rule 16(b) related to the required warning on the notice of initial hearing.

1. First Proposed Amendment to Rule 16(b)

The first proposed amendment amends the second paragraph to read: “You are not required to attend this hearing except as provided by A.R.S. § 14- 5401(D).” (New language underlined) Petitioner proposed this amendment based on the newly enacted subsection D of A.R.S. § 14- 5401 which 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.

Commentors correctly point out that A.R.S. § 14-5401(D) does not compel the person in need of protection to attend the hearing, but rather places restrictions on the court relating to its ability to appoint a conservator or enter a protective order under A.R.S. § 14-5401(A)(2). Commentors recommend that this Court not adopt Petitioner’s proposed amendment. Petitioner does not object to not adopting the

verbiage initially proposed, but it is Petitioner's position that alternative verbiage is warranted to adequately advise the person allegedly in need of protection that their failure to appear in person or by virtual means may prevent the court from granting the relief requested in the petition. Petitioner therefore proposes alternative verbiage as follows and as set forth in the Appendix (with additions underlined) to instead read:

You are not required to attend this hearing, but in some cases A.R.S. § 14-5401(D) may prohibit the court from granting the relief requested in the petition if you have not appeared before the court. 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:

2. Second Proposed Amendment to Rule 16(b)

Petitioner's second proposed amendment to Rule 16(b) amends Rule 16(b)(1) (with additions underlined) to read:

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, . . .

Commentors recommend that the added verbiage be moved to the beginning of the sentence so that it is amended (with additions underlined) to instead read:

If you do not file a timely response or attend the hearing:
(1) unless otherwise prohibited by law, the court may grant the relief requested in the petition and without further proceedings, . . .

Petitioner has no objection to this proposal and recommends that this Court adopt the amendment as proposed by Commentors and as reflected in the Appendix.

C. Probate Rule 17(a)

Lastly, the petition proposed one amendment to Rule 17(a)(2)(A) (with additions underlined) to read as follows:

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 in 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]

Although Petitioner agrees with Commentors that A.R.S. § 14-5401(D) does not compel the person allegedly in need of protection to attend the initial hearing, Petitioner proposed amending Rule 17(a)(2)(A) because before the court can appoint a conservator or enter a protective order under A.R.S. § 14-5401(A)(2), the person allegedly in need of protection does have to appear before the court. It is Petitioner's position that without more, the phrase "an interested person who does not oppose the relief requested in the petition is not required to attend the initial hearing" in Rule 17(a)(2)(A), while true, is misleading and may cause confusion about whether the

court can proceed when the person allegedly in need of protection has not appeared before the court.

Commentors propose moving Petitioner's proposed verbiage for Rule 17(a)(2)(A) to Rule 17(b)(1), so that Rule 17(b)(1) reads as follows (with additions underlined and deletions stricken):

Rule 17. Initial Hearing on a Petition

(b) Procedure at Initial Hearing.

(1) *No Opposition.* Except as provided in A.R.S. § 14-5401(D),
~~If~~ no interested person has opposed the relief requested in the
petition as provided in Rule 15, the court may decide the issues
raised in the petition at the initial hearing without setting
additional court events.

(2) [No change]

It is Petitioner's position that Rule 17(a)(2) unamended, in conjunction with Commentor's proposed addition to Rule 17(b)(1), alleviates potential confusion or conflict that an unamended Rule 17(a)(2)(A) may have caused with regard to whether a person's appearance is required before the court can proceed with appointing a conservator or entering a protective order. Petitioner therefore agrees with Commentor's proposal and recommends that this Court adopt the amendment to Rule 17(b)(1) as proposed by Commentors and as reflected in the Appendix, instead of adopting on a permanent basis Petitioner's proposed amendment to Rule 17(a)(2)(A).

III. Request

Petitioner appreciates the comments submitted during the comment period. Petitioner respectfully requests that this Court decline to permanently adopt the emergency amendments to Probate Rule 17(a) as set forth in this Court's August 24, 2023 Order and leave Probate Rule 17(a) unamended. Petitioner further requests that this Court adopt on a permanent basis the amendments to Probate Rules 16(a) and (b) and 17(b) as set forth in the Appendix.

Respectfully submitted this 13th day of October, 2023.

By /s/David K. Byers
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APPENDIX

Arizona Rules of Probate Procedure

(deletions shown with ~~striketrough~~, 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)-(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) any notice regarding the right to a jury trial required under A.R.S. §§ 14- 5309(C) or 14-5405(C).

(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, but in some cases A.R.S. § 14-5401(D) may prohibit the court from granting the relief requested in the petition if you have not appeared before the court. 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) unless otherwise prohibited by law, the court may grant the relief requested in the petition 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)-(e) [No change]

Rule 17. Initial Hearing on a Petition

(a) [No change]

(b) Procedure at Initial Hearing.

(1) *No Opposition.* Except as provided in A.R.S. § 14-5401(D), ~~If~~ no interested person has opposed the relief requested in the petition as provided in Rule 15, the court may decide the issues raised in the petition at the initial hearing without setting additional court events.

(2) [No change]

(c) [No change]