

Honorable Dean M. Fink
Presiding Judge, Probate and Mental Health Department
Superior Court of Arizona in Maricopa County
125 W. Washington Street, Suite 201
Phoenix, AZ 85003

**IN THE SUPREME COURT
STATE OF ARIZONA**

PETITION TO AMEND RULE 4(a)
OF THE RULES OF PROBATE
PROCEDURE

}
} Supreme Court No. R-_____
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Pursuant to Rule 28 of the Rules of the Supreme Court, the Probate Department of the Superior Court of Arizona in Maricopa County respectfully petitions the Court to modify Rule 4(a) of the Arizona Rules of Probate Procedure.

BACKGROUND

Pursuant to Rule 4(a)(1) of the Rules of Probate Procedure (or “Probate Rules”), the Rules of Civil Procedure apply to probate proceedings unless they are inconsistent with the Probate Rules or A.R.S. Title 14. The Probate Rules do not currently have a rule establishing a party’s right to a peremptory change of judge; therefore, Rule 42.1 of the Rules of Civil Procedure, “Change of Judge as a Matter of Right,” applies in probate cases and proceedings. Civil Rule 42.1(a) allows that “[i]n any action in superior court, except an action in the Tax Court, each side is

entitled as a matter of right to a change of one judge.” The term “action” in Civil Rule 42.1(a) is not further defined, nor is it a term defined in the definitions that are set forth in Rule 2 of the Rules of Probate Procedure. Rule 3 of the Probate Rules does, however, acknowledge that there is a distinction between “probate cases” and “probate proceedings.” The goal of this petition is to clarify that the term “action” for the purposes of change of judge as a matter of right, as applied to the Rules of Probate Procedure, refers to a “probate case.”

IMPACTED RULE AND PROPOSAL

The only rule impacted by this petition is Rule of Probate Procedure 4(a)(1). The requested change simply adds language to Probate Rule 4(a)(1) to clarify that the right by each side for a change of one judge in any action, as set forth in Rule 42.1(a) of the Rules of Civil Procedure, refers to a right by each side for a change of one judge in each *probate case*. After this modification, Probate Rule 4(a)(1) would read as follows:

The Civil Rules apply to probate proceedings unless they are inconsistent with these probate rules or A.R.S. Title 14. For purposes of applying Civil Rule 42.1, “action” has the same meaning as “probate case” under Rule 3 of these rules.

NEED FOR RULE CHANGE

On November 26, 2024, Division One of the Arizona Court of Appeals issued an opinion in *Sobrino v. Fisk*, -- P.3d --, 2024 WL 4887123 (11/26/2024),

1 interpreting the word “action” for the purposes of a change of judge as a matter of
2 right in Rule 6 of the Rules of Family Law Procedure to include any post-decree
3 petition filed pursuant to Family Law Rule 23. We recognize that the *Sobrino*
4 decision is limited to interpreting Family Law Rule 6, and does not apply to the
5 Rules of Probate Procedure; nevertheless, the decision highlights the fact that the
6 term “action,” when it come to the right of parties to request a change of judge, is
7 open to differing interpretation. The Rules of Probate Procedure, in relying on
8 Rule 42.1(a) of the Rules of Civil Procedure to govern the process for change of
9 judge, are therefore subject to the term “action”—the term used in Civil Rule
10 42.1(a)—and therefore could also be open to different interpretation.
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12 Rule 3 of the Probate Rules distinguishes between a “probate case,” defined
13 in Rule 3(b) and “probate proceeding,” defined in Rule 3(c). As stated in Probate
14 Rule 3(b), a probate case can include more than one probate proceeding. Our
15 Court’s current practice is to interpret the term “action” when applying Civil Rule
16 42.1(a) to the Rules of Probate Procedure to mean “probate case.” In light of the
17 *Sobrino* decision, and the fact that the term “action” is not otherwise defined in
18 the Probate Rules, clarification of the meaning of the term “action” is warranted.
19 We believe that in the interest of judicial economy, it is important that the right to
20 a change of judge be limited to one change per side *per probate case*.
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1 Therefore, as set forth in Attachment “A” to this petition, the undersigned
2 petitioner respectfully requests that Rule 4(a)(1) of the Rules of Probate Procedure
3 be amended to clarify that an “action” for the purposes of the right to a change of
4 judge as set forth in Rule 42.1(a) of the Rules of Civil Procedure, when applied to
5 the Rules of Probate Procedure, refers to a “probate case.”
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8 RESPECTFULLY SUBMITTED this 10th day of January, 2025.
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12 Hon. Dean M. Fink
13 Presiding Judge
14 Probate and Mental Health Department
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16 Electronic copy filed with
17 the Clerk of the Arizona Supreme Court
18 this 10th day January, 2025.
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ATTACHMENT “A”
(removed language is ~~struck through~~, new language is underlined)

Rules of Probate Procedure

Rule 4. Applicability of Other Rules.

(a) Probate Proceedings.

(1) *Civil Rules.* The Civil Rules apply to probate proceedings unless they are inconsistent with these probate rules or A.R.S. Title 14. For purposes of applying Civil Rule 42.1, “action” has the same meaning as “probate case” under Rule 3 of these rules.

(2) *Rules of Evidence.*

(A) Contested Hearings. The Arizona Rules of Evidence apply in contested hearings unless all parties and the court agree those rules will not apply.

(B) Uncontested Hearings. The Arizona Rules of Evidence do not apply in uncontested hearings.

(C) Admissibility of Evidence When the Arizona Rules of Evidence Do Not Apply. When the Arizona Rules of Evidence do not apply, all relevant evidence is admissible, except the court may exclude any relevant evidence if its probative value is outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, needlessly presenting cumulative evidence, or lack of reliability.

(b) [no changes]