

1 Honorable Dean M. Fink
2 Presiding Judge, Probate and Mental Health Department
3 Superior Court of Arizona in Maricopa County
4 125 W. Washington Street, Suite 201
5 Phoenix, AZ 85003

6 **IN THE SUPREME COURT**
7 **STATE OF ARIZONA**

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9 PETITION TO AMEND RULE 3(d)
10 OF THE RULES OF PROBATE
11 PROCEDURE

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14 } Supreme Court No. R-_____
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17 Pursuant to Rule 28 of the Rules of the Supreme Court, the Probate and
18 Mental Health Department of the Superior Court of Arizona in Maricopa County
19 respectfully petitions the Court to modify Rule 3(d) of the Arizona Rules of
20 Probate Procedure.

21 **BACKGROUND**

22 Rule 3 of the Arizona Rules of Probate Procedure distinguishes
23 between a *probate case* and the various *proceedings* that may occur within that
24 case, including both probate and non-probate proceedings. Under the current
25 rules, certain non-probate proceedings—such as civil actions or family law
26 matters—may be filed within or consolidated with a probate case, subject to the
27 requirements of Rule 6.
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1 In practice, however, parties occasionally file a single pleading that
2 attempts to function simultaneously as a probate petition and as an initiating
3 pleading for a non-probate proceeding, such as a civil complaint or family law
4 petition. These “combined” or “hybrid” pleadings create confusion regarding post-
5 filing procedures, including service requirements, response deadlines,
6 applicability of the Arizona Rules of Civil Procedure, case management practices,
7 and the preservation of jury trial rights.
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10 Although existing rules contemplate that probate and non-probate
11 proceedings follow different procedural tracks, the rules do not expressly state that
12 non-probate proceedings must be initiated by a separate, appropriate pleading and
13 may not be combined with a probate petition. This petition seeks to clarify that
14 requirement.
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17 IMPACTED RULE AND PROPOSAL 18

19 The only rule impacted by this petition is Rule of Probate Procedure 3. The
20 requested change is to expand Rule 3(d) to expressly clarify how non-probate
21 proceedings must be initiated. With the proposed amendment, Rule 3(d) would
22 read as follows:
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25 A non-probate proceeding is one that may be filed as a separate case but
26 may be appropriately filed within or consolidated with a probate case under
27 Rule 6, such as a civil action, a juvenile proceeding under A.R.S. Title 8, or
28 a family law proceeding under A.R.S. Title 25. **A non-probate proceeding
must be initiated by the appropriate pleading for that type of matter**

1 **and may not be initiated by, joined with, or combined in a petition filed**
2 **under these rules, including a petition described in Rule 15.**

3 No other provisions of Rule 3 are affected.

4 **NEED FOR RULE CHANGE**

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6 The proposed amendment is intended to promote clarity, consistency, and
7 efficient case administration. Probate petitions and non-probate initiating
8 pleadings are subject to materially different post-filing requirements. Probate
9 petitions typically proceed by notice and hearing, while civil complaints and
10 family law petitions require issuance of summons, service under different rules,
11 distinct response timelines, and may implicate jury trial rights. When these
12 pleadings are combined into a single filing, it is often unclear which procedural
13 rules apply, creating uncertainty for litigants, clerks, and the court.

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17 The amendment does not limit the court's authority to consolidate
18 proceedings under Rule 6, does not affect subject-matter jurisdiction, and does not
19 alter substantive rights. It simply clarifies that non-probate proceedings must be
20 initiated in the same manner as they would be if filed as a separate case, even if
21 they are filed within or consolidated with a probate case.

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24 By addressing initiation at the outset, the proposed rule change prevents
25 confusion, reduces the need for corrective orders, and promotes uniform filing
26 practices statewide.
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1 RESPECTFULLY SUBMITTED this 6th day of January, 2026.

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5 Hon. Dean M. Fink
6 Presiding Judge
7 Probate and Mental Health Department
8 Superior Court in Maricopa County

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10 Electronic copy filed with
11 the Clerk of the Arizona Supreme Court
12 this 6th day of January, 2026.
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