

The Honorable Ann A. Scott Timmer, Chief Judge
Arizona Court of Appeals, Division One
Chair, Committee on Improving Judicial Oversight
and Processing of Probate Court Matters
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ARIZONA SUPREME COURT

In the matter of :	)	
	)	
PETITION TO AMEND RULE 5,	)	Supreme Court No. R-_____
ARIZONA RULES OF PROBATE	)	(Emergency or Expedited Adoption
PROCEDURE	)	Requested)
	)	
_____	)	

I. Background and Purpose of the Proposed New Rule.

On April 30, 2010, Chief Justice Rebecca White Berch issued Administrative Order No. 2010-52, establishing the Committee on Improving Judicial Oversight and Processing of Probate Matters, which will exist until June 30, 2011. The Committee Chair submitted an Interim Report at the Arizona Judicial Council's (AJC) Meeting on October 21, 2010. On that date the AJC adopted the following recommendations made by the Committee in its Interim Report:

Recommendation 1: The supreme court should advocate for the legislature to expand the statutory "standby" guardianship provision in the probate code.

Recommendation 2: The supreme court should advocate for the legislature to include a statutory provision in the probate code that exclusively applies to incapacitated minors approaching adulthood.

After these recommendations were adopted, Committee members worked toward bringing about these statutory changes. In the First Regular Session of the Fiftieth Legislature (2011), the Legislature passed Senate Bill 1081. The statutes amended have an impact upon the Arizona Rules of Probate Procedure. Senate Bill 1081 was approved by the governor on April 25, 2011 and has an effective date of July 20, 2011. The draft final report of the “Committee on Improving Judicial Oversight and Processing of Probate Court Matters” (scheduled for presentation to the AJC on June 20, 2011) describes the bill as follows:

(a) The bill expands “standby” guardianship procedures by authorizing a parent or spouse to appoint a guardian for an unmarried incapacitated child or spouse by any signed writing. The prior statute authorized appointment only by testamentary appointment in a will. In addition to prescribing other procedures, SB 1081 authorizes the court to confirm in advance the appointing parent’s or spouse’s selection upon a finding the parent/spouse will likely become unable to care for the incapacitated person within two years, thereby granting more control and peace of mind to that parent/spouse. *See* Ariz. Rev. Stat. (“A.R.S.”) §§ 14-5301 – 14-5301.02.

(b) A party interested in an alleged incapacitated minor’s welfare can initiate adult guardianship proceedings when the minor is seventeen years and 6 months of age and ask that the adult guardianship commence on the minor’s eighteenth birthday. Rather than repeat any recently concluded medical evaluation process to establish incapacity, the petitioning party may satisfy the statutory obligation by providing a recent evaluation report authored by a physician, psychologist or registered nurse. A.R.S. § 14-5301.03.

(c) A party interested in a minor's welfare can initiate adult conservatorship proceedings when the minor is seventeen years and 6 months of age and ask that the adult conservatorship commence on the minor's eighteenth birthday. A.R.S. § 14-5301.04.

(d) After a minor with a conservatorship turns seventeen years of age, an interested party may petition for continuation of a conservatorship or other protective order beyond the minor's eighteenth birthday rather than reinitiating proceedings after the minor turns eighteen. A.R.S. § 14-5401(B).

(e) A party petitioning for a guardianship who seeks appointment of a parent or nonparent custodian for the alleged incapacitated person must name the court and case number of any action or proceeding in which any custodial order was previously entered regarding the proposed ward. A.R.S. § 14-5303.

II. Contents of the Proposed Rule Amendments and New Rules

Rule 5(C) Continuation of Conservatorship or Other Protective Order

The proposed new rule ensures that the caption and case filing number of a conservatorship or other protective proceedings continued pursuant to A.R.S. § 14-5401 remains constant. This is important to make certain the fiduciary continues to have access to financial accounts and other private information after entry of the continuation order.

III. Pre-Petition Distribution and Comment

Comments could not be obtained due to the need to file the petition by May 26, 2011, in order to allow for the court to consider the petition on June 1, 2011. The early consideration was necessary in order to have the rule in place by July 20, 2011, the effective date of the statutes.

IV. Effective Date of the Proposed new Rule

Petitioner respectfully requests that the proposed new rule be adopted on an expedited basis pursuant to Rule 28(G) effective on and after July 20, 2011, as that is the effective date of the statutory changes necessitating the rule changes, with distribution for comment following adoption. The proposed rule amendment is attached as Appendix A.

Respectfully submitted this _____ day of _____, 2011.

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“EXHIBIT A”

Rule 5. Captions on Documents Filed With the Court

C. Continuation of Conservatorship or Other Protective Order. A petition to continue a minor conservatorship or other protective order pursuant to A.R.S. §14-5401(b) shall be filed in the pending protective proceeding case. If the court grants the petition, the case number shall remain the same but the caption shall be amended to reflect that the conservatorship or other protective order is for an adult.