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ARIZONA SUPREME COURT

In the matter of :)
)
PETITION TO AMEND RULE 21,) Supreme Court No. R-13 _____
ARIZONA RULES OF PROBATE) (Emergency or Expedited
PROCEDURE) Adoption Requested)
)
)
_____)

Pursuant to Arizona Supreme Court Rule 28, David K. Byers, Director, Administrative Office of the Courts, Arizona Supreme Court, respectfully petitions this court to adopt the attached proposed rule amendments to the Arizona Rules of Probate Procedure.

I. Background and Purpose of the Proposed Rule Amendments and New Rules

In the First Regular Session of the Fifty First Legislature (2013), the Legislature passed House Bill 2308. This legislation impacts the Arizona Rules of Probate Procedure. House Bill 2308 was signed by the Governor on April 3, 2013 and enacted as Laws 2013, Chapter 26. The legislation has a regular effective date of September 13, 2013.

Relevant to this petition, House Bill 2308 amends A.R.S. §§ 14-5304(E) and -5401(C) by providing that the court may require each person who seeks appointment as a guardian or conservator to furnish a full set of fingerprints to enable the court to conduct a criminal background investigation. This subsection does not apply to a fiduciary who is licensed pursuant to A.R.S. § 14-5651, or an employee of a financial institution; nor does it impact A.R.S. § 14-5206(B) and Rule 21, Arizona Rules of Probate Procedure, that require fingerprinting for non-

relatives seeking appointment as guardian of a minor. A.R.S. § 14-5651(B), as amended, provides:

As a condition of appointment, the supreme court shall require each applicant for the position of fiduciary to submit a full set of fingerprints to the supreme court for the purpose of obtaining a state and federal criminal records check to determine the suitability of the applicant pursuant to § 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.

The Arizona Code of Judicial Administration, Section § 7-202(E)(4) directly implements the fingerprinting requirements for licensed fiduciaries.

II. Contents of the Proposed Rule Amendments and New Rules

The proposed amendments to this rule permit the court to exercise its discretion to require a background check for each person seeking appointment as a guardian or conservator pursuant to A.R.S. §§ 14-5304 and -5401. Consistent with the statutes, the amendments also provide a general process for the submission of the fingerprints and establish who bears the cost of the criminal background check. The rule also states that these requirements do not apply to a fiduciary licensed pursuant to A.R.S. § 14-5651 or an employee of a financial institution.

III. Pre-Petition Distribution and Comment

Due to the emergency nature of this petition and the need to have the rule in place prior to September 13, 2013, no Pre-Petition Distribution and Comment occurred.

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 September 13, 2013, consistent with the effective date of House Bill 2308.

Respectfully submitted this _____ day of _____ 2013.

By _____
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Appendix A

Rule 21. Background Check Requirements for Non-Relative Seeking Appointment as Guardian of Minor

- A. Seeking Appointment of Non-Relative as Guardian of Minor. A non-relative who seeks appointment as the guardian of a minor shall submit to a criminal background investigation pursuant to A.R.S. § 14-5206(B). ~~The applicant shall submit a full set of fingerprints and pay the required fee to the appropriate court or clerk division assigned to process such requests for the superior court in that county.~~
- B. ~~The court or clerk shall forward the background check application, fingerprint card, inventory sheet, and processing fee directly to the Arizona Department of Public Safety.~~ Appointment of other Persons as Guardian or Conservator. Pursuant to A.R.S. §§ 14-5304 and -5401, the court may require each person who seeks appointment as a guardian or conservator to furnish a full set of fingerprints to enable the court to conduct a criminal background investigation. This rule does not apply to a fiduciary who is licensed pursuant to A.R.S. § 14-5651 or an employee of a financial institution.
- C. Procedure. The applicant shall submit a full set of fingerprints and pay the required fee to the court or clerk division assigned to process such requests for the superior court in that county. The cost shall not exceed the actual cost of obtaining the person's criminal history information. The court or clerk shall forward the background check application, fingerprint card, inventory sheet, and processing fee directly to the Arizona Department of Public Safety.

COMMENT

A person not related to a minor who wishes to be appointed as guardian for that minor must undergo a criminal background investigation before the hearing on the petition to appoint a guardian. At the court's discretion other persons seeking appointment must undergo a criminal background investigation before appointment as a guardian or conservator. Licensed fiduciaries undergo background checks in the licensing process. Employees of financial institutions are exempted from these requirements by statute. The investigation is designed to assist the court in determining the applicant's suitability to serve as a guardian or conservator. Applicants should contact the court or clerk division assigned to probate matters in the county for information regarding how to obtain a fingerprint card application and inventory sheet (where applicable) and where to be fingerprinted.

The Department of Public Safety conducts criminal history records checks pursuant to A.R.S. § 41-1750 and ~~applicable federal law~~ Public Law 92-544. The Department submits the fingerprint card information to the Federal Bureau of Investigation for a national criminal history records check. The Department of Public Safety then forwards the results of the background check to the court before appointment ~~of a non-relative as a guardian for a minor~~ occurs.

The criminal background check process may take six to eight weeks to complete once the Department of Public Safety has received the paperwork from the court or clerk. In most circumstances, the court will not ~~appoint a non-relative as guardian for a minor~~ make the

appointment until the background check has been completed. In emergency circumstances, the court may make a temporary appointment of a ~~non relative as guardian~~ pending receipt of the background check results.

In most counties, the clerk's office is charged with the responsibility for distributing the fingerprint cards and instructions for fingerprinting to applicants for appointment as a guardian or conservator. In Maricopa County, the Probate Court Administrator's Office handles the fingerprinting process.