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SUPREME COURT OF ARIZONA

PETITION TO AMEND THE ARIZONA RULES OF PROBATE PROCEDURE	) Supreme Court No. R-18-0044)) REPLY TO PUBLIC COMMENTS))

The Task Force on the Arizona Rules of Probate Procedure ("Task Force") submits this Reply pursuant to the Court's May 20, 2019 Order authorizing this filing by June 14, 2019.

The Reply includes three appendices. Appendix A-R (the "R" designates "Reply") shows with redlines the Task Force's recent changes to rules originally proposed in Appendix A of the January 2019 rule petition. Appendix B-R is a clean version of the proposed rules, including a correlation table that shows the new rules' origins in the current rules. Appendix C-R contains clean versions of seven proposed forms.

Because R-18-0044 proposed that the Court abrogate the current probate rules and adopt a comprehensive new set of rules, as well as several new forms, the Task

Force widely publicized its work product. It distributed links to R-18-0044 and invited comments from:

- the State Bar of Arizona Probate and Trust Section
- the State Bar Elder Law, Mental Health, and Special Needs Planning Section
- the State Bar Civil Practice and Procedure Committee
- the Maricopa County Bar Estate Planning, Probate, and Trust Law Section
- the National Academy of Elder Law Attorneys ("NEALA")
- the Arizona Fiduciaries Association

Task Force members, individually and in teams, discussed the proposed rules in presentations to the following groups, among others:

- the Executive Council of the Elder Law, Mental Health, and Special Needs Planning Section of the State Bar
- the Executive Council of the Estate Planning, Probate, and Trust Law Section of the Maricopa County Bar Association
- the Phoenix College of Estate Planning Attorneys
- the Arizona Fiduciaries Association
- the Committee on Superior Court
- the Presiding Superior Court Judges

Task Force members discussed the proposed rules at a State Bar seminar on Advanced Issues in Probate and Estate Planning, which had about 200 attendees, and during a continuing education session at Pima County's Step Up to Justice Program. The Hon. Jay M. Polk, a member of the Task Force, also authored articles about the proposed rules that were published in Arizona legal periodicals:

- "Top 20 Proposed Substantive Changes to the Probate Rules," *Maricopa Lawyer*, March 2019

- "Changes Proposed for Probate Procedure Rules," *Arizona Attorney*, April 2019

Based on this widespread publicity, the Task Force anticipated that it would receive many formal comments, but this was not the case. Only six formal comments appeared on the Court Rules Forum. One of those comments, from the Committee on Superior Court, was supportive and requested no substantive changes. The five other Rules Forum comments raised significant issues. In addition, the Task Force gathered informal comments during discussions, presentations, and seminars. The Task Force also took the initiative to review its own work product and identified minor items requiring simple corrections as well as weightier issues that required further discussion. The Task Force met on May 17, 2019, and, over six hours, discussed all these matters. This Reply summarizes the Task Force discussion and any resulting changes to the proposed rules made by the Task Force or by the Editorial Group, which was a subgroup the Task Force authorized to craft, harmonize or "fine tune" the wording of various rules consistent with the Task Force's discussions.[1]

1. **Rules Forum comments**.

[1] The Editorial Group was led by the Task Force Chair, Justice Rebecca White Berch (ret.). It included Judge Patricia K. Norris (ret.), Judge Jay Polk, and Mark Meltzer.

Comment from Ms. Kile. Ms. Kile's comment concerned Form 10 ("proof of restricted account from financial institution"). Members consolidated the discussion of Ms. Kile's comment with a related comment from Ms. Swartz, described below.

Comment from Judge McDougall. A comment from Judge James McDougall (ret.) concerned proposed Rules 32 and 47, and proposed Form 2-S.

Rule 32: Judge McDougall believed proposed Rule 32 ("statutory representative (formerly known as guardian ad litem)"), which replaces current Rule 15.1 ("appointment of guardian ad litem"), improperly eliminates the court's ability to appoint a guardian ad litem ("GAL") in a probate proceeding. Judge McDougall does not believe that a statutory representative (SR) can function as a GAL or that the SR position was meant to supplant the role of a GAL. He added that precluding the appointment of a GAL before a finding of incapacity defeats the purpose of having a GAL, which is to advise the court on whether the appointment of a fiduciary is appropriate. He also suggested that the Task Force delete a portion of proposed Rule 32's title that says, "formerly known as guardian ad litem," and adopt a new rule that would permit the court to appoint a GAL. Judge McDougall further suggested changing the term "guardian ad litem"—because that person does not function as a guardian—to "court advisor."

The Task Force discussed Judge McDougall's comments at length. As part of that discussion, members considered two recent Court of Appeals decisions

involving the appointment and role of GALs: *Kennedy v. Wybanga*, 1-CA-CV 17-0559 FC (Ariz. Ct. App. Sept.11, 2018 (mem.)), and *Gibson v. Theut,* 1 CA-CV 17-0562 (Ariz. Ct. App. March 3, 2019) (issued after R-18-0044 was filed). Members noted that before a guardianship hearing, a probate judge appoints a court investigator and a physician, both of whom who report to the court on whether the subject person is incapacitated. In addition, the subject person has a court-appointed attorney whose role generally is to advocate for the subject person's wishes. Members questioned why the court would need to appoint anyone else. If the investigator does a satisfactory job, the court should not need to appoint a GAL. And if, after the investigation, the court has additional questions or concerns regarding the subject person's alleged incapacity, it may order additional investigatory efforts or request the parties to submit additional information. Moreover, the statutory representative is a statutorily created position that replaced the position of GAL. See A.R.S. § 14-1408(A). Any change that would retain the use of GALs in probate proceedings should come from the Legislature.

A Task Force workgroup and the full Task Force extensively discussed Rule 32 before filing the rule petition. Despite Judge McDougall's thoughtful comments, the Task Force did not modify Rule 32 as Judge McDougall proposed, with one exception: it modified the heading of Rule 32 to delete "formally known as guardian ad litem" because the text of the rule makes that point.

Rule 47: Judge McDougall found Rule 47(a)(4) confusing. The proposed rule requires the court and the requesting party to "meet all the conditions of A.R.S § 14-5310(B)" if a party requests an order granting a guardian inpatient psychiatric treatment authority on an ex parte basis, and also specifies that the court and requesting party must "follow procedures substantially similar to those set forth in A.R.S. § 14-5310(B)." The Task Force generally agreed with Judge McDougall's comment and authorized the Editorial Group to clarify this provision, which it did by deleting the reference to section B in the citation to that statute because other provisions in A.R.S. § 14-5310 concern procedures that must be followed in requesting relief.

Form 2-S: Judge McDougall pointed out a grammatical error in Form 2-S, subpart E. The Editorial Group corrected that error.

Comment from Mr. Beckett and Ms. Swartz. Proposed Rule 45 ("conservator's inventory, budget, and account") required the filing of an account within 60 days after the anniversary date of the issuance of the conservator's letters. These comments contended that for logistical reasons, including the unavailability of statements from financial institutions, this period was too short. They requested changing 60 days in Rule 45 to the current 90 days. After discussion, the Task Force agreed, and revised the rule accordingly.

Additional Comment from Ms. Swartz. Ms. Swartz suggested that proposed Rule 36(b) ("restrictions on authority"), which mandates the use of Form 10, be changed to recommend rather than to require use of that form. Although banks formerly were the only custodians used for conservatorship accounts, restricted funds are now regularly placed in brokerage accounts rather than low or no-interest bank accounts. Ms. Swartz noted that some brokerage institutions prefer to use their own proofs of restricted account forms or insert into Form 10 some of their own provisions concerning account management and fees, so the form is often modified. Members were concerned that a brokerage-generated form, or individual modifications of Form 10's provisions, might not adequately restrict an account. The Task Force directed the Editorial Group to modify Rule 36(b)(2) to allow a fiduciary to use a form other than Form 10 if authorized to do so by the court and if that form was substantially similar to Form 10.

The Editorial Group concluded that the Task Force's decision to basically require Form 10, yet allow some flexibility concerning proof of restricted account, could best be achieved by modifying Form 10. The modified form, which is contained in Appendix C-R, now allows the custodian of a restricted account holding stocks, bonds, or mutual funds to "invest and reinvest dividends, capital gains, and interest, and withdraw reasonable and customary account management fees, without a court order." The Editorial Group also modified Rule 36(B)(2) to say, "Unless the

court orders otherwise, the fiduciary is responsible for ensuring that Form 10, proof of restricted account, is filed not later than 30 days after the Court enters an order restricting the account." The Editorial Group believes these changes address Ms. Swartz' comment and follow the directions of the Task Force.

Comment from Ms. Wyant. Ms. Wyant filed a comment on behalf of the Arizona Association of Superior Court Clerks that concerned multiple rules.

Rule 6(c) ("definition of party"): The comment suggested that the definition of a "party" should include an intervenor. The Task Force agreed and modified the rule accordingly.

Rule 7(c) ("continuation of a conservatorship or other protective order," now renumbered as Rule 7(d)): The comment opposed the proposed rule's requirement to change the case caption when a minor guardianship or minor conservatorship becomes an adult guardianship or conservatorship once the subject person reaches the age of majority. The comment explained that Maricopa County's case management system cannot make such changes. But this rule requirement is not new—it is in the current rule. Nonetheless, to assist the Clerks and allow them to rely on a judicial order to change the caption, the Task Force added to this rule that "the court may order the Clerk to amend the caption to reflect that the conservatorship or protective order is for an adult."

Rule 8(c) ("filing paper confidential documents"): The comment concerned the filing of a confidential document as an exhibit to a pleading or motion. Although members believed the proposed rule adequately addressed the comment's concerns, for additional clarity, the Task Force replaced the word "filed" with the word "referenced" in the sentence, "a confidential document ~~filed~~ referenced as an exhibit to a pleading or motion must state on the envelope the title of that pleading or motion and identify the exhibit number…".

Rule 8(e) ("motions concerning confidential documents and information"): Subpart (1)(D) of this proposed rule allows the court to enter an order that "a filed document be replaced with an identical document with confidential information redacted or removed." The comment requested that in these instances, the rule require the Clerk to seal the original document. To avoid the need to seal these documents and to provide the Clerks with alternatives, the Task Force instead approved language that would allow the Clerk to return the original document to the filer, or to destroy the original, when the original is replaced with an identical version that has confidential information redacted or removed.

Rule 13(b) ("probate information form"): The comment contended that Forms 11 ("probate information form for decedent's estate") and 12 ("probate information form for guardianship/conservatorship") are missing two fields, one concerning the nature of the action and the other regarding the need for an

interpreter. The Task Force decided not to add these fields because Forms 11 and 12 are intended solely to assist the court in locating individuals. The two fields noted by the Clerks are more appropriate for, and are included in, the probate cover sheet. The comment also suggested that there should be only one probate information form rather than two, but the Task Force believed that separate forms, which differ based on the nature of the action, are easier for self-represented litigants.

Rule 13(c) ("notice of change of contact information"): The comment suggests having a single change of address form rather than two forms. But as with the probate information forms, the Task Force believes that having two forms allows each to be more focused and easier for self-represented individuals. The Editorial Group reviewed the comment's suggestions regarding the content of the captions of these forms and made appropriate changes.

Rule 14(c) ("action upon application"): The comment requested that the rule confirm the Clerk's right to assess a filing fee for subsequent applications and petitions filed under the same case number, but the Task Force declined to address this statutory matter.

Rule 26(f) ("duty to provide copies and envelopes"): The comment requested the addition of language that would apply to the electronic distribution of orders. Because electronic distribution of court orders and e-filing is not yet available in probate cases, the Task Force drafted the proposed rules for the current paper

environment and processes. These rules will need to be amended when e-filing is implemented for probate cases.

Rule 46(b) ("content"): The comment correctly noted that this rule should have referred to A.R.S. § 14-5315(C), instead of A.R.S. § 14-5315(B). The Task Force corrected the statutory citation.

Rule 46(d) ("confidentiality"): The comment raised a recurring issue that arises when filers attach confidential medical records to annual guardianship reports, which are not confidential. The comment suggested that Rule 46(d) be modified to emphasize that medical records are not to be attached to such reports, and to state that the court will not maintain these reports as confidential unless the fling party complies with proposed Rule 8(c)'s filing requirements by filing the reports as confidential documents. The Task Force agreed that the filer bears responsibility for ensuring that confidential matters in the guardianship report are filed as such, and Rule 46(d) now reads: "The guardian must file the required medical professional's report or summary as a confidential document under Rule 8."

2. <u>Issues for discussion.</u> Members discussed issues that were raised other than by Rules Forum comments.

(A) An omitted provision about providing copies to the assigned judicial officer. Before e-filing was implemented, civil and local rules required parties to provide paper copies of certain filed documents to the assigned judicial officer.

Those rules were abrogated with the advent of e-filing. But probate proceedings still use paper filing, and the occasional failure of parties to provide judicial officers in probate proceedings with copies of their filings has left some judges unaware of the need to act on a filing. The Task Force directed the Editorial Group to modify the rules to reincorporate such a requirement. The Editorial Group modified Rules 15 ("Petitions") and 19 ("Motions") to require parties filing documents under these rules to provide a copy of the filed document to the assigned judicial officer.

(B) Training for retained attorneys in guardianship and conservatorship cases (Rule 42). Proposed Rule 42 ("training, role, and termination of an attorney for a subject person"), section (a), requires an attorney for the subject person of an adult guardianship or protective proceeding to complete training prescribed by the Supreme Court.

To enhance the competency of counsel, the Committee on Improving Judicial Oversight and Processing of Probate Court Matters (chaired by Justice Ann A. Scott Timmer ["Timmer Commission"]) recommended that all attorneys in such cases be required to participate in court-prescribed training. The Task Force discovered, however, that the current training course is not robust and provides only basic, limited information, and so largely fails to accomplish the desired training. Given this, all but three members of the Task Force agreed the training requirement should

apply only to "court-appointed" counsel and the Task Force modified Rule 42(a) accordingly.

(C) Actions a fiduciary can competently perform (Rule 31). Proposed Rule 31 ("duties of a fiduciary's attorney") requires counsel for a fiduciary to "encourage the fiduciary to take actions the fiduciary is authorized to perform and can perform competently rather than have the attorney perform them." Members were concerned that counsel might be civilly liable for encouraging the fiduciary to perform duties that the fiduciary then performed incompetently. Although similar language is contained in current Rule 10(D) and has not been problematic, the Task Force agreed to remove from Rule 31(a) ("duty to minimize legal expenses") the words "can perform competently."

(D) Rule 45 budget and a proposal for a simplified budget form. In its petition, the Task Force modified current Rule 30.3 ("conservatorship estate budget") to allow the court to decide whether a budget was necessary in a conservatorship case. The Task Force did so because it found that the cost of imposing the budget requirement greatly outweighed the benefit it produced in far too many cases. But informal comments received during the comment period asked the Task Force to consider reinstituting this requirement for every conservatorship.

The Task Force took the request very seriously. It queried judges, fiduciaries, accountants, and lawyers about the effectiveness of the budget requirement, and the

Editorial Group submitted a proposed simplified budget to help overcome objections to the "budget in every case" requirement. In the end, however, the consensus of the Task Force was to not require a budget in every case for the following reasons.

First, the budget forms are complex and intimidating, even for many lawyers. The instructions for Form 5, which includes the budget, run for 28 pages. After considering the forms and instructions, the Task Force discussed the objectives of making the probate process more open, available, understandable, and cost-effective. Requiring the filing of a budget in every case frustrates these purposes, and it frustrates and stresses many of the self-represented individuals who struggle with the budget forms and instructions. People seemed to feel about filing budgets much like they feel about taxes: they'd rather not engage.

Second, requiring the budget adds a minimum of $500-$750 (as estimated by the lawyer members of the Task Force) to the cost of each case. The Court should not impose the high cost of requiring a budget without evidence that the benefits outweigh these costs. That evidence is lacking.

Third, a budget simply isn't meaningful in every case. Task Force members provided evidence of non-complex cases in which requiring a full budget simply was not necessary—that is, cases in which the costs swamped the advantages. For example, there might be little need for a budget when one spouse serves as

conservator for an incapacitated spouse and the marital community's recurring income is enough to pay for the incapacitated spouse's care.

Fourth, there is no evidence that requiring a budget in every case has produced the desired transparency or helped protect subject persons from fraud or financial exploitation, the primary reasons for the requirement. A budget is a projection of future expenses rather than an audit of actual expenses, and fraudulent conduct often is not detectable in the budget's numbers. Because the initial budget involves projections, which sometimes are more akin to "best guesstimates" of the expected costs of goods and services, it can be easy to inflate these costs so that expenses do not exceed budgeted amounts in the budget year.

Moreover, the Task Force received evidence that some fiduciaries simply raise the first budgeted amounts by a fixed percentage—say, 15-20%—with each annual filing. Such a non-thoughtful process does not protect the subject person. And judges who responded to an inquiry were almost evenly divided on whether the budget requirement should be retained. Under these circumstances, the Task Force did not find that the "budget in every case" requirement sufficiently protects the subject person to justify the burden and expense it imposes. The revised rule proposed by this Reply does not preclude the court from requiring a budget; indeed, it encourages a budget for most cases. However, before ordering a budget, the rule

requires the court to first consider relevant factors, such as the value and complexity of the conservatorship estate.

This latter point bears emphasis: at the time the conservator is appointed and thereafter when reviewing each annual accounting, revised Rule 45(d) *requires* the court to determine whether the conservator should file a budget. See further Rule 36, which concerns the order appointing a conservator and now includes this new provision: "An order appointing a conservator must specify whether the conservator is required to file an initial budget under Rule 45(d)." In addition to making an initial determination concerning the budget, revised Rule 45(d) further provides that "The court must make a similar determination when reviewing each account under section (e)." Thus, at the inception of the case *and then yearly*, the court *must* carefully evaluate whether a budget is necessary. The Task Force believes these rigorous reviews will serve the goals of transparency and protection.

The Task Force was well aware that the budget requirement in current Rule 30.3 was inserted to protect the subject person, to protect against financial mismanagement and exploitation, and to provide transparency in the process, and further was aware that the budget requirement sprang from a compromise reached several years ago with members of the Legislature. (Several of the Task Force members served on the Timmer Commission, and the Task Force Chair appointed the Commission members and, with the Court, approved the work of the

Commission.) But after nearly ten years of experience with mandatory budgets, Task Force members could not conclude that the case supporting the mandatory requirement for a budget in every case had been made. Instead, the Task Force thoughtfully considered the request to maintain the budget requirement, but after lengthy deliberation, declined to reinstate it.

The Task Force did not reach its conclusion lightly. It considered a simplified budget form drafted by staff (Form 9-S in the May 17, 2019 meeting materials), but rejected it as not being simple enough. It also considered the comments of a judge member of the Task Force who served on the Timmer Commission and was instrumental in drafting the current budget forms. He recalled that the Timmer Commission did not intend to require a budget using Forms 5-9 in every case, especially if the protections a budget would provide were unnecessary in individual circumstances. The original idea was to use a budget that, with the aid of an electronic submission process, would allow a judicial officer or court accountant to quickly see year-over-year changes. But that understanding has given way to the current belief that a budget using the forms is required in every case. Moreover, the envisioned electronic submission process has not yet been implemented.

The Task Force wrestled with several options, including adopting the language in current Rule 30.3. Ultimately, the Task Force supported the changes discussed above. The proposed rule also permits the conservator to file a budget in

the absence of a court order compelling one. The Task Force believes that requiring rigorous judicial oversight and carefully exercised discretion best balances the need for protection of subject persons with the need to reduce expense, confusion, and frustration in probate cases.

(E) Informal comments at 04.12.2019 Committee on Superior Courts (COSC) meeting. Although the COSC meeting concluded with a unanimous vote to support the rule petition, a COSC member raised an issue regarding proposed Rule 27 ("management of contested probate proceedings"). The COSC member, a judge, observed that he has had few probate cases that warranted the filing of a joint report, and he suggested changing the word "must" in Rule 27(a) ("generally") to "may." The Task Force observed that Rule 27(a) does not require a joint report to be filed in every case; instead, it also allows the court simply to "enter an order setting litigation deadlines," which could be as simple as an order setting a trial date. Thus, the Task Force declined to make any changes to Rule 27.

(F) Adding an analog to Civil Rules 54(b) and 54(c). Although proposed Rule 4(a)(1) provides that the Civil Rules apply to probate proceedings unless they are inconsistent with the probate rules, a member questioned whether Civil Rule 54(b) and 54(c) fit probate proceedings. The Task Force discussed whether the proposed rules should include a specialized provision for the appealability of orders

and judgments in probate cases. After considering applicable statutes and case law, the Task Force declined to add such a provision.

3. Other matters. The Task Force also made the following changes to the proposed rules.

- In Rule 7 ("document captions"), it added a new section (c) that requires inclusion of the title of a non-probate proceeding that was filed within or consolidated with a probate case, and it reorganized the adjacent sections so they are more compatible with the new section.

- In Rule 8(d) ("prohibition on filing confidential documents"), subpart (1), it changed "refrain from including" to "not include," and changed "otherwise ordered by the court" to "the court orders otherwise."

- In Rule 10(a) ("acknowledgment required"), the revisions clarify that certain consents, waivers, and nominations must be signed by the interested person and acknowledged by a notary, judicial officer, or other person legally authorized to verify the signer's identity.

- In Rule 15(j) ("ex parte petitions"), it substituted for enhanced clarity the words "that authorize the court to rule on the request without prior notice to interested persons" at the end of the second sentence.

- In Rule 18(a) ("administrative dismissal of a petition"), it removed an ambiguity by relocating the clause "within 60 days after filing a petition" so it appears after the word "not."

- In Rule 19(a)(1) (a definition of "motion"), it revised the sentence to say that a "'motion' is a request made by a party to a judicial officer that seeks procedural rather than substantive relief."

- In Rule 19(b) ("ex parte motion"), it added the words "ex parte."

- In Rule 20(c) ("evidence"), it rephrased "evidence may not be presented" so it is in the active voice ("they may not present evidence").

- In Rule 26(c) ("service and filing"), it changed the word "file" to "lodge [a proposed order]."

- In Rule 27(b) ("duty to confer"), subpart 2 and for clarity, it changed the word "they" to "the parties."

- In Rule 27(c) ("content of the joint report"), it added the omitted word "to" [i.e., "the right to a jury trial."]

- In Rule 28(d) ("attorney fees claim"), it replaced "that a party took discovery [etc.]" with the words "discovery taken by a party [etc.]."

- In Rule 45(d)(5) ("filing a budget, objections, and court action"), it relocated the last sentence of subpart (A) ("the court may set a hearing in the absence of an objection") as the second sentence of subpart (B).

- In Rule 45(c) ("conservator's account"), subpart (2) ("required attachments"), it deleted the word "monthly" because financial statements might be generated other than monthly.

- In Rule 45(e)(6) ("final account"), it replaced the existing language with the following text: "Except as provided in A.R.S. § 14-5419(F) or as ordered by the court, the conservator must file a final account of the protected person's estate no later than 90 days after the termination of the conservatorship, whether by death of the protected person or by other court order. The final account must reflect all activity between the ending date of the most recently approved account and the date of termination of the conservatorship. The court may extend the date for filing the account or relieve the conservator from filing a final account."

- In Rule 45(e)(7) ("format of account"), it added Form 5, which had been inadvertently omitted.

- In Rule 48 ("remedies for non-compliance by a guardian or conservator"), it deleted in section (b) the surplusage, "under Rule 48."

Although the Task Force took no action on the following items, it notes them so that the Court understands why no changes were recommended:

- In Rule 30 ("representation of parties"), section (b) ('limitation"), the Task Force did not add "statutory representative" because a statutory representative might not be an attorney.

- In Rule 44(c) ("conservator's inventory"), it did not add a form number for the inventory because there are several inventory forms other than the one that is on the Arizona Judicial Branch webpage, including inventories that are available through the State Bar or local courts.

- In Rule 50(a) ("inventory"), subpart 1 ("timing"), it did not vary the manner of service, although it might conflict with that set forth in Civil Rule 5, because service in the manner required by Probate Rule 50(a) is prescribed by statute.

Rule 39(f). The Task Force also discussed an issue regarding Rule 39(f) ("recording personal representative's letters of appointment"). This provision, which is new, requires the personal representative to record letters "in any county of any state" where the decedent owned real property that is subject to court-ordered restrictions. Members thought this requirement might create confusion if there is an ancillary probate proceeding in another state. They also noted that while an Arizona statute requires recording in similar circumstances for a conservatorship estate, there is no comparable statute for a decedent's estate. They observed that recording the letters in other states without fully evaluating the laws of each state might cloud property titles and subject a personal representative to civil liability. Members accordingly agreed to change "in any county of any state" to "in any county of this state."

Rule 29 ("demand for jury trial"). The Task Force filed a rule petition in December 2018, number R-18-0039, which requested expedited adoption of a new Probate Rule 28.1 concerning demands for jury trials in guardianship and conservatorship cases. The Court adopted this rule on an emergency basis, effective January 1, 2019. Proposed Rule 29 in R-18-0044 would supersede Rule 28.1. Although the Court opened R-18-0039 for public comment in 2019, Petitioner submits that if the Court adopts the rules proposed by R-18-0044, R-18-0039 would be moot.

4. Forms. Current Rule 38 ("Forms") refers to forms in the Arizona Code of Judicial Administration ("ACJA"), which is somewhat confusing because ACJA § 3-302(D) also refers to, but does not include, any forms. Rather, ACJA § 3-302(D) directs the reader to the Arizona Judicial Branch website to find the forms. Moreover, ACJA § 3-302(D) categorizes forms as either "preferred" or "exclusive." The January rule petition, at page 19-20, recommended changing these terms to "recommended" and "required," and proposed Rule 55 in Appendix A to the petition used that terminology. But proposed Rule 55, as shown in Appendix A-R to this Reply, no longer uses "recommended" or "required" because judicial officers can modify even "required" forms. See, for example, proposed Rule 45(a) ("court authority"), which permits a judicial officer to modify requirements for inventory, budget, and account forms.

Accordingly, revised Rule 55 advises that any of the referenced forms that are available on the Supreme Court's website "meet the requirements of these rules;" that inapplicable content may be deleted from a form or relevant content be added; and that Forms 5-10 (the forms for budgets, accounts, and proofs of restricted account) "may be modified only by a court order." The Task Force believes this revised rule strikes an appropriate balance between mandating necessary content, while also providing flexibility for those who use these forms and who need to adapt a form to the circumstances of an individual case.

5. Conclusion. The Task Force requests the Court to

(A) Abrogate the current Rules of Probate Procedure;

(B) Abrogate current Form 10 ("Proof of Restricted Account from Financial Institution");

(C) Adopt the proposed Rules of Probate Procedure, including the cross-reference table, as shown in Appendix B-R;

(D) Approve for posting on the Arizona Judicial Branch self-service webpage Form 2-S ("Supplemental Order to Guardian with Inpatient Psychiatric Treatment Authority and Acknowledgement"), Form 10 ("Proof of Restricted Account from Financial Institution"), Form 11 ("Probate Information Form for Decedent's Estate"), Form 12 ("Probate Information Form for Guardianship/Conservatorship"), Form 13 ("Notice of Change of Fiduciary's

Contact Information"), Form 14 ("Notice of Change of Ward's Contact Information"), and Form 15 ("Authorization to Obtain Certified Copy of a Sealed Document"), as shown in Appendix C-R.

(E) Reject Rule Petition No. R-18-0039 as moot.

Task Force members appreciate the opportunity to serve on this Task Force and to participate in the probate rules project to further the Court's Strategic Agenda of Advancing Justice Together.

RESPECTFULLY SUBMITTED this 14th day of June 2019.

By /s/ Rebecca White Berch
Rebecca White Berch (Justice, ret.), Chair, Probate Rules Task Force