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Probate Rules as proposed

June 14, 2019

(final version)

Arizona Rules of Probate Procedure

June 14, 2019

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Correlation Table

<u>New</u> probate rule number	Title of the New 2020 Rule	<u>Former</u> probate rule number
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1	Scope, Applicability, and Construction	1
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4	Applicability of Other Rules	3
5	Contested and Uncontested Hearings	new
6	Non-Probate Proceedings Filed Within or Consolidated with a Probate Case	4(B), 4(C)
7	Document Captions	5
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22	Settlement Conference	new
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28	Disclosure and Discovery	28(B)
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30	Representation of Parties	10(B)
31	Duties of a Fiduciary's Attorney	10(D)
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33	Compensation for Fiduciaries, Attorneys, and Statutory Representatives	33
34	Prudent Management of Costs	10.1
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43	Duties of Investigators	10(F)
44	Appointment of a Temporary Guardian or Temporary Conservator	23, 13(C)
45	Conservator's Inventory, Budget, and Account	30(A), 30(B), 30.2, 30.3
46	Annual Guardian Reports	30(C)
47	Guardian's Inpatient Psychiatric Treatment Authority	24, 36
48	Remedies for Non-Compliance by a Guardian or Conservator	15.2(C)
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Deleted Rules

The following pre-2020 rules were deleted and not incorporated within another rule:

Rule #	Rule Title
20	Affidavit of Proposed Appointee
21	Background Check Requirements
26.1	Written Findings on Appointment
30.1	Financial Order

Forms

The Probate Rules refer to the following forms:

Form #	Form Title	In Rule #
1	Order to Personal Representative and Acknowledgement	37
2	Order to Guardian and Acknowledgement	37
2-S	Supplemental Order to Guardian with Inpatient Psychiatric Treatment Authority and Acknowledgement	47
3	Order to Conservator and Acknowledgement	37
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13	Notice of Change of Fiduciary's Contact Information	13
14	Notice of Change of Ward's Contact Information	13
15	Authorization to Obtain Certified Copy of a Sealed Document	9

Prefatory Comment to the 2020 Amendments

In Administrative Order 2017-133, the Court ordered a comprehensive review of the Probate Rules, which led to the adoption of these rules. Like the former Probate Rules, the 2020 rules must be construed with the Civil Rules and applicable statutes.

Although these rules are based on an earlier set of Probate Rules, there are significant changes, both stylistic and substantive.

The most obvious change is a reorganization of the rules. The 55 rules are organized by subject matter and presented in the order in which events occur in a probate proceeding. Some provisions have been added, and some former provisions have been abrogated, relocated, consolidated, or bifurcated. The new rules incorporate any important substantive provisions that were contained in the former comments, and therefore most comments have been deleted. The former comments and case law continue to be authoritative unless rendered inapplicable by changes in the 2020 rules. Except for several new rules that have no corollary in the earlier Probate Rules, the correlation table accompanying the 2020 rules identifies the source of each new rule by reference to the former rules.

The other noticeable change is restyling. The new Probate Rules add informative titles and subheadings to make rules and sections easier to locate, and they use clearer language, uniform formatting, and consistent terminology. The wording of an amended rule may vary slightly or substantially from the rule it replaces. The purpose of these differences is to make the new probate rules easier to understand and use.

PART I. GENERAL INFORMATION

Rule 1. Scope, Applicability, and Construction

- (a) Scope.** These rules govern procedures in all probate proceedings in the superior court.
- (b) Applicability.** These rules apply to all persons in a probate proceeding, whether self-represented or represented by an attorney.
- (c) Construction.** The court must enforce and construe these rules in a manner that ensures a consistent, predictable, prompt, efficient, and just resolution of probate proceedings.

Rule 2. Definitions

- (a) “A.C.J.A.”** is the Arizona Code of Judicial Administration.
- (b) “Application”** has the meaning described in Rule 14.
- (c) “A.R.S.”** is the Arizona Revised Statutes.
- (d) “Attend”** means to be present, either personally or by counsel, at a court event.
- (e) “Civil Rules”** means the Arizona Rules of Civil Procedure. A **“Civil Rule”** is a rule in the Arizona Rules of Civil Procedure.
- (f) “Court”** includes a superior court judicial officer, clerk, or court administrator.
- (g) “Court day”** is a day that is not a Saturday, Sunday, or legal holiday.
- (h) “Demand for notice”** means a written request filed with the court by an interested person to be notified of any filings in the probate proceeding.
- (i) “Evidence”** means testimony, documents, objects, or other things offered to prove the existence or nonexistence of a fact.
- (j) “Financial institution”** is defined in A.R.S. § 14-5651.
- (k) “Incapacitated person”** is defined in A.R.S. § 14-5101.
- (l) “Interested person”** is defined by A.R.S. § 14-1201 and includes a party.

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- (m) **“Judicial officer”** includes a superior court judge, commissioner, or judge pro tempore.
- (n) **“Licensed fiduciary”** means a person or entity licensed by the Arizona Supreme Court under A.R.S. § 14-5651.
- (o) **“Medical professional”** means a physician, psychologist, and registered nurse for guardianship and conservatorship proceedings under A.R.S. §§ 14-5303(C) and 14-5407(B), and a psychiatrist or psychologist in a proceeding requesting inpatient treatment authority under A.R.S. § 14-5312.01.
- (p) **“Motion”** is defined in Rule 19.
- (q) **“Oral argument”** is defined in Rule 19.
- (r) **“Party”** is a person who has filed a notice of appearance, an application, a petition, a response, or a joinder in a probate proceeding. An interested person who has filed a demand for notice or a statement of no position—but who has not filed a notice of appearance, a petition, response, or a joinder—is not a party.
- (s) **“Petition”** is described in Rule 15.
- (t) **“Pleading”** means an application, a petition, or a response to a petition.
- (u) **“Protected person”** is defined in A.R.S. § 14-5101.
- (v) **“Protective proceeding”** is defined in A.R.S. § 14-5101.
- (w) **“Statutory representative”** is defined in Rule 32.
- (x) **“Subject person”** is the decedent, alleged incapacitated person, ward, person allegedly in need of protection, or protected person, whose estate or interest is the focus of the proceeding.
- (y) **“Ward”** is defined in A.R.S. § 14-5101.

Rule 3. Probate Case and Proceedings

- (a) **Generally.** These rules distinguish between a probate case and the various proceedings that may occur within the case.
- (b) **Probate Case.** A probate case is a court case initiated by filing a probate proceeding. Each probate case is assigned a unique number by the court clerk. A probate case

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includes one or more probate proceedings and, subject to the requirements of Rule 6, may include one or more non-probate proceedings. The termination of the initial probate proceeding does not necessarily terminate the probate case.

(c) Probate Proceeding. A probate proceeding is a court proceeding arising under

(1) A.R.S. Title 14, including cases concerning decedents' estates, trusts, guardianships, conservatorships, and related matters, and any associated proceeding for declaratory relief under A.R.S. Title 12, Chapter 10, Article 2; or

(2) A.R.S. Title 36, Chapter 32, regarding living wills and health care directives.

(d) Non-Probate Proceeding. A non-probate proceeding is one that may be filed as a separate case but may be appropriately filed within or consolidated with a probate case under Rule 6, such as a civil action, a juvenile proceeding under A.R.S. Title 8, or a family law proceeding under A.R.S. Title 25.

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.

(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) Non-Probate Proceedings. In non-probate proceedings, the same procedure and evidence rules apply as if the matter had been litigated as a separate case.

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Rule 5. Contested and Uncontested Hearings

- (a) When a Hearing Becomes Contested.** A hearing becomes contested as described in Rule 15(e).
- (b) Precluding Evidence at an Uncontested Hearing.** A hearing that is not contested under section (a) is uncontested. At an uncontested hearing, the court may preclude non-moving or non-petitioning parties from presenting evidence in opposition to the motion or petition.
- (c) Joinder or Statement of No Position.** For purposes of this rule, joinders and statements of no position are not considered written objections.

Rule 6. Non-Probate Proceedings Filed Within or Consolidated with a Probate Case

- (a) Requirements.** A non-probate proceeding may be filed within or consolidated with a probate case, under the case number assigned to the probate case, only under one of the following conditions:
- (1)** if the probate case involves a decedent's estate, the personal representative must be a party to the non-probate proceeding;
 - (2)** if the probate case involves a guardianship or protective proceeding, the subject person's guardian or conservator must be a party to the non-probate proceeding;
or
 - (3)** if the probate case involves the internal affairs of a trust, the trustee must be a party to the non-probate proceeding.
- (b) Separate Hearings and Severance.** If a non-probate proceeding has been filed in or consolidated with a probate case, the court may order a separate hearing on one or more issues, or it may sever the non-probate proceeding from the probate case. When ordering a separate hearing, the court must preserve any right to a jury trial.
- (c) Definition of Party.** As used in this rule, the word "party" means plaintiff, petitioner, defendant, respondent, counterclaimant, counter-defendant, cross-claimant, cross-defendant, third-party plaintiff, third-party defendant, or intervenor in the case filed within or consolidated with a probate case.

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Rule 7. Document Captions

- (a) Generally.** The first page of every document filed with the court must contain a caption that complies with Civil Rule 5.2(a).
- (b) Title of the Probate Case.** The title of a probate case must include the following information:
- (1)** the name of the subject person or trust; and
 - (2)** if a person, immediately below the subject person's name, the subject person's status as an adult, a minor, or deceased.
- (c) Title of a Non-Probate Proceeding Filed Within or Consolidated with a Probate Case.** The caption of a document that pertains to a non-probate proceeding filed within or consolidated with a probate case must contain both the title of the probate case and, immediately below that title, the title of the non-probate proceeding.
- (d) Continuation of a Conservatorship or Other Protective Order.** A petition to continue the conservatorship of a minor or other protective order beyond the minor's eighteenth birthday under A.R.S. § 14-5401(B) must be filed in the existing case. If the court grants the petition, the court may order the Clerk to amend the caption to reflect that the conservatorship or protective order is for an adult.

Rule 8. Confidential Documents and Information

(a) Definitions.

- (1) “Confidential document”** means
- (A)** the Probate Information Form filed under Rule 13;
 - (B)** medical reports and records that are filed in connection with proceedings, including reports and records filed in connection with proceedings under A.R.S. §§ 14-5303, 14-5310, 14-5401.01, or 14-5407, or A.R.S. § 36-3206, or as required by A.R.S. §§ 14-5312.01, 14-5312.02, and 14-5315;
 - (C)** budgets filed under Rule 45;
 - (D)** inventories and appraisements filed under A.R.S. § 14-5418(A);
 - (E)** accountings filed under A.R.S. Title 14;

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(F) a credit report; or

(G) any other document that the court orders filed as a confidential document under this rule.

(2) ***“Confidential information”*** means

(A) a social security number of a living person;

(B) any financial account number, unless limited to the last four digits only; or

(C) any other information the court determines is confidential.

(3) ***“Financial account”*** includes bank, credit card, debit card, and brokerage accounts; pensions, profit-sharing, or retirement and similar benefit plans; and an insurance policy or an annuity contract.

(4) ***“Redact”*** means to edit or obscure text in a document in a manner that prevents it from being read. Redaction must be accomplished so that the redacted information cannot be identified in either paper or electronic formats.

(b) Access to Confidential Documents.

(1) ***Generally.*** Confidential documents are not part of the public record of a probate case.

(2) ***Probate Information Form.*** Only the following persons may access the Rule 13 Probate Information Form:

(A) an attorney or a statutory representative appointed by the court to represent the subject person of a guardianship or protective proceeding in which the document has been filed;

(B) a court investigator appointed for the probate case in which the Probate Information Form has been filed;

(C) judicial officers, court administrative staff, and other court personnel whose official duties require access to confidential information for processing and managing probate cases;

(D) the public fiduciary;

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- (E) staff from the Administrative Office of the Courts who are conducting a compliance audit of a fiduciary, or an investigation into alleged misconduct by a licensed fiduciary, under Arizona Code of Judicial Administration § 7-201; and
 - (F) any person authorized by the court, on a showing of good cause, to view or obtain a copy of the confidential document;
- (3) ***Other Confidential Documents.*** Only the following persons may access other confidential documents:
- (A) the persons described in subparts (b)(2)(A) through (F);
 - (B) a party to the probate case in which the document has been filed and that party's attorney or other legal representative; and
 - (C) a person appointed as a medical professional or accountant for the probate case in which the document has been filed.
- (c) **Filing Paper Confidential Documents.** A party filing a paper confidential document must place it in an envelope marked with the case name, the case number, the name of the document being filed, the name of the party filing the document, and the words "Confidential Document." A confidential document referenced in a pleading or motion as an exhibit must state on the envelope the title of that pleading or motion and identify the exhibit number. A party must use a separate envelope for each confidential document. The clerk is not required to review a document to determine whether it is a confidential document.
- (d) **Prohibition on Filing Confidential Information.**
- (1) ***Generally.*** Other than in a confidential document, a person must not include confidential information in any document the person files with the court, whether filed electronically or in paper, unless the court orders otherwise or as prescribed by law.
 - (2) ***Responsibility with Filer.*** The responsibility for not including or redacting confidential information rests solely with the person filing a document. The clerk and the court are not required to review documents for compliance with this rule, or to seal or redact documents that contain confidential information.

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(e) Motions Concerning Confidential Documents and Information.

- (1) ***Available Orders.*** On its own or on a party's motion, the court may order that
- (A) a document be filed as a confidential document;
 - (B) a document not be filed as a confidential document;
 - (C) confidential information contained in a non-confidential document be redacted and, in instances where the document has not yet been filed, the filing party perform the redaction; or
 - (D) a filed document be destroyed or returned to the filing party and replaced with an identical document with confidential information redacted or removed.
- (2) ***Motion's Requirements.*** A party filing a motion to determine confidentiality must include in the motion:
- (A) the title of the document to which the motion pertains;
 - (B) the date the document was filed; and
 - (C) why information should be redacted, or the document should be filed as a confidential document.

(f) Confidential Documents as Hearing Exhibits. A confidential document may be used as an exhibit, or a part of an exhibit, at any hearing in the probate case in which the confidential document was filed. The party submitting the exhibit for the clerk to mark must identify the document as being, or including, a confidential document, and the clerk must mark it as such. Any exhibit that is, or includes, a confidential document and that is offered into evidence is governed by section (b).

(g) Sanctions. The court may impose appropriate sanctions on a person who violates this rule.

Rule 9. Sealing and Unsealing Court Documents

(a) Procedure. The procedure for sealing and unsealing documents in a probate case is governed by Civil Rule 5.4.

(b) Access to Sealed Documents. Court documents that are sealed in a probate case may be examined only by judicial officers or those persons identified in Rule 8(b)(2)(E).

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Access to sealed documents by court staff or clerk staff may be determined by local administrative order. Parties and the public may access sealed documents only by court order, except that certified copies of any sealed order appointing the fiduciary, sealed acceptance of appointment, sealed proof of completion of training, and sealed letters of the fiduciary's appointment may be obtained without a court order by the following persons:

- (1) the court appointed fiduciary,
- (2) that fiduciary's attorney, or
- (3) a person authorized by the fiduciary or the fiduciary's attorney upon presentation of a completed Form 15, Authorization to Obtain Certified Copy of a Sealed Document.

Rule 10. Acknowledgment of a Consent, Waiver, Renunciation, or Nomination

(a) Acknowledgment Required. The following documents must be signed by the interested person and acknowledged by a notary public or a judicial officer, or other person who is legally authorized to verify the identity of the signer:

- (1) the waiver of any right, including a waiver of notice, waiver of priority for appointment, or waiver of bond;
- (2) a renunciation of the right to appointment as a guardian, conservator, personal representative, or trustee;
- (3) the nomination of a person to serve as a guardian, conservator, personal representative, or trustee; and
- (4) if the signer is self-represented, in addition to the documents listed in (1), (2), and (3), a consent to, joinder in, or statement of no position regarding a petition or application.

(b) Disclaimers. The requirements of this rule do not apply to a disclaimer of property executed under A.R.S. §§ 14-10001 to 14-10018.

COMMENT TO 2020 AMENDMENTS

A.R.S. § 33-511 lists those who may take acknowledgments within the State of Arizona.

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Rule 11. Personal Service of Documents

(a) Personal Service on the Subject Person of a Guardianship or Protective

Proceeding; Waiver. Whenever A.R.S. Title 14 requires personal service of a document on the subject person of a guardianship or protective proceeding, service must be made by a person authorized in Civil Rule 4(d), and the subject person may waive service only in accordance with A.R.S. §§ 14-5309(B) or 14-5405(B).

(b) Personal Service on Other Persons. Whenever A.R.S. Title 14 requires personal service of a document on any other person, service must be made under Civil Rules 4, 4.1, and 4.2.

(c) Personal Service When a Money Judgment Is Requested. If a petition requests that the court enter a money judgment against a person, service of a copy of the petition and a copy of the notice of the initial hearing on that petition must be made on that person under Civil Rules 4, 4.1, and 4.2.

Rule 12. Telephonic and Video Attendance and Testimony

(a) Definitions.

(1) **“Proceeding.”** When used in this rule, “proceeding” means a court event that interested persons or their attorneys have an opportunity to attend. These events include, but are not limited to, a trial, hearing, oral argument, and conference.

(2) **“Telephonic.”** When used in this rule, “telephonic” means by telephone, video conferencing, or other available audio or audiovisual technology.

(b) When Permitted. Parties and their attorneys are expected to appear in open court for court proceedings unless the court, in its discretion, permits telephonic attendance under this rule. The court may allow a person to telephonically attend, or testify at, a proceeding if both of the following are true:

(1) the person can be heard by every other person participating in the proceeding, including the judicial officer and, if applicable, the court reporter or an electronic recording system; and

(2) no party will be unfairly prejudiced by the telephonic attendance or testimony.

(c) How Requested. Unless otherwise ordered by the court, a person who wishes to telephonically attend or testify at a proceeding must either file a written motion or make an oral motion in open court. The request may be for a particular proceeding or

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for multiple proceedings. A written motion made under this rule must be served on all parties and any person who has filed a demand for written notice and must be accompanied by a proposed order.

- (d) Time for Making Request.** Unless otherwise provided by local rule, a written or oral motion to allow telephonic attendance or testimony must be made in a timely manner considering the circumstances at the time the request was made. Circumstances may include but are not limited to (1) the promptness of the party in making the request; (2) the nature of the proceeding, including whether it is contested or evidentiary; (3) whether all other parties agree to the telephonic attendance or testimony; (4) the reason why telephonic attendance or testimony is being requested; and (5) logistical factors.
- (e) Objection to Request.** A party opposing a written motion made under this rule must file a response no later than 5 court days after the motion is served. The court may modify or waive this time limit.
- (f) Ruling.** The court may rule on a written motion made under this rule before a response is filed, and without a reply or oral argument.
- (g) Use of Exhibits During Telephonic Testimony.** Unless otherwise ordered by the court, before a party may question a person testifying telephonically about an exhibit, that party must:

 - (1) have provided that person and all parties, in advance, with a copy of that exhibit, marked so that it can be easily identified by that person, all parties, and the court; and
 - (2) confirm to the court that the exhibit provided to the court is identical to the exhibit provided to the person who is testifying telephonically.
- (h) Costs of Telephonic Attendance or Testimony.** The person requesting telephonic attendance or testimony must arrange it, and, unless the court orders otherwise, pay the related costs.

COMMENT TO THE 2020 AMENDMENTS

A party should carefully consider a request to present telephonic testimony in a contested matter. Demeanor while testifying is an important factor used by the court to assess a

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witness's credibility. A party who offers a witness by telephone may be at a disadvantage if the testimony is contradicted by a witness who testifies in person.

PART II. INITIATION OF PROBATE PROCEEDINGS

Rule 13. Probate Information Form and Notice of Change of Contact Information Form

(a) Definitions. For purposes of this rule,

- (1) ***“Contact information”*** means the information designated on the Probate Information Form as contact information; and
- (2) ***“Fiduciary”*** means a personal representative, guardian, or conservator, whether temporary or permanent.

(b) Probate Information Form.

- (1) ***Generally.*** A party who requests the appointment of a personal representative must file Form 11, Probate Information Form for Decedent's Estate. A party who requests the appointment of a guardian or conservator, whether temporary or permanent, must file Form 12, Probate Information Form for Guardianship/Conservatorship.
- (2) ***Confidentiality.*** The court must maintain a Probate Information Form filed under this rule as a confidential document under Rule 8.
- (3) ***No Service.*** Except as required by the court, a party who files a Probate Information Form is not required to provide other parties or interested persons with a copy of the form.
- (4) ***Non-Compliance.*** The clerk may not reject a petition or application because the filing party failed to provide all the information required in the Probate Information Form.
- (5) ***Duty to Correct.*** A party who has filed a Probate Information Form and who subsequently discovers that the date of birth or social security number contained in that Probate Information Form is incorrect must file an amended Probate Information Form with the correct information within 10 court days after discovery.

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(c) Notice of Change of Contact Information.

(1) *Generally.*

(A) *Change in Contact Information for Fiduciary.* If a fiduciary's contact information changes during the fiduciary's appointment in a probate case, the fiduciary must file Form 13, Notice of Change of Fiduciary's Contact Information, within 10 court days after such change occurs.

(B) *Change in Contact Information for Ward.* If a ward's contact information changes, the ward's guardian must file Form 14, Notice of Change of Ward's Contact Information, within 3 days of learning of such change.

(2) *No Confidentiality.* Unless the court orders otherwise, a Notice of Change of Contact Information filed under this rule must be maintained as part of the public record.

(3) *Service.* Unless the court orders otherwise, a person who files the Notice of Change of Contact Information Form must mail or deliver a copy to the subject person's court-appointed attorney, the subject person's statutory representative, and all parties to the probate case in which the form has been filed.

(4) *Non-Compliance.* Absent good cause, the fiduciary must pay all costs of the court or the estate that result from a failure to timely provide a Notice of Change of Contact Information.

Rule 14. Applications

(a) Meaning of "Application." An "application" is a written request authorized by statute made to a registrar in a probate proceeding, usually without advance notice to interested persons, to

- (1)** informally admit a will to probate or informally appoint a personal representative under A.R.S. §§ 14-3301 to 14-3311;
- (2)** informally appoint a special administrator under A.R.S. § 14-3614(1);
- (3)** issue a certificate of discharge under A.R.S. § 14-3937;
- (4)** informally appoint a personal representative to administer a later discovered asset under A.R.S. § 14-3938;

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(5) grant a conservator the authority to exercise the powers and duties of a personal representative and endorse the conservator's letters under A.R.S. § 14-5425(D); or

(6) take any other action authorized by statute.

(b) Form of Application. An application must contain statements required by statute and must comply with Civil Rules 5.2(a), 5.2(b), 8(a), 8(e), 10(b), and 11.

(c) Action upon Application.

(1) ***By the Clerk.*** The clerk must file and retain the application, including any original will submitted with the application. Any amended application or subsequent petition relating to the same decedent must be filed under the same case number as that assigned to the prior application.

(2) ***By the Registrar.*** The probate registrar must promptly approve or deny the application. When the registrar denies an application, the registrar must file a statement with reasons for the denial and provide a copy of the statement to the applicant.

(d) Notice. The applicant must provide timely notice as required by statute and must file proof of having given notice with the court.

(e) Objection to Application. Any interested person who opposes the relief requested in an application must file a petition.

Rule 15. Petitions

(a) Meaning of "Petition." A "petition" is a written request to a judicial officer for substantive relief in a probate proceeding, usually requiring advance notice to interested persons and a hearing. "Petition" includes a counter-petition, cross-petition, and third-party petition.

(b) Form of Petition. A petition must contain statements required by statute and must comply with Civil Rules 5.2(a), 5.2(b), 8(a), 8(e), 9, 10(b), and 11.

(c) Initial Hearing Date. The petitioner must obtain from the court a date, time, and location for an initial hearing on the petition. Failure to obtain an initial hearing date may result in dismissal of the petition, as provided in Rule 18.

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- (d) Notice of Hearing on the Petition.** The petitioner must provide notice of the initial hearing as required by A.R.S. Title 14 and Rule 16 and must file proof of having given notice.
- (e) Contested Proceeding; Response.** A probate proceeding becomes contested when an interested person opposes a petition as follows:
- (1) *Written Response.*** An interested person who opposes the relief requested in a petition should file a response that objects to the petition, or a motion under Civil Rule 12, no later than 7 calendar days before the initial hearing on the petition.
 - (2) *Oral Response.*** If an interested person does not timely file a written response before the initial hearing on the petition, that person must attend the hearing, orally respond to the petition at the hearing, and file a written response that objects to the petition, or a motion under Civil Rule 12, within 14 calendar days after the initial hearing or as the court orders.
 - (3) *Form of Written Response.*** A written response must comply with Civil Rules 5.2(a), 5.2(b), 8(c), 8(d), 8(e), 9, 10, and 11.
 - (4) *Notice of Response.*** Unless the court orders otherwise, a person who files a written response to a petition must serve a copy of the response on all other parties as provided by Civil Rule 5.
- (f) Joinder or Statement of No Position.** An interested person who agrees that the court should grant the relief requested in a petition or response may file a notice of joinder. Any person who takes no position concerning the requested relief may file a statement of no position. Alternatively, a notice of joinder or statement of no position may be made in open court and filed within the times and in the manner provided by section (e).
- (g) Reply.** Unless the court directs otherwise, a party may not file a reply to a response, joinder, or statement of no position.
- (h) Copy to the Assigned Judicial Officer.** When filing a petition, response, reply, or other document under this rule, the filing party must provide a copy of the filed document to the assigned judicial officer.
- (i) Request for Accelerated Hearing.** A party requesting an accelerated hearing on a petition must file a separate motion that states the legal authority and factual

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circumstances supporting the request. The motion may incorporate by reference relevant allegations in the petition. The petitioner must provide the assigned judicial officer a copy of the motion, a copy of the petition, and a proposed order accelerating the hearing. The court may rule on the motion requesting an accelerated hearing without awaiting a response or setting oral argument. Section (h) does not apply to a petition under Rule 44 that requests the appointment of a temporary guardian or conservator.

- (j) Ex Parte Petitions.** Any petition that seeks relief without prior notice to interested persons must contain the words “ex parte” in its title. The petitioner must state in the petition the legal authority and factual circumstances that authorize the court to rule on the request without prior notice to interested persons.

Rule 16. Notice of Initial Hearing on Petition

- (a) Required Content.** The notice of an initial hearing on a petition required by Rule 15(d) must state:

- (1)** the title of the petition to be heard;
- (2)** the date, time, and place of the initial hearing; and
- (3)** the name of the judicial officer before whom the petition is set for hearing.

- (b) Required Warning.** The notice must include the following warning:

This is a legal notice; your rights may be affected. [Éste es un aviso legal. Sus derechos podrían ser afectados.]

You are not required to attend this hearing. However, if you oppose any of the relief requested in the petition that accompanies this notice, you must file with the court a written response at least 7 calendar days before the hearing date or you or your attorney must attend the hearing. Any written response must comply with Rule 15(e) of the Arizona Rules of Probate Procedure. If you do not file a timely response or attend the hearing:

- (1)** the court may grant the relief requested in the petition without further proceedings, and
- (2)** you will not receive additional notices of court proceedings relating to the petition unless you file a demand for notice pursuant

to Title 14, Arizona Revised Statutes.

(c) Required Copy of the Petition. Except for notices that are published, the notice must be accompanied by a copy of the petition that is the subject of the initial hearing, unless the court orders otherwise or the person being served waives this requirement.

(d) Petition for the Confirmation of a Sale of Real Estate.

(1) *Notice of Hearing.* In addition to the information required by (a) and (b), a notice of an initial hearing on a petition for the confirmation of a sale of real estate must contain the following information:

(A) the name and telephone number of the petitioner or the petitioner's attorney;

(B) the proposed sales price; and

(C) a statement that the court may consider other bids at the hearing.

(2) *Providing, Posting, and Publishing the Notice.*

(A) *Providing the Notice to Interested Persons.* The notice of the hearing must be provided to all interested persons as required by A.R.S. § 14-1401(A), unless the court orders otherwise.

(B) *Posting and Publication.* The court also may require either or both of the following to be done at least 14 calendar days before the hearing:

(i) that the notice of hearing to be posted on the property to be sold, and

(ii) that the notice of hearing be published in a newspaper of general circulation in the county in which the property is located.

(C) *Placement of Posted Notice.* If the court orders that notice of the hearing be posted on the property, the notice must be posted in a place that is visible from the front of the property and, if the property is a structure, in a place that is visible from outside the structure.

(e) Inapplicability of Civil Rule 6(c). The provisions of Civil Rule 6(c) do not apply to a notice of hearing in a probate proceeding.

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Rule 17. Initial Hearing on a Petition

(a) Attendance at the Initial Hearing.

- (1) ***Petitioner.*** The petitioner must attend the initial hearing on a petition unless the court has specified otherwise.
- (2) ***Other Interested Persons and Their Attorneys.***
 - (A) ***No Opposition to Relief Requested in Petition.*** Unless the court has specified otherwise, an interested person who does not oppose the relief requested in the petition is not required to attend the initial hearing.
 - (B) ***Opposition to Relief Requested in Petition.*** An interested person who opposes the relief requested in the petition must attend the initial hearing unless the interested person has filed a written response to the petition at least 7 calendar days before the hearing. If the interested person attends the initial hearing, the interested person must notify the court of such person's presence and opposition to the petition.

(b) Procedure at Initial Hearing.

- (1) ***No Opposition.*** If no interested person has opposed the relief requested in the petition as provided in Rule 15, the court may decide the issues raised in the petition at the initial hearing without setting additional court events.
 - (2) ***Opposition.*** If an interested person has opposed the requested relief as provided in Rule 15, the clerk must note the opposition in the court's minutes and the court must follow the procedures set forth in Rules 27-29 relating to contested matters.
- (c) **Evidence.** Evidence may not be presented at the initial hearing if the court has specified that the petitioner is not required to attend the hearing. However, if the petitioner attends the initial hearing, evidence may be presented upon agreement of the parties.

Rule 18. Dismissal for Failure to Obtain a Hearing Date

- (a) **Administrative Dismissal of Petition.** If the petitioner has not, within 60 days after filing a petition, obtained an initial hearing date, the court must notify petitioner, and anyone filing a demand for notice, that the petition may be administratively dismissed 30 days from the date of the court's notice, unless within that 30 days the petitioner

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has obtained a hearing date or an extension of the dismissal date. This provision does not apply to a petition subject to court accountant review.

(b) Effect of Dismissal.

(1) ***Only Petition Filed in the Case.*** An order administratively dismissing the only petition filed in a probate case is a dismissal without prejudice of the entire case.

(2) ***Other Petitions Filed in the Case.*** When more than one petition has been filed in a probate case, an order administratively dismissing one petition dismisses only that petition without prejudice.

(c) **Dismissal Authority.** The court's authority to issue notices and to dismiss petitions and cases under this rule may be performed by court administration or by an appropriate electronic process under the court's supervision.

PART III. SUBSEQUENT EVENTS AND ACTIONS

Rule 19. Motions and Oral Argument

(a) Definition.

(1) ***"Motion"*** is a request made by a party to a judicial officer that seeks procedural rather than substantive relief.

(2) ***"Oral argument"*** is an event at which the parties argue their positions in support of, or in opposition to, a motion.

(b) **Copy to the Assigned Judicial Officer.** When filing a motion, response, or reply, the filing party must provide a copy of the filed document to the assigned judicial officer.

(c) **Rulings on Motions.** Unless required by the Civil Rules, a judicial officer may rule on a motion without a hearing or oral argument.

(d) **Setting Oral Argument.** The court may set oral argument if requested by a party, or on the court's own motion.

(e) **Notice of Oral Argument.** The court must notify the parties of the date, time, and place of an oral argument, but it is not required to provide notice to an interested person unless the interested person has filed a demand for notice.

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- (f) Attendance at Oral Argument.** Parties must attend the oral argument unless the court orders otherwise.
- (g) Evidence.** Evidence that was not submitted with a motion, response, or reply, or live testimony of witnesses, may not be presented at an oral argument.
- (h) Accelerated Ruling on Motion.** If a party requests an accelerated ruling on a motion, the motion must contain the words “Accelerated Ruling Requested” below its title. The motion must describe the legal authority and factual circumstances supporting the request for an accelerated ruling. The court may summarily grant or deny the request.
- (i) Ex Parte Motion.** Any motion that seeks relief without prior notice to interested persons must contain the words “ex parte” in its title. The moving party must state in the motion the legal authority and factual circumstances supporting the ex parte request.

Rule 20. Conference

- (a) Definition.** A “conference” is an event at which the court and the parties discuss the status and scheduling of a court proceeding or any other matter as determined by the court and the parties. “Conference” includes a pretrial conference, a scheduling conference, and a status conference, but not a settlement conference under Rule 22.
- (b) Setting a Conference.** The court may set a conference if requested by a party or on the court’s own motion.
- (c) Notice of a Conference.** The court must notify the parties of the date, time, and place of a conference, but it is not required to provide notice of the conference to an interested person unless the interested person has filed a demand for notice.
- (d) Attendance at a Conference.** Parties must attend a conference unless the court orders otherwise.
- (e) Evidence.** Although the parties may state their positions at a conference, they may not present evidence.

Rule 21. Alternative Dispute Resolution

- (a) Generally.** On a party’s motion or on its own, the court may order the parties to participate in one or more alternative dispute resolution processes, such as a

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settlement conference or, if the parties agree, private mediation or a form of arbitration.

- (b) Duty to Confer and Participate.** The parties must make a good faith effort to agree on an alternative dispute resolution process. If they participate in an alternative dispute resolution process, they must do so in good faith.
- (c) Compulsory Arbitration Not Required.** Unless the parties agree otherwise, they are not subject to compulsory arbitration under Civil Rules 72 through 77.

Rule 22. Settlement Conference

- (a) Definition.** A “settlement conference” is a court event at which a judicial officer attempts to facilitate a voluntary settlement between the parties.
- (b) Setting a Settlement Conference.** The court may set a settlement conference on request of any party or on the court’s own motion.
- (c) Notice of a Settlement Conference.** The court must notify the parties of the date, time, and place of a settlement conference, but it is not required to provide notice to an interested person, even when the interested person has filed a demand for notice.
- (d) Attendance at a Settlement Conference.** All parties and their attorneys must attend a settlement conference unless the court orders otherwise.
- (e) Record.** Settlement discussions are not recorded by a court reporter or an electronic recording system. If the parties reach a settlement, the terms of the settlement must either be placed on the record and entered in the minutes or be included in a writing signed by the parties.
- (f) Communication with Parties.** The judicial officer may communicate with each party during the conference outside the presence of the other parties.
- (g) Evidence.** Documents or other things may be presented to the judicial officer who is conducting the settlement conference, but those items are not admitted into evidence. Testimony may be taken only in support of, or to make a record of, the parties’ agreement.

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Rule 23. Evidentiary Hearing

- (a) Definition.** An “evidentiary hearing” is a court event held after an initial hearing at which the parties present evidence for a determination of factual issues. An evidentiary hearing includes a trial.
- (b) Setting of an Evidentiary Hearing.** If the court does not decide at the initial hearing all the issues raised in a petition, the court may set an evidentiary hearing on the remaining issues.
- (c) Notice of an Evidentiary Hearing.** Unless the court orders otherwise, the court must notify the parties of the date, time, and place of an evidentiary hearing, but it is not required to provide notice to an interested person unless the interested person has filed a demand for notice.
- (d) Procedure at an Evidentiary Hearing.** To the extent not inconsistent with these rules or A.R.S. Title 14, the Civil Rules governing trial procedures apply to evidentiary hearings in probate proceedings.

Rule 24. Enforcement of Court Orders

- (a) Generally.** In addition to the court’s inherent powers to enforce compliance with court orders and to impose sanctions provided in statutes and in Civil Rule 37, the court may issue arrest warrants and orders to show cause.
- (b) Civil Arrest Warrants.** Pursuant to Civil Rule 64.1, the court may issue a civil arrest warrant to obtain the appearance of a person when that person has failed to appear after receiving actual notice of an order or subpoena to appear at a specific time and location that included a warning that the failure to appear might result in the issuance of a civil arrest warrant.
- (c) Fiduciary Arrest Warrants.** Pursuant to A.R.S. § 14-5701, the court may issue a fiduciary arrest warrant to obtain the fiduciary’s appearance when that fiduciary has failed to appear in court after receiving actual notice of an order to appear at a specific time and location that included a warning that the failure to appear might result in the issuance of a fiduciary arrest warrant.
- (d) Orders to Show Cause.** The court may issue an order to show cause to address problems arising from a party’s failure to discharge duties or obligations required by court order, court rule, or statute. The procedure for the hearing is governed by Rule 25(b).

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(e) **Criminal Contempt.** This rule does not govern criminal contempt sanctions.

Rule 25. Compliance and Order to Show Cause Hearings

(a) Compliance Hearing.

- (1) **Definition.** A “compliance hearing” is a court event to determine whether a party has complied with a court order.
- (2) **Setting of Compliance Hearing.** The court may set a compliance hearing whenever the court determines such a hearing is appropriate.
- (3) **Notice of Compliance Hearing.** The court must notify the parties of the date, time, and place of the compliance hearing, but it is not required to provide notice to an interested person unless the interested person has filed a demand for notice.
- (4) **Attendance at Compliance Hearing.** Unless the court orders otherwise, only the person who was ordered to perform the task that is the subject of the compliance hearing, and that person’s attorney, must appear at the compliance hearing.
- (5) **Evidence.** The court may receive evidence to determine whether a person has complied with the court’s order.

(b) Order to Show Cause Hearing.

- (1) **Definition.** An “order to show cause hearing” is a court event to address a party’s or a fiduciary’s failure to discharge duties or obligations required by court order, court rule, or statute.
- (2) **Setting of Order to Show Cause Hearing.** The court may set an order to show cause hearing on the filing of an application and affidavit that comply with Civil Rule 7.3, or on the court’s initiative. The court must set a specific date, time, and place for the order to show cause hearing.
- (3) **Notice of Order to Show Cause Hearing.** Notice of an order to show cause hearing must be served in accordance with Civil Rule 7.3.
- (4) **Evidence.** The court may receive evidence at an order to show cause hearing.

Rule 26. Proposed Orders, Decrees, and Judgments

(a) **Definitions.** A “proposed order” means any order, decree, or judgment that has not been signed by a judicial officer.

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(b) Generally. This rule rather than Civil Rule 5.1(d) applies to the submission of proposed orders.

(c) Form of Proposed Order. A proposed order must comply with the requirements of Civil Rule 5.2. On the signature page, there must be at least two lines of text above the signature line. A proposed order ruling on a petition must state the hearing date on that petition immediately below the order's title.

(d) Time to Submit. A proposed order must be submitted to the assigned judicial officer at least 5 court days before the hearing.

(e) Service and Filing.

(1) A proposed order must be served on all parties when it is submitted to the court.

(2) A party must lodge a proposed order when directed by the court or required by rule and may file it under subpart (e)(3) only to preserve the record on appeal.

(3) A party may file a proposed order only as an attachment or exhibit to a filing. The clerk may not file a proposed order unless it is an attachment or an exhibit.

(f) Duty to Provide Copies and Envelopes. Unless the court orders otherwise, the party submitting the proposed order must include with it copies to be conformed and postage-paid envelopes addressed to each party who has entered an appearance in the case.

(g) Stipulations and Motions; Proposed Forms of Order.

(1) ***Stipulations.*** All written stipulations must be accompanied by a proposed order. If the proposed order is signed and entered, no minute entry need issue.

(2) ***Motions.*** If a motion is accompanied by a proposed order, no minute entry need issue if the order is signed and entered.

PART IV. CONTESTED PROCEEDINGS

Rule 27. Management of Contested Probate Proceedings

(a) Generally. If a petition is contested, the court must either

(1) enter an order setting litigation deadlines; or

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- (2) order the parties to confer and set a deadline for the parties to file a joint report and proposed scheduling order as described in this rule.

(b) Duty to Confer. If the court orders the parties to confer, the parties must discuss the following:

- (1) agreements that could aid in the just, speedy, and inexpensive resolution of the case, including resolution by means other than litigation;
- (2) anticipated disclosures concerning witnesses, including the number of fact witnesses, whether the parties intend to use expert witnesses, and how much deposition testimony will be necessary;
- (3) anticipated disclosures of documents, including any issues already known to them concerning electronically stored information; and
- (4) motions they expect to file, and whether any of the motions can be avoided by stipulations, amendments, or other cooperative activity.

(c) Contents of the Joint Report. The joint report must state, to the extent practicable, the parties' positions on the subjects set forth in sections (b) and (d) of this rule. In addition, the joint report must state whether any party has demanded a jury trial under Rule 29, and if so, whether any other party disputes the right to a jury trial. The joint report may include any other matters a party deems appropriate. However, in the joint report, the parties must not discuss details of settlement negotiations, criticize the rejection of proposed agreements, or argue that another party has taken unreasonable positions. A party's signature, or authorized signature, on the joint report is the party's certification that the party conferred in good faith regarding the subjects set forth in this rule.

(d) Contents of the Proposed Scheduling Order. The parties must submit a proposed scheduling order with their joint report. The proposed scheduling order must specify deadlines for the following by month, day, and year:

- (1) serving initial disclosures under Civil Rule 26.1, if disclosure statements have not already been served or waived;
- (2) identifying areas of expert testimony;

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- (3) identifying and disclosing expert witnesses and their opinions under Civil Rule 26.1(d);
- (4) propounding written discovery;
- (5) disclosing nonexpert witnesses;
- (6) completing depositions;
- (7) completing all discovery other than depositions;
- (8) final supplementation of Civil Rule 26.1 disclosures;
- (9) a settlement conference or private mediation, if ordered by the court;
- (10) filing dispositive motions;
- (11) filing a joint pre-trial statement, if ordered by the court; and
- (12) the earliest date the parties will be ready for trial, including the anticipated number of days for trial.

(e) Contents of Scheduling Order. In addition to the items listed in section (d), the scheduling order must include either a trial date or a date for a trial-setting conference under Civil Rule 16(e). The parties may modify the dates established in a scheduling order only by court order for good cause.

Rule 28. Disclosure and Discovery

(a) Generally.

- (1) Unless inconsistent with these rules, Civil Rules 26 through 37 apply to disclosure and discovery in contested probate proceedings, except that Civil Rule 26(f)(1) is replaced by subpart (a)(2) of this rule, and Civil Rule 26.2 is replaced by section (b) of this rule.
- (2) A party may not seek discovery from any source, including nonparties, unless
 - (A) a petition is pending before the court;
 - (B) authorized by section (e) of this rule;
 - (C) authorized by statute; or

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(D) the court orders otherwise.

(b) Presumptive Limits. Unless the court orders otherwise, each side in a probate proceeding is presumptively limited to the following discovery:

- (1) ***Interrogatories.*** 20 interrogatories, with each subpart of a nonuniform interrogatory counted as a separate interrogatory.
- (2) ***Request for Admissions.*** 10 requests.
- (3) ***Requests for Production.*** 10 requests.
- (4) ***Depositions of Fact Witnesses.*** 10 hours total.
- (5) ***Depositions of Expert Witnesses.*** 4 hours for each expert. For purposes of this rule, a treating physician is an expert witness.

(c) Limits by Court Order. The court on its own or on a party's motion may modify the presumptive limits in section (b).

(d) Attorney Fees Claim. For purposes of a claim for attorney fees, discovery taken by a party within the limits of this rule does not establish that the discovery was necessary or that the time expended on that discovery was reasonable.

(e) Fiduciary Subpoena Authority. Even when no contested matter is pending, any of the following persons, in furtherance of that person's duties, may request the clerk to issue a subpoena to produce materials or permit inspections:

- (1) a public fiduciary ordered by the court to conduct an investigation;
- (2) a licensed fiduciary appointed by the court as a guardian, conservator, or personal representative;
- (3) an unlicensed fiduciary expressly authorized by the court to request the subpoena; or
- (4) the attorney representing a guardian, conservator, or personal representative, regardless of whether that fiduciary is licensed.

A person who requests the issuance of a subpoena under this rule must comply with the applicable requirements of Civil Rule 45.

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Rule 29. Demand for Jury Trial

- (a) Demand.** On any issue triable of right by a jury, a party may obtain a jury trial by filing a written demand at any time after the proceeding is commenced, but no later than 30 days after the initial hearing on the petition. The demand may not be combined with any other motion or pleading.
- (b) Specifying Issues.** In its demand, a party must specify the issues for which it requests a jury. The party is deemed to have waived a jury trial on all issues not specified in the demand. If a party has demanded a jury trial on only some issues, any other party, within 10 court days after the demand is served or within a shorter time ordered by the court, may file a demand for jury trial on any other issues triable of right by a jury.
- (c) Waiver; Withdrawal.** A party waives a jury trial unless its demand is properly filed. A proper demand may be withdrawn only if all parties consent.
- (d) If a Demand Is Made.** If a jury trial is properly demanded on an issue, the issue must be tried by jury unless
- (1) all parties file a stipulation to a nonjury trial or so stipulate on the record; or
 - (2) the court finds that the issue is not triable by jury as a matter of right.
- (e) If No Demand Is Made.** The court must try all issues on which a jury trial is not properly demanded.
- (f) Advisory Jury; Jury Trial by Consent.** Even if an issue is not triable of right by a jury, the court may order the issue tried by a jury. The jury's decision on the issue will be advisory only, unless the parties agree that the jury's decision will be binding.

PART V. GENERAL ROLES AND DUTIES OF PARTICIPANTS

Rule 30. Representation of Parties

- (a) Self-Represented Parties.** A person may represent himself or herself. A self-represented party must provide the court with a current mailing address, email address, and telephone number, and notify the court of any change in that information.
- (b) Limitation.** Unless a person is an active member of the State Bar of Arizona or an attorney who has been admitted *pro hac vice* under the Rules of the Arizona Supreme Court, that person may not represent someone else.

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- (c) **Fiduciaries.** A non-lawyer serving as a fiduciary may represent himself or herself in that capacity.

Rule 31. Duties of a Fiduciary's Attorney

- (a) **Duty to Minimize Legal Expenses.** To minimize legal expenses, a fiduciary's attorney must encourage the fiduciary to take actions the fiduciary is authorized to perform rather than have the attorney perform them.
- (b) **Duty upon Withdrawal.** A fiduciary's attorney who moves to withdraw must comply with Civil Rule 5.3 and must inform the court of any issues pending in the probate case and whether all required reports, inventories, accounts, and documents have been filed.

Rule 32. Statutory Representative

- (a) **Definition.** "Statutory representative" means a person appointed under A.R.S. § 14-1408 and includes the role traditionally described as a guardian ad litem.
- (b) **Generally.** The court may appoint a statutory representative as authorized by A.R.S. § 14-1408.
- (c) **How Requested.** If a party requests the appointment of a statutory representative, the party must file a verified petition that states with specificity the following:
- (1) whether the person for whom the statutory representative is requested is a minor, an incapacitated person, an unborn child, or a person whose identity or location is unknown; and
 - (2) why that person's interest is not represented under A.R.S. §§ 14-1404 through 14-1407, or why otherwise available representation is inadequate.
- (d) **Notice of Hearing.** The petitioner must give notice of the hearing to all interested persons as set forth in A.R.S. § 14-1401. In addition:
- (1) **Minor.** If the petitioner requests appointment of a statutory representative for a minor, the petitioner must give notice as set forth in A.R.S. § 14-5207(A).
 - (2) **Incapacitated Person.** If the petitioner requests appointment of a statutory representative for an alleged incapacitated person, the petitioner must give notice as set forth in A.R.S. § 14-5309.

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- (3) ***Person Whose Identity or Location is Unknown.*** If the petitioner requests appointment of a statutory representative for a person whose identity or location is unknown, the petitioner must give notice as set forth in A.R.S. § 14-1401(A)(3).

(e) Appointment of Statutory Representative for Subject Person of Adult

Guardianship or Protective Proceeding. The court must not appoint a statutory representative for the subject person of an adult guardianship or protective proceeding unless the court, after notice and hearing, has found that the subject person is an incapacitated person as defined in A.R.S. § 14-5101 or is a person in need of protection under § 14-5401(A)(2).

(f) Order.

- (1) ***Required Provisions.*** An order appointing a statutory representative must state:

- (A) the basis for the appointment,
- (B) the appointment's scope and duration,
- (C) whether the representative will represent the person or the best interests of the person; and
- (D) any applicable terms of compensation.

- (2) ***Additional Provisions.*** An order appointing a statutory representative may grant immediate access to the person for whom the statutory representative has been appointed and to medical and financial records pertaining to such person, including records and information that are otherwise privileged or confidential.

- (g) Participation in Court Proceedings.** A statutory representative is a party to the probate case in which the statutory representative was appointed and has the same rights and responsibilities of any other party.

COMMENT TO THE 2020 AMENDMENTS

The position formerly known as “guardian ad litem” was replaced in probate proceedings by that of a statutory “representative.” See A.R.S. § 14-1408(A) (eff. 2009); *Unif. Trust Code* § 305 cmt. The official Comment to Uniform Trust Code section 305, from which A.R.S. § 14-1408 is derived, explains that the powers of a representative may be broader than the powers of a guardian ad litem.

Rule 33. Compensation for Fiduciaries, Attorneys, and Statutory Representatives

(a) Generally.

- (1) *Guardianships and Conservatorships.*** A request for approval of fees for a guardian, a conservator, an attorney, or a statutory representative to be paid from an estate of a ward or protected person, or a trust that the ward or protected person established, must be made in a petition filed under section (c) or section (d) of this rule.
- (2) *Decedents' Estates and Trusts.*** A personal representative, a trustee, a statutory representative, or an attorney for any of them, is not required to request court approval of fees to be paid from the estate or trust, unless the court orders otherwise. If approval is requested, the request must be made in a petition filed under section (c) or section (d).

(b) Content of Request for Approval. Any request for approval of compensation must be accompanied by statements that include the following information:

- (1)** If requested fees are based on hourly rates, the statements must specify the services provided and explain the tasks performed, the date each task was performed, the time expended in performing each task, the name and position of the person who performed each task, and the hourly rate charged for such services. Block billing is not permitted.
- (2)** If requested fees are not based on hourly rates, the statement must include an explanation of the fee arrangement and a computation of the fee for which approval is sought.
- (3)** If the request includes reimbursement of costs, the statement must specify each cost, the date the cost was incurred, the purpose of the cost, and the amount of reimbursement requested or, if reimbursement of costs is based on some other method, an explanation of the method being used.

(c) Approval in an Account. If a petition requests approval of a fiduciary's account and the account lists fees paid to a fiduciary, an attorney, or a statutory representative, the petition must request the court's approval of those fees paid during the accounting period. Statements that document the fees paid and conform with section (b) must be submitted with the petition.

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- (d) Approval by Separate Petition.** If a request for approval of fees is not included in a petition for approval of the fiduciary's account, a fiduciary, an attorney, or a statutory representative may file a separate petition for approval of compensation.
- (e) Waiver.** An attorney or statutory representative waives compensation from the estate of a ward or protected person if a request is not timely submitted under A.R.S. §14-5110.
- (f) Objections.** A person who opposes a request for approval of compensation must file a response as prescribed in Rule 15(e). The response must provide a specific basis for each objection.
- (g) Fee Guidelines.** When determining whether compensation is reasonable, the court must follow statewide fee guidelines contained in A.C.J.A. § 3-303.

Rule 34. Prudent Management of Costs

The following are in addition to the duties imposed by A.R.S. § 14-1104 and A.C.J.A. § 3-303.

- (a) Disclosure When Cost Exceeds Benefits.** A statutory representative, guardian, conservator, personal representative, attorney for a fiduciary, or an attorney for a ward or protected person must timely disclose to the court and the other parties any reasonable belief that the projected cost of complying with a court order may exceed the likely benefit to the ward, protected person, decedent's estate, or trust.
- (b) Orders.** If appropriate and if consistent with due process, the court may enter or modify orders to protect or further the best interests of the ward, protected person, decedent's estate, or trust.
- (c) Market Rates.** In appointing a fiduciary, attorney, or statutory representative, in ruling on or considering a budget objection, and in ruling on a request to substitute a court-appointed fiduciary, attorney, or statutory representative, the court and the fiduciary should not pay more than market rates for a good or service.
- (d) Competitive Bids.** At any stage of the proceedings, the court may require competitive bids for goods or services.

Rule 35. Repetitive Filings; Vexatious Conduct; Remedies

- (a) Definitions.** For purposes of this rule,

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- (1) ***“Repetitive filing”*** means a petition, motion, or other document that
 - (A) requests relief that is the same or substantially similar to the relief requested in an earlier petition, motion, or document filed within the preceding 12 months by the same person; and
 - (B) the later-filed motion or petition does not describe in detail a change in fact or law that supports the requested relief.
- (2) ***“Vexatious conduct”*** means habitual, repetitive conduct undertaken solely or primarily to harass or injure another party or that party’s representative, cause unreasonable delay in proceedings, cause undue harm to the ward or protected person, or cause unnecessary expense. It does not include conduct undertaken in good faith.

(b) Notice of Repetitive Filings.

- (1) ***Grounds.*** A party may file a notice of repetitive filings if the party has a good faith belief that a person has filed a repetitive filing.
- (2) ***Timing and Identification of the Earlier Filing.*** A party must file a notice of repetitive filing no later than the response or objection deadline for the allegedly repetitive filing. A notice of repetitive filing must include the title and date of the alleged repetitive filing, the title and date of the earlier filing, and the date of any court ruling on the earlier filing.
- (3) ***Effect of a Notice.*** A notice of repetitive filing stays the deadline to respond or object to the alleged repetitive filing until further court order.
- (4) ***Court’s Authority.*** The court may summarily strike a repetitive filing on its own motion or after receiving a notice of repetitive filing.

(c) Remedies. If the court finds that a person has engaged in repetitive filings or vexatious conduct, the court may do any combination of the following:

- (1) require the person to obtain the court’s permission to file future pleadings and other papers in the probate case or in other cases, and, if the court enters such an order, no party is required to respond to the person’s future filings until ordered to do so;

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- (2) order that no response to the person's future requests for information is required, unless a later order requires it; or
- (3) order any other remedy provided by law.

PART VI. RULES THAT APPLY TO GUARDIANSHIPS, CONSERVATORSHIPS, AND DECEDENT'S ESTATES

Rule 36. Order Appointing Guardian, Conservator, Personal Representative, or Special Administrator

(a) Orders.

- (1) ***Required Warning.*** Every order appointing a guardian, conservator, personal representative, or special administrator must include the following language: "Warning: This appointment is not effective until the clerk of the superior court issues the letters of appointment."
- (2) ***Guardianship Finding.*** Every order appointing a guardian must include a specific finding as to whether the guardian's appointment is due solely to the ward's physical incapacity.
- (3) ***Bond Amount.*** Any order requiring a bond must state the bond amount. Letters of appointment will not issue until the bond has been filed.
- (4) ***Conservatorship Budget.*** An order appointing a conservator must specify whether the conservator is required to file an initial budget under Rule 45(d).

(b) Restrictions on Authority.

- (1) ***Generally.*** Every order appointing a guardian, conservator, personal representative, or special administrator, or that authorizes a single transaction or other protective arrangement, must state any restrictions on the fiduciary's powers.
- (2) ***Proof of Restricted Account.*** Unless the court orders otherwise, the fiduciary is responsible for ensuring that Form 10, proof of any restricted account, is filed not later than 30 days after the court enters an order restricting the account.
- (3) ***Attorney Responsibilities.*** Unless the court orders otherwise, an attorney who receives any proceeds to be restricted for the benefit of a minor, incapacitated

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person, or protected person must ensure that the restricted account is established and properly titled, and that the funds are deposited into the restricted account. The court also may order that other parties or attorneys ensure that the restrictions are properly implemented and that a proof of restricted account is filed.

COMMENT TO THE 2020 AMENDMENTS

The following examples provide sample language for restrictions of authority in an appointment order:

“No real property may be leased for more than one year, sold, encumbered, or conveyed except as authorized by court order.”

“No withdrawals of principal or interest may be made except as authorized by court order. Unless the court orders otherwise, reinvestment may be made without further court order so long as funds remain restricted in this institution at this branch.”

“The guardian has no authority over placement or movement of the ward’s residence, absent an emergency, except as authorized by court order.” Or, “The guardian’s authority is limited to the power to make medical decisions.”

Rule 37. Order to Fiduciary

(a) Generally. The clerk must not issue letters to a personal representative, a guardian, or a conservator until the appointed fiduciary has signed an acknowledgment and the court has entered an order as described in this rule.

(b) Order to a Personal Representative. The order to a personal representative is Form 1, Order to Personal Representative. This requirement does not apply to the appointment of a special administrator.

(c) Order to a Guardian. The order to a guardian is Form 2, Order to Guardian.

(d) Order to a Conservator. The order to a conservator for an adult is Form 3, Order to Conservator. The order to a conservator for a minor is Form 3M, Order to Conservator of a Minor.

(e) Order to a Guardian and Conservator. If the same person is being appointed as both guardian and conservator, the requirements of sections (c) and (d) may be satisfied by Form 4, Order to Guardian and Conservator.

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Rule 38. Training for Non-Licensed Fiduciaries

- (a) Generally.** Unless the court orders otherwise, a guardian, a conservator, or a personal representative must complete prescribed training programs approved by the Supreme Court and file a Certificate of Completion before the clerk issues letters of appointment.
- (b) Temporary Appointment.** Unless the court orders otherwise, a person who is subject to the training requirements of section (a) and whose appointment is temporary must complete the training within 30 days after the temporary appointment or before the appointment is made permanent, whichever is earlier
- (c) Exemptions from Training.** The training requirements in this rule do not apply to licensed fiduciaries or financial institutions.

Rule 39. Issuing and Recording Letters of Appointment

- (a) Definition.** “Letters of appointment” is a document the clerk issues, pursuant to a court order, that authorizes a personal representative, guardian, or conservator to act for the estate or subject person.
- (b) Power to Act.** A personal representative, guardian, or conservator may not act on behalf of the estate or the subject person until the clerk has issued letters of appointment.
- (c) Duration of Appointment.** If the duration of the appointment of a personal representative, guardian, or conservator is limited by statute or court order, the letters of appointment must state the appointment’s termination date.
- (d) Limitation of Authority.** If the court restricts the authority of a personal representative, guardian, or conservator, the letters of appointment must include the language of the court’s order restricting that authority.
- (e) Certified Copies.** Before issuing certified copies of letters of appointment, the clerk must verify that the appointment of the personal representative, guardian, or conservator is in effect.
- (f) Recording Personal Representative’s Letters of Appointment.** No later than 10 court days after issuance of the letters of appointment, a personal representative must record a certified copy of the letters of appointment with the county recorder in any county of this state where the decedent owned real property that is subject to court-

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ordered restrictions. No later than 45 calendar days after a county recorder has recorded the letters of appointment, the personal representative must file a copy of the recorded letters with the court.

- (g) Recording Conservator's Letters of Appointment.** No later than 10 court days after issuance of the letters of appointment, a conservator must record a certified copy of the letters of appointment with the county recorder in every county of any state where the protected person owns real property. No later than 45 calendar days after a county recorder has recorded the letters of appointment, the conservator must file a copy of the recorded letters with the court.

Rule 40. Duties of Court-Appointed Fiduciaries

- (a) Generally.** A court-appointed fiduciary must

- (1)** review all court filings prepared on the fiduciary's behalf; and
- (2)** if the fiduciary is a licensed fiduciary who is not also an active member of the State Bar of Arizona, place the fiduciary's license number on all documents signed by the fiduciary and filed with the court.

- (b) Before Resignation or Termination.** Before resigning or having the court terminate the responsibilities of a court-appointed fiduciary, the fiduciary must comply with statutory requirements for withdrawal, including the filing of final reports and accounts.

- (c) Notice Following Death of a Ward or Protected Person.** No later than 14 calendar days after learning that the subject person has died, the guardian or conservator must file a notice of the subject person's death.

- (d) Upon a Minor's Death, Adoption, Marriage or Emancipation.** Upon a minor's death, adoption, marriage, or emancipation, a court-appointed guardian must file a notice no later than 14 calendar days after the event. If a minor does not have a conservator when a guardianship terminates, the guardian must provide the court and former minor ward with a written list of any known assets or monies, other than personal effects, the guardian believes are owned by the former minor ward.

**PART VII. RULES THAT APPLY ONLY TO GUARDIANSHIPS AND
CONSERVATORSHIPS**

**Rule 41. Appointment of an Attorney, Medical Professional, or Investigator in a
Guardianship or Protective Proceeding**

- (a) Time and Method.** A person seeking the appointment of a guardian or the entry of a protective order must request the court to appoint an attorney, investigator, or medical professional, as required by A.R.S. Title 14, when the petition is filed. The request may be included in the petition or filed as a separate motion. The court may, on its own motion, appoint an attorney, investigator, or medical professional other than the one nominated by the petitioner.
- (b) Nomination of Attorney.** Absent good cause, a petitioner must not nominate an attorney to represent the subject person unless the attorney has an existing attorney-client relationship with the subject person, and the petition describes the attorney's relationship with the subject person and any relationship with the petitioner.
- (c) Prohibited Attorney Appointments.** The court may not appoint an attorney for the subject person, nor may the attorney accept an appointment, if
- (1)** the attorney has an existing attorney-client relationship with the proposed guardian or conservator, or
 - (2)** the attorney has a prior attorney-client relationship with the proposed guardian or conservator, unless after disclosure of the prior relationship to the court and parties, the court approves the appointment.
- (d) Nomination of Physician, Psychologist, Psychiatrist, or Registered Nurse.** If a petitioner nominates a physician, psychologist, psychiatrist, or registered nurse to evaluate the subject person, the petition must describe the nominee's prior relationship, if any, with the petitioner and the subject person.
- (e) Proposed Order.** When the petition is filed, the petitioner must provide to the assigned or authorized judicial officer a blank form of order appointing the attorney, investigator, and medical professional.
- (f) Notice to Appointees.** The petitioner must promptly provide each individual appointed under this rule with a copy of the order appointing that individual, the

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petition requesting the appointment of a guardian or the entry of a protective order, and the notice of hearing.

Rule 42. Training, Role, and Termination of an Attorney for a Subject Person

(a) Training. A court-appointed attorney for the subject person of an adult guardianship or protective proceeding must complete training prescribed by the Supreme Court.

(b) The Attorney's Role. The attorney for the subject person must advocate for the subject person's wishes to the extent the attorney is able to ascertain those wishes. The attorney must, as far as possible, maintain a normal client-lawyer relationship with the subject person. In addition, the attorney must act to protect the subject person's substantive and procedural due process rights.

(c) Subject Person's Death.

(1) Generally. The participation of an attorney representing the subject person in a guardianship or protective proceeding terminates upon the subject person's death.

(2) Exception. In extraordinary situations and for good cause, the court may authorize the limited participation of the subject person's attorney after the subject person's death. The court's order authorizing the attorney's continued participation must state the basis and scope of the attorney's continued participation.

Rule 43. Duties of Investigators

(a) Initial Training. Before being appointed as an investigator under A.R.S. §§ 14-5303(C), 14-5407(B), or 36-540(G), the person must first complete a training course prescribed by the Supreme Court. The Supreme Court will issue a certificate of completion. Unless the investigator is a full-time court employee, the investigator must file a copy of the certificate in each probate case in which the investigator is appointed.

(b) Later Required Training. Any person who continues to serve as a court-appointed investigator must complete an additional training course prescribed by the Supreme Court every 5 years and, unless the investigator is a full-time court employee, the investigator must file a copy of the certificate of completion in each probate case in which the investigator is appointed.

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Rule 44. Appointment of a Temporary Guardian or Temporary Conservator

(a) Petition. A petition requesting the appointment of a temporary guardian, temporary conservator, or both, must include either of the following:

- (1)** a request for the appointment of a permanent guardian, permanent conservator, or both; or
- (2)** a statement explaining why the appointment of a permanent guardian or permanent conservator is unnecessary.

(b) Emergency Appointment of a Guardian or Conservator. A petition that requests the emergency appointment of a temporary guardian, a temporary conservator, or other relief authorized by A.R.S. §§ 14-5310 or 14-5401.01 must contain the word “Emergency” in its title. The petitioner must state in the body of the petition the legal authority and factual circumstances supporting the request for emergency relief.

(c) Ex Parte Request. A petition requesting the appointment of a temporary guardian or conservator without notice must comply with Rule 15(i).

(d) Copies for the Assigned Judicial Officer. The petitioner must provide conformed copies of the filed petition and any required affidavits to the assigned judicial officer, or if a judicial officer has not been assigned, to the presiding probate judge or other designated judicial officer.

Rule 45. Conservator’s Inventory, Budget, and Account

(a) Court Authority. The court may order a variation of this rule’s requirements for an inventory, budget, or account, or the form thereof, if the court finds the variation is consistent with prudent management and oversight of the case.

(b) Date of Conservator’s Appointment. For purposes of this rule, the conservator’s appointment is the date the court first issues letters of appointment.

(c) Conservator’s Inventory.

- (1) Timing.** A conservator must file an inventory of a protected person’s estate no later than 90 days after the date of the conservator’s appointment.
- (2) Contents.** The inventory must contain the information specified in A.R.S. § 14-5418(A).

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- (3) ***Consumer Credit Report.*** The conservator must file the consumer credit report required by A.R.S. § 14-5418(A) with the inventory.

(d) Conservator's Budget.

- (1) ***Necessity.*** At the time of the conservator's appointment, the court must determine whether to order the conservator to file a budget. The court must make a similar determination when reviewing each account under section (e). In deciding whether to order a budget, the court must consider the value and complexity of the estate and any other factors the court deems relevant. The conservator may file a budget in the absence of a court order.
- (2) ***Timing.*** The conservator must file any initial budget no later than the date the conservator's inventory is due and file any subsequent budget with the annual account.
- (3) ***Contents and Format.*** The budget must include a reasonable estimate of all anticipated income and expenditures related to the protected person's estate. The budget must cover the same time frame as the conservator's annual account. The conservator must use Form 5 for the initial budget.
- (4) ***Amendments.*** The conservator must file an amended budget no later than 30 days after reasonably projecting the expenditures for any specific category will exceed the budget by a threshold stated in the instructions to Form 5.
- (5) ***Filing a Budget, Objections, and Court Action.***
- (A) ***Presumption; Objection.*** A timely filed budget is presumed reasonable unless there is an objection. An interested person may file an objection no later than 14 calendar days after the budget or amendment was filed.
- (B) ***Hearings and Resolving Objections.*** The court may summarily overrule the objection, order the conservator to file a response, or set a hearing on the objection. The court may set a hearing even in the absence of an objection. The conservator has the burden of proving that a contested budget item is reasonable, necessary, and in the best interests of the protected person.
- (C) ***Court Action.*** If the court reviews the budget, it may approve, disapprove, or modify the budget to further the protected person's best interests.

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(e) Conservator's Account.

- (1) *Timing.*** The conservator must file an annual account no later than 90 days after the anniversary date of the issuance of the conservator's permanent letters of appointment.
- (2) *Required Attachments.*** For each bank or securities account listed on the ending balance schedule, the conservator must attach the statement that corresponds to the ending balance of such account.
- (3) *Sustainability.*** The annual account must state whether the conservatorship's recurring annual expenses exceed its recurring annual income, and
 - (A)** if so, whether the assets available to the conservator less the estate's liabilities are sufficient to sustain the conservatorship for the protected person's foreseeable needs; and
 - (B)** if the estate is not sustainable, the conservator must include a discussion of the available options.
- (4) *First Account.*** The conservator's first account must reflect all activity relating to the conservatorship estate from the date of first appointment through and including one year from the date of the issuance of the conservator's letters of permanent appointment, or other date set by the court.
- (5) *Later Accounts.*** All later accounts must reflect all activity relating to the conservatorship estate from the ending date of the most recently filed account through, and including, the anniversary date of the conservator's letters, or other date set by the court.
- (6) *Final Account.*** 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 protected person's death or court order terminating the conservatorship. 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.
- (7) *Format of Account.*** If the court orders a budget, the conservator must use Form 6, 7, or 8, as applicable. If the court has not ordered a budget, a conservator may

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use Form 9. Nothing in this rule precludes the court from requiring an alternative form of account or, in appropriate circumstances, waiving an account.

- (f) Motion for Additional Time.** If the conservator is unable to comply with a deadline established by this rule or court order, the conservator must file a motion for additional time before the deadline. The motion must state why the conservator needs additional time and how much additional time is needed.
- (g) Confidentiality.** The court must maintain the inventory, the consumer credit report, the budget, and the account as confidential documents under Rule 8.

Rule 46. Annual Guardian Reports

- (a) Timing.** A guardian must file an annual report on the date established by the court, but in no event later than 60 days after the anniversary date of the issuance of the guardian's letters of permanent appointment.
- (b) Content.** The guardian's annual report must contain the information specified in A.R.S. § 14-5315(C).
- (c) Motion for Additional Time.** If the guardian is unable to file an annual report within the time provided by this rule, the guardian must file a motion requesting additional time to file the report. The guardian must file the motion before the deadline for filing the annual report and state why the guardian needs additional time and how much additional time is needed to file the report.
- (d) Confidentiality.** The guardian must file the required medical professional's report or summary as a confidential document under Rule 8.

Rule 47. Guardian's Inpatient Psychiatric Treatment Authority

- (a) Initial Request for Inpatient Psychiatric Treatment Authority.** An initial request for inpatient psychiatric treatment authority must be made in a petition that complies with A.R.S. § 14-5312.01 and must be accompanied by a psychiatrist's or psychologist's evaluation report required under A.R.S. § 14-5312.01(P). After making the required findings, the court may authorize the guardian to consent to the placement, care, and treatment of the ward in an inpatient psychiatric treatment facility.
 - (1) Orders and Letters.** The order authorizing a guardian to place the ward in an inpatient psychiatric treatment facility and the letters of appointment must

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describe the authority granted to the guardian and include a specific date that the guardian's authority terminates. The order granting the guardian inpatient psychiatric treatment authority may include other provisions that the court determines are necessary to protect the ward's best interests. The court must limit the guardian's authority to that reasonably necessary to obtain the ward's care in the least restrictive treatment alternative.

- (2) ***Early Termination.*** For good cause, the court may terminate the authority before the date specified in the order.
- (3) ***Acknowledgement.*** The court will not issue letters that include the guardian's inpatient psychiatric treatment authority until the guardian has signed an acknowledgment of the guardian's power and the court has entered the Supplemental Order to Guardian with Inpatient Psychiatric Treatment Authority and Acknowledgement shown in Form 2-S.
- (4) ***Order Without Notice.*** If a party requests an order without notice to the subject person, the court may grant the guardian inpatient psychiatric treatment authority only if all the conditions in A.R.S. § 14-5310(B) have been met and the court has determined that an adequate basis exists under A.R.S. § 14-5312.01(B) and (C). If the court grants the request without notice, the party and the court must follow procedures that are substantially similar to those set forth in A.R.S. § 14-5310 for the appointment of a temporary guardian without notice.
- (5) ***Annual Reports.*** The guardian must file an annual report as required by A.R.S. § 14-5315. In addition, a guardian who requests to continue the guardian's inpatient psychiatric treatment authority also must file an evaluation report by a psychiatrist or psychologist as required by A.R.S. § 14-5312.01(P). The guardian must file the evaluation report no later than 30 days before the termination date of the inpatient psychiatric authority.

(b) Renewal of a Guardian's Inpatient Psychiatric Treatment Authority.

- (1) ***Renewal of Authority.*** The court may renew the guardian's authority to consent to inpatient psychiatric treatment as provided by A.R.S. § 14-5312.01 and this rule.
- (2) ***Timing.*** The guardian must file a motion and the other documents required by subpart (b)(3) no later than 30 days before expiration of the order that grants the

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guardian inpatient psychiatric treatment authority. If the guardian does not file a motion for renewal before the expiration of the order, the guardian must file a new petition requesting inpatient psychiatric treatment authority under section (a).

- (3) ***Required Filings.*** A guardian authorized to place a ward in an inpatient psychiatric facility pursuant to A.R.S. § 14-5312.01 may request renewal of that authority before it expires by complying with the time requirement of subpart (b)(2) and by filing
- (A) a motion that states grounds for renewal and requests the court to renew the guardian's authority;
 - (B) a psychiatrist's or psychologist's evaluation report required under A.R.S. § 14-5312.01(P); and
 - (C) the guardian's annual report, if due within 30 days of the renewal of inpatient psychiatric treatment authority, or otherwise, a reference to the guardian's last annual report and an update on the information contained in the last annual report.
- (4) ***Proposed Order.*** When filing the renewal motion, the guardian must submit a proposed order granting the motion and renewing the guardian's authority. Renewal orders are subject to the requirements of section (a).
- (5) ***Service.*** Promptly after filing the renewal motion, the guardian must mail, deliver, or otherwise provide to both the ward and the ward's court-appointed attorney copies of the motion, the psychiatrist's or psychologist's evaluation report, the guardian's annual report or updates, and the proposed order.
- (6) ***Objection to Motion for Renewal or Request for Hearing.*** The ward may file an objection to a renewal motion or may file a request for a hearing under A.R.S. § 14-5312.01(P). The guardian's authority to consent to inpatient psychiatric treatment continues pending the court's determination of the motion. If the motion proceeds to a hearing, the guardian has the burden of providing by clear and convincing evidence that the ward is likely to need inpatient psychiatric care and treatment during the renewal period.
- (c) ***Confidentiality.*** The court must maintain the evaluation reports as confidential documents under Rule 8.

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Rule 48. Remedies for Non-Compliance by a Guardian or Conservator

If a guardian or conservator fails to comply with requirements of A.R.S. Title 14, court rules, or a court order, the court may enter any order, including

- (a) an order directing the guardian or conservator to comply by a specified deadline;
- (b) an order requiring the guardian or conservator to show cause why the court should not take appropriate action;
- (c) an order appointing a person to investigate the reasons for the guardian's or conservator's non-compliance and to report to the court regarding the investigator's findings and proposed recommendations;
- (d) an order immediately suspending or terminating the guardian's or conservator's authority to take any further action on behalf of the subject person and appointing a successor or temporary guardian or conservator;
- (e) an order terminating the guardianship or conservatorship proceeding if the court determines that dismissal is appropriate, but the court must not terminate a guardianship or conservatorship if the subject person resides in Arizona and remains incapacitated or in need of protection;
- (f) an order initiating proceedings that may result in issuance of a fiduciary arrest warrant under A.R.S. § 14-5701;
- (g) an order under Civil Rule 70; or
- (h) other appropriate orders.

Rule 49. Administrative Closure of a Minor Guardianship or Minor Conservatorship Case

- (a) **Administrative Closure of a Minor Guardianship Case.** Consistent with A.R.S. § 14-5210, the clerk or court administrator, as designated by the presiding judge, must administratively close a minor guardianship case filed under A.R.S. §§ 14-5201 to 14-5212 when the minor reaches the age of majority, or upon the minor's adoption, marriage, emancipation, or death.
- (b) **Administrative Closure of a Minor Conservatorship Case.** The court must administratively close the conservatorship and terminate the conservator's appointment if no order terminating a conservatorship for a minor has been entered

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within two years after the minor's eighteenth birthday. The court must notify the conservator and the former minor that the conservatorship will be administratively closed unless, within 90 days after the notice, the conservator or the former minor files a petition to terminate the conservatorship and obtains an initial hearing date. An order under this rule that administratively closes a conservatorship and terminates the conservator's appointment does not

- (1) discharge the conservator from liability,
- (2) authorize the release of any restricted conservatorship assets,
- (3) release any financial institution holding restricted conservatorship assets from liability, or
- (4) exonerate the conservator's bond.

PART VIII. RULES THAT APPLY ONLY TO DECEDENTS' ESTATES AND TRUSTS

Rule 50. Personal Representative's Inventory and Account

(a) Inventory.

- (1) ***Timing.*** Unless the court orders otherwise, no later than 90 days after the date the personal representative's letters of appointment are first issued, the personal representative must do one of the following with respect to the inventory required by A.R.S. § 14-3706:
 - (A) file the inventory with the court, and send a copy only to interested persons who request it; or
 - (B) mail or deliver a copy of the inventory to each heir in an intestate estate, or to each devisee if a will has been probated, and to any other interested person who requests it.
- (2) ***Contents.*** The inventory must contain the information specified in A.R.S. § 14-3706(A).
- (3) ***Proof of Mailing or Delivery.*** If the personal representative mails or delivers the inventory, the personal representative must file a proof of notice that identifies

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each person to whom the inventory was provided, and how and when it was provided.

(4) ***Supplementary Inventory.*** If the personal representative discovers an additional asset or discovers the value of an asset is erroneous or misleading, the personal representative must prepare a supplementary inventory showing the market value as of the date of death of the decedent. The supplementary inventory must be filed with the court if the original inventory was filed, or it must be mailed or delivered to the same parties as the original inventory if it was mailed or delivered. The personal representative must file a notice of mailing or delivery in accordance subpart (a)(3).

(5) ***Motion for Additional Time.*** If the personal representative is unable to comply with the deadline established by this rule or court order, the personal representative must file a motion for additional time before the deadline. The motion must state why the personal representative needs additional time and how much additional time is needed.

(b) Account.

(1) ***Generally.*** Unless the personal representative's administration is supervised or the court orders otherwise, the personal representative is not statutorily required to file annual accounts.

(2) ***Supervised Administration.*** A personal representative in a supervised administration under A.R.S. § 14-3505 must file an account with the court not less than annually, and upon closing of the estate.

(3) ***County with a Court Accountant.*** Unless the court orders otherwise, if a petition for approval of a personal representative's account is filed in a county with a court accountant, the petitioner is not required to submit the account to the court accountant for review or to pay the court accountant's fee.

(c) **Forms.** Unless the court orders otherwise, a personal representative's account need not be presented on the standard forms for conservator accounts.

(d) **Confidentiality.** The court must maintain any account that is filed as a confidential document under Rule 8.

Rule 51. Administrative Closure of a Decedent's Estate and Termination of Appointment

(a) Notice of Impending Administrative Closure. Two years after a decedent's estate is commenced, the court may issue a notice of impending administrative closure of the estate unless at least one of the following has occurred:

- (1) one year has elapsed since the filing of a closing statement under A.R.S. § 14-3933 and no proceedings involving the personal representative or special administrator remain pending;
- (2) a petition to settle the estate under A.R.S. §§ 14-3931 and 14-3932 has been filed and an initial hearing on that petition has been set;
- (3) a petition to terminate the appointment of the special administrator under A.R.S. § 14-3618 has been filed and an initial hearing on that petition has been set; or
- (4) the court has entered an order setting a future hearing or conference or extending the administration of the estate beyond two years.

(b) Contents of Notice. The notice must inform the parties and all persons who have filed a demand for notice that the estate will be administratively closed and any fiduciary appointment will be terminated without a discharge and release from liability or exoneration of any bond unless:

- (1) one of the circumstances in section (a) has occurred;
- (2) a request for hearing or conference has been filed;
- (3) a petition to terminate the appointment of the personal representative or the special administrator has been filed; or
- (4) a status report describing the matters to be resolved has been filed.

(c) Distribution of the Notice. The clerk or court administrator, as designated by the presiding judge, must distribute the notice to the following:

- (1) the parties;
- (2) in an intestate estate, every heir whose address is contained in the court's file;
- (3) in a testate estate, every devisee whose address is contained in the file; and

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(4) any person who has filed a demand for notice.

(d) Administrative Closure and Termination of Appointment. The court, without a hearing, may issue an order closing the estate administratively and terminating the appointment of the personal representative or special administrator if none of the events described in section (b) has occurred within 60 days after distribution of the notice.

(e) Effect of Administrative Closure. An order closing an estate administratively and terminating the appointment of a personal representative or special administrator under this rule does not discharge or release the fiduciary from liability or exonerate any bond.

(f) Authority. The court's authority to issue notices, administratively close an estate, and terminate appointments under this rule may be performed by court administration or by an appropriate electronic process under the court's supervision.

Rule 52. Trustee's Account

(a) Generally. A trustee is not required to submit an account to the court unless the court orders otherwise.

(b) County with a Court Accountant. Unless the court orders otherwise, if a petition for approval of a trustee's account is filed in a county with a court accountant, the petitioner is not required to submit the account to the court accountant for review or to pay the court accountant's fee.

(c) Confidentiality. The court must maintain any account that is filed as a confidential document under Rule 8.

PART IX. RECOVERIES FOR, AND DISTRIBUTIONS TO, MINORS AND PROTECTED ADULTS

Rule 53. Settlements of Claims for Minors and Adults in Need of Protection

(a) Court Approval.

(1) *When Required.* Except as provided in subpart (a)(2), no settlement of a claim brought on behalf of a minor or an adult in need of protection is binding on the minor or the adult in need of protection unless it is approved by a judicial officer.

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If the court approves the settlement, it may authorize the execution of appropriate releases of liability.

- (2) ***When Not Required.*** Under A.R.S. § 14-5424(C)(19), a conservator may enter into a binding settlement of claims not involving personal injury or wrongful death without court approval.

(b) Who May Approve.

- (1) ***Claims of Minors.*** Any superior court judge or judge *pro tem* may approve the settlement of a minor's claim if the settlement does not exceed \$10,000. If the settlement exceeds \$10,000, it must be approved by a superior court judge or judge *pro tem* in a probate proceeding under A.R.S. Title 14.
- (2) ***Claims of Adults in Need of Protection.*** Any superior court judge or judge *pro tem* in a probate proceeding under A.R.S. Title 14 may approve the settlement of a claim brought on behalf of an adult in need of protection.

(c) Appointment of a Statutory Representative or Master. The court may appoint a statutory representative pursuant to A.R.S. § 14-1408 or a master pursuant to Civil Rule 53, with instructions to address specific items, including any of the following:

- (1) the reasonableness of the settlement proposal,
- (2) the attorney fees to be paid from the minor's or adult's settlement proceeds,
- (3) the costs of litigation and apportionment of those costs,
- (4) the effect of the settlement on eligibility for public benefits or other resources that might be available, and
- (5) the proper apportionment of settlement proceeds among the various litigants.

(d) Permissible Orders. After considering the amount and nature of the settlement proceeds, the age and sophistication of the minor or adult in need of protection, and that person's living arrangements and ongoing needs, the court may do one or more of the following:

- (1) appoint a conservator;
- (2) order establishment of an appropriate trust, including a special needs trust, with or without continuing court supervision, as authorized by ARS §14-5409(B),

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- (3) authorize all or a portion of the proceeds to be placed in an account pursuant to
 - (A) 26 U.S.C. § 529 (“qualified tuition programs”),
 - (B) 26 U.S.C. § 529A (“qualified ABLE programs”),
 - (C) 42 U.S.C. § 1396p(d)(4)(C) (a pooled special needs trust),
 - (D) A.R.S. § 14-5408(C) (a “dignity account”)
- (4) in the case of a minor claimant, order distribution of the proceeds to a custodian under A.R.S. § 14-7656(B) (the Uniform Transfers to Minors Act);
- (5) order distribution of the proceeds to an appropriate person under A.R.S. § 14-5103 (“facility of payment or delivery”) or to a guardian under A.R.S. § 14-5312(A)(4)(b);
- (6) approve a structured settlement; or
- (7) enter any other order authorized by statute.

COMMENT TO THE 2020 AMENDMENTS

This rule clarifies that any settlement on behalf of a minor or adult in need of protection must be approved by the court to be binding on the minor or adult in need of protection. The only exception is that a conservator may enter into a binding settlement of a claim other than a wrongful death or personal injury claim. See A.R.S. § 14-5424(C)(19). In comparison, A.R.S. § 14-5103 does not provide a parent the authority to compromise a minor child’s claim; it deals only with who may receive limited amounts of money or property on behalf of a minor.

Rule 54. Distributions to Persons Under Disability

If a person petitions the court to approve a distribution from a conservatorship estate, a decedent’s estate, or a trust, and if the person reasonably believes that a distributee is a minor, an incapacitated adult, or an adult in need of protection, the person must notify the court of the distributee’s status as a minor, an incapacitated adult, or an adult in need of protection. If a court has appointed a guardian or conservator for the proposed distributee, or if a court has approved other protective arrangements for the proposed distributee, the petitioner must provide the court with a copy of the order appointing the guardian or conservator or the order approving the protective arrangement.

PART X. FORMS

Rule 55. Forms

- (a) Location.** Forms referred to in these rules are located on the self-service page of the Arizona Judicial Branch website, www.azcourts.gov. These forms meet the requirements of these rules.
- (b) Modification of Forms by the Court or Parties.** Forms 5 through 10 may be modified only by court order. A party may adapt other forms by deleting content that does not apply to a particular proceeding or by adding other relevant content, provided the adapted form includes all the information that applies to that proceeding. Deleting information contained in a form, or failing to complete a portion of the form, constitutes the party's representation that any omitted or unanswered questions or items are not applicable to the proceeding.
- (c) Administrative Orders.** The Supreme Court may adopt, approve, or modify forms by administrative order.

COMMENT TO THE 2020 AMENDMENTS

Additional probate forms may be available on superior court websites and in the State Bar of Arizona Probate Practice Manual.