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

9 In the Matter of:

Supreme Court No. R-20-

10 **PETITION TO ADD RULE 16.3 TO**
11 **THE ARIZONA RULES OF CIVIL**
12 **PROCEDURE**

PETITION

13 Pursuant to Rule 28(a) of the Arizona Rules of Supreme Court, the State Bar
14 of Arizona (“State Bar”) hereby petitions the Court to add Rule 16.3 to the Arizona
15 Rules of Civil Procedure in the form attached as Appendix A. Rule 16.3 directs
16 practitioners to the procedures set forth in Rule 53 of the Arizona Rules of Probate
17 Procedure which governs the settlement of minors’ personal injury and wrongful
18 death claim as follows:
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20 **Rule 16.3. Settlements of Claims for Minors and**
21 **Adults in Need of Protection**

22 The settlement of a claim brought on behalf of a minor
23 or adult in need of protection is not binding unless a
24 judicial officer approves it as provided in Rule 53 of the
25 Arizona Rules of Probate Procedure.

1 The Supreme Court recently adopted Rule 53 on August 29, 2019, as part of
2 a comprehensive package of amendments proposed by the Court’s Task Force on
3 the Arizona Rules of Probate Procedure (the “Task Force”). As explained in the
4 Task Force’s Petition (No. R-18-0044), Probate Rule 53 was intended to clarify
5 when court approval of a settlement is required for a settlement to be binding on a
6 minor, and who may approve the settlement. In the course of its work, the Task
7 Force informally recommended to the State Bar’s Committee on the Rules of Civil
8 Practice & Procedure that a companion rule should be considered for the Arizona
9 Rules of Civil Procedure, to ensure that civil practitioners are aware of the special
10 requirements applicable to the settlement of claims of minors.¹

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14 Proposed Rule 16.3 implements the Task Force’s suggestion and will improve
15 settlement practices and protect minors’ property interests in settlements by directing
16 practitioners to the requirement imposed by Rule 53.
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23 ¹ As set forth below, Rule 53 also includes requirements for the settlement of the
24 claims of adults in need of protection, which were previously codified elsewhere.
25 Proposed Rule 16.3 refers practitioners to Rule 53 for guidance regarding the
settlement of those claims as well.

1 **HISTORICAL CONTEXT**

2 Before Rule 53 was adopted, Rule 37(A) of the Arizona Rules of Probate
3 Procedure described the procedure for the settlement of minors’ personal injury or
4 wrongful death claim as follows:
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6 **Except as provided in A.R.S. § 14-5103(A),** and
7 without regard to whether a conservator has previously
8 been appointed, any settlement of a civil claim brought
9 on behalf of or against a minor for personal injury or
wrongful death shall be submitted for review and
approval by a judicial officer assigned to hear matters
arising under A.R.S. Title 14.

10 (Emphasis added.) A.R.S. § 14-5103(A) provides:

11 **A. Any person under a duty to pay or deliver**
12 **money or personal property to a minor, including**
13 **monies related to the settlement of a civil claim, may**
14 **perform this duty in amounts not exceeding ten**
15 **thousand dollars per annum** by paying or delivering
the money or property to any of the following:

- 16 1. The minor, if the minor is married.
- 17 2. Any person having the care and custody of the minor
18 and with whom the minor resides.
- 19 3. The guardian of a minor.
- 20 4. A financial institution incident to a deposit in a
federally insured savings account in the sole name of the
minor and giving notice of the deposit to the minor.

21 (Emphasis added.)

22 Rule 37(A)’s reference to the A.R.S. § 14-5103(A) “exceptions” for the
23 requirement of judicial approval of minors’ personal injury and wrongful death
24 settlements was confusing because the statute does not describe any exceptions.
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1 Moreover, the statute’s reference to the payment of settlement proceeds “in amounts
2 not exceeding \$10,000.00” has led some lawyers and insurance adjusters to
3 incorrectly believe the settlement of a minor’s personal injury or wrongful death
4 claim in an amount of \$10,000.00 or less is binding without court approval.
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6 The Court of Appeals squarely addressed the issue *Gomez v. Maricopa*
7 *County*, 175 Ariz. 469, 473, 857 P.2d 1323, 1327 (App. 1993) holding A.R.S. § 14-
8 5103 “is not relevant to the correct procedure for entering into a binding settlement
9 of a minor’s wrongful death claim and does not dispense with the need for
10 apportionment of a guardian or approval by the court to compromise the minor’s
11 claim.” Unfortunately, following *Gomez*, Rule 37(A) was never amended to
12 eliminate reference to the statute and the misconception continues.
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14

15 Now, Probate Rule 53 essentially codifies *Gomez*, providing:

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

18 **(a) Court Approval.**

19 **(1) When Required.** Except as provided in subpart
20 **(a)(2), no settlement of a claim brought on behalf of a**
21 **minor** or an adult in need of protection is binding on the
22 minor or the adult in need of protection **unless it is**
23 **approved by a judicial officer.** If the court approves the
24 settlement, it may authorize the execution of appropriate
25 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 (1) *Claims of Minors.* Any superior court judge or
2 judge pro tem may approve the settlement of a minor's
3 claim if the settlement does not exceed \$10,000. If the
4 settlement exceeds \$10,000, it must be approved by a
5 superior court judge or judge *pro tem* in a probate
6 proceeding under A.R.S. Title 14.

7 (2) *Claims of Adults in Need of Protection.* Any
8 superior court judge or judge *pro tem* in a probate
9 proceeding under A.R.S. Title 14 may approve the
10 settlement of a claim brought on behalf of an adult in
11 need of protection.

12 (Emphasis added.) By eliminating the confusing and superfluous reference to
13 A.R.S. § 14-5103, Rule 53 makes clear no settlement of a minor's personal injury or
14 wrongful death claim is binding without judicial approval.

15 **Rule 16.3 Will Reduce Confusion about Settlement Procedures**

16 Rule 16.3 would be located following Rules 16.1 and 16.2, all of which govern
17 settlements. The placement of Rule 16.3 among those rules, along with the direction
18 it provides to Probate Rule 53, will help dispel the current misunderstandings about
19 the law governing minors' settlements.

20 **Rule 16.3 Will Protect Minors' Settlement Interests**

21 Unfortunately, there is no way to prevent parties from entering into the
22 nonbinding settlement of a minor's claim, and it happens with some frequency for a
23 variety of reasons. When a minor's personal injury or wrongful death claim is settled
24 without judicial approval, the settlement proceeds are generally given to the minor's
25 parents without restriction. The parents are then free to manage, or mismanage, the

1 settlement proceeds however they want. If the money is misspent, the minor may
2 never know they had a claim or that there was even a settlement.

3
4 When a court is involved, more often than not it will require even small
5 amounts to be placed in a restricted savings account, or some other protected
6 investment vehicle, until after the minor turns 18. Judicial oversight of a minor's
7 settlement ensures any decisions about the use of the settlement money is made in a
8 minor's best interest.

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10 Rule 16.3 acts as a signpost directing practitioners to the requirements Probate
11 Rule 53, providing better notice that exposure to a minor's claim for personal injury
12 or wrongful death is not extinguished by a settlement which is not judicially
13 approved. This should encourage parties to seek court approval of settlements more
14 frequently resulting in greater protections to the minor.

15 16 17 **CONCLUSION**

18 Confusion about the procedures for settling minors' personal injury and
19 wrongful death claims, especially among those who may not regularly consult the
20 Arizona Rules of Probate Procedure, is likely to persist. Rule 16.3 will reduce
21 confusion, helping eliminate what could be a trap for the unwary and increase
22 protections for settlement proceeds paid for the benefit of minors.

23
24 A previous iteration of Rule 16.3 was abrogated on August 31, 2017. The
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1 abrogation became effective on July 1, 2018. There is no reported Arizona case
2 addressing the application of the abrogated version of Rule 16.3, therefore, proposed
3 new Rule 16.3 should not create any conflict or confusion in the case law.
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5 For the foregoing reasons, the State Bar respectfully petitions this Court to
6 adopt Rule 16.3 as set forth in the attached Appendix.
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8 RESPECTFULLY SUBMITTED this ____ day of _____, 2020.
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10 _____
11 Lisa M. Panahi
12 General Counsel
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14 Electronic copy filed with the
15 Clerk of the Supreme Court of Arizona
16 this ____ day of _____, 2020.

17 by: _____
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