

Hon. Patti Noland, President
Arizona Association of Superior Court Clerks
110 W. Congress, 1st Floor
Tucson, Arizona 85701
520-740-3201
nasha@COSC.maricopa.gov

IN THE SUPREME COURT STATE OF ARIZONA

In the Matter of Petition to Amend)	Supreme Court
Rule 7, Arizona Rules of Probate)	No. R-_____
Procedure and Request for Expedited)	
Adoption)	Petition to Amend Rule
_____)	7, Arizona Rules of Probate Procedure

INTRODUCTION

Pursuant to Rule 28 of the Rules of the Supreme Court, the Arizona Association of Superior Court Clerks respectfully petitions the Arizona Supreme Court to amend Rule 7 of the Arizona Rules of Probate Procedure to improve the processing of and access to confidential documents filed in probate cases.

I. SUMMARY OF PROPOSED CHANGES

In 2008 the Supreme Court approved the creation of uniform rules of procedure in probate cases (R-07-0012). The Arizona Association of Superior Court Clerks recommended changes, particularly directed at confidential documents in Rule 7 of the proposed rules. For ease of filing and processing, the Clerks recommend that the documents labeled in court rule as confidential be processed as sealed documents.

The practical effect of making certain probate documents confidential is that they are filed and processed in a paper method that mirrors existing processes

for documents filed under seal. The new probate rules create confidential documents as a new and unnecessary level of security and access that can be accomplished with existing procedures. Should the Court choose not to change the probate rules in a way that would seal documents filed in this case type, the Clerks have prepared alternative language in this rule petition to deal with confidential documents. The changes proposed in section II of this petition are summarized below.

The definitions section of rule 7(A)(1)(b) is changed to include a cite to A.R.S. §14-5206 related to guardians of minors filing medical reports or other records as confidential documents. The omission of this cite appears to have been an oversight in drafting.

Rule 7(A)(2) expands the definition of social security numbers as a confidential data element to any person, living or dead, as identity theft has been shown to reach beyond the grave.

Rule 7(A)(3) adds debit cards to the list defining financial accounts.

Rule 7(A)(4) properly places the duty of redaction on the filing party. The volume of filings processed by the Clerks makes it impossible for the Clerks to review every page of every document to identify and redact confidential information.

Rule 7(E) allows the court to order a confidential document sealed after motion from a party or on the court's own motion, thus allowing the court to limit access to the document in its order to seal or requiring a further court order to authorize access.

Whether probate documents are filed as confidential or under seal, changes are needed to the stated access of these documents. New rules 7(G) and 7(H) grant

access to judicial officers, but neglect to include court personnel who need regular access to probate documents for processing fiduciary warrants and other administrative actions. The changes proposed in this petition extend access to court personnel without having to obtain an additional order for access from the court.

Two changes in the Comments section following Rule 7 are intended to better reflect the scope of the intent of the Probate rules in protecting confidential information.

The Arizona Association of Superior Court Clerks respectfully requests that the Court amend Rule 7 of the Arizona Rules of Probate Procedure to treat documents filed in this case type as sealed or, in the alternative, as detailed in the proposed amendments in section II below. Changes are reflected in legislative mark-up where deleted language appears in ~~strikeout~~ and new language appears in ALL CAPS. The Clerks further request expedited adoption of the proposed rules pursuant to Rule 28(G) of the Rules of the Supreme Court with a comment period to follow, as the requirements of new Probate Rule 7 effective January 1, 2009 cause substantial inefficiencies due to increased paper processes and limited authority for court personnel to carry out necessary functions without additional court-ordered access.

DATED this 10th day of December, 2008.

/s/ Patti Noland
Patti Noland, President
Arizona Association of Superior Court
Clerks

II. TEXT OF PROPOSED RULE CHANGES

RULE 7. CONFIDENTIAL DOCUMENTS AND INFORMATION

A. Definitions.

1. For purposes of this rule, “confidential document” means the following:
 - (a) the probate information form filed pursuant to Rule 6 of these rules;
 - (b) medical reports and records obtained and filed with the court in connection with proceedings pursuant to A.R.S. §§ 14-~~5206~~, -5303, -5310, -5401.01, or -5407, or A.R.S. § 36-3206, or in connection with the requirements of A.R.S. § 14-5312.01 and -5312.02;
 - (c) inventories and appraisements filed pursuant to A.R.S. §§ 14-3706(B) or -5418(A);
 - (d) accountings filed pursuant to A.R.S. Title 14;
 - (e) a credit report; or
 - (f) any other document ordered by the court to be filed or maintained as a confidential document pursuant to this rule.
2. For purpose of this rule “confidential information” means the following:
 - (a) A PERSON’S social security number ~~of a living person~~;
 - (b) any account number for a financial account, unless limited to the last four digits only; or
 - (c) any other information determined by the court to be confidential.
3. For purposes of this rule, “financial account” includes credit card account, DEBIT CARD ACCOUNT, bank account, brokerage account, insurance policy, and annuity contract.

4. For purposes of this rule, “redact” means to edit or obscure text in a document to prevent it from being viewed. Redaction must be accomplished in a manner that prevents the reader from identifying the redacted information either physically or electronically. **THE REDACTION SHALL BE PERFORMED BY THE ORIGINATOR OF THE DOCUMENT PRIOR TO BEING FILED WITH THE CLERK OF THE COURT.**

- B. The clerk of court shall comply with court rules and the Arizona Code of Judicial Administration for the security of electronically filed or transmitted confidential documents and information and the maintenance of confidential documents and information.

- C. A party who files a confidential document under this rule shall, when filing the paper document with the Clerk’s Office, place the original document in an envelope that bears the case name and number, the name of the document being filed, the name of the party filing the document, and the phrase “Confidential Document.” A separate envelope shall be used for each confidential document. A confidential document shall not be maintained as part of the public record of a probate case.

- D. Other than confidential documents and arrest warrants, documents filed with the court shall not contain confidential information.

- E. Upon motion by any party or upon the court’s own motion, the court may order that
 1. a document be filed as a confidential document, regardless of whether the document has already been filed with the court.
 2. **A DOCUMENT CONTAINING CONFIDENTIAL INFORMATION BE SEALED.**

- F. A party who files a motion seeking to have a document or information declared confidential shall
 1. provide the title of the document containing the confidential information or requested to be filed as confidential; and
 2. include the approximate date the document was filed; and

3. state why the information in question should be filed as a confidential document.
- G. The clerk of the court shall disclose confidential documents, except for the probate information form described in Rule 6, and confidential information only to the following persons:
1. an attorney or guardian ad litem appointed by the court to represent the person who is the subject of a guardianship or conservatorship proceeding in which the document has been filed;
 2. a party to the probate case in which the document has been filed and such party's attorney, guardian ad litem, or other legal representative;
 3. a person appointed as a court investigator, medical professional, psychologist, registered nurse, or accountant for the probate case in which the document has been filed;
 4. judicial officers, COURT ADMINISTRATION STAFF AND OTHER AUTHORIZED COURT PERSONNEL;
 5. any person authorized by the court, upon a showing of good cause, to view or obtain a copy of such document or information; and
 6. staff from the Administrative Office of the Courts for the purpose of conducting a compliance audit of a fiduciary or an investigation into alleged misconduct by a certified fiduciary, pursuant to the Arizona Code of Judicial Administration § 7-201.
- H. The clerk of court shall disclose the probate information form described in Rule 6 only to the following persons:
1. an attorney or guardian ad litem appointed by the court to represent the person who is the subject of a guardianship or conservatorship proceeding in which the document has been filed;
 2. a person appointed as a court investigator for the probate case in which the document has been filed;
 4. judicial officers, COURT ADMINISTRATION STAFF AND OTHER AUTHORIZED COURT PERSONNEL;

5. any person authorized by the court, upon a showing of good cause, to view or obtain a copy of such document or information; and
 6. staff from the Administrative Office of the Courts for the purpose of conducting a compliance audit of a fiduciary or an investigation into alleged misconduct by a certified fiduciary, pursuant to the Arizona Code of Judicial Administration § 7-201.
- I. Nothing in this rule shall prevent a confidential document from being used as an exhibit at any hearing in the probate case in which such document was filed.

Comment

Generally, court records are presumed to be open to any member of the public for inspection or copying during regular office hours at the office having custody of the records. In view of the possible countervailing interests of confidentiality, privacy, or the best interests of the state or parties, however, public access to some court records may be restricted or expanded. *See* Ariz. R. Sup. Ct. 123(c)(1).

The purposes of this rule are to preserve any medical professional-patient privilege and confidentiality and to protect ~~vulnerable adults from~~ AGAINST identity theft and financial exploitation. Thus, the rule identifies documents that are to be considered confidential and not kept as part of the court file and it provides a mechanism for filing such confidential documents. The rule is based, in part, upon former Rule 129, Rules of the Supreme Court, which dealt with confidentiality of medical records in guardianship and conservatorship cases, and Rule 123(c)(3), Rules of the Supreme Court, which deals with confidentiality of personal financial information. Unredacted versions of the probate information form or a financial statement ~~from a brokerage house~~ are confidential. If a party redacts account numbers or social security numbers from a confidential form, the form then may be made available for public viewing.

Although these documents and information may be confidential, the fiduciary must observe and abide by all requirements imposed by statute, law, controlling document, or court order requiring provision of the documents and information to any interested party.

Arizona Code of Judicial Administration § 1-506(E)(4) prohibits the court from accepting confidential or sealed documents by electronic filing. As technology and case management systems advance, court rules and the Code of Judicial Administration will address electronic filing security issues.

For purposes of section A(1)(c), the inventory itself should be treated as confidential; however, any cover sheet should not be treated as confidential. Thus, only the inventory, including any appraisals or financial documents, should be filed as confidential.

For purposes of section A(1)(d), the accounting itself should be treated as confidential; the petition requesting approval of the accounting, however, should not be treated as confidential. Thus, only the accounting, including any schedules and supporting financial documents, should be filed as confidential. The petition requesting approval of the accounting, including the fiduciary's and attorney's fee statements required by Rule 33 of these rules, should be separately filed and are not confidential documents.

For purposes of section G(2) of this rule, a legal representative of a party, such as a guardian or conservator or like fiduciary of a party, or the agent under a valid power of attorney may request release of confidential documents on behalf of the party; the mere existence of a fiduciary, however, should not prevent even an incapacitated party from making a request in his or her own name.