

Hon. Patricia 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 ARIZONA SUPREME COURT

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|---------------------------|---|-----------------------------|
| In the Matter of |) | Supreme Court No. R-08-0032 |
| PETITION TO AMEND RULE 7, |) | |
| ARIZONA RULES OF PROBATE |) | COMMENT RELATED TO |
| PROCEDURE |) | IMPLEMENTATION OF THE |
| |) | PROBATE RULES OF |
| |) | PROCEDURE |

The Arizona Association of Superior Court Clerks (AASCC) submits the following comments on its own petition to amend Rule 7 of the Arizona Rules of Probate Procedure and offers further suggestions for better management of probate case type filings. Having worked daily with the Probate Rules since their implementation on January 1, 2009, the Clerks have developed these comments and submit them as a reflection of options that will meet the committee’s interest in using a functional set of statewide probate rules.

SUMMARY OF DIFFERENCES

The Clerks’ initial petition recommended that documents labeled in court rule as “confidential” be processed as “sealed.” The intent of this recommendation was to promote consistency in both filing and access. However, each Clerk’s Office has varying processes, filing systems and technical development making implementation of this recommendation overly complex at this time. Instead, the Clerks offer a change to Rule 7(C) that will improve the process for sensitive information contained in the Probate

Information Form and that works within the framework of the probate rules that took effect January 1, 2009. The Clerks' initial petition offered alternative language for Rule 7 which is repeated in Appendix A of this comment, including additional modifications.

Through Administrative Order 2009-07, the Supreme Court addressed access to records issues that would have otherwise complicated processing probate cases. The language included in the original petition and repeated in Appendix A of this comment is intended to continue this needed access for processing probate cases appropriately.

COMMENT TO RULES 6 and 7(C), PROBATE INFORMATION FORM

The AASCC recommends changes to Rule 7(C) that will allow the Clerks to maintain Probate Information Forms as confidential documents and to shred those documents once scanned and maintained electronically, where the Clerk's technology allows them to do so. Rule 6 of the Arizona Rules of Probate Procedure requires the person filing a petition or application requesting the appointment of a guardian, conservator, or personal representative to file a confidential Probate Information Form that contains sensitive information related to nominated fiduciaries, incapacitated or protected persons, or decedents. The prescribed procedure in Probate Rule 7(C) using sealed envelopes for processing and maintaining the Probate Information Form in paper hinders judicial economy and efficiency. It is particularly burdensome for Clerk's Offices that maintain an electronic court record to simultaneously house these paper documents in sealed envelopes because information contained on the Probate Information Form must be used in the regular course of business by judicial, court and clerk staff who have electronic access to other probate documents. Suggested language appears in Appendix A, below.

Note that recommendations for new text in the appendix below are indicated by **red font** or ALL CAPS and deletion of language is indicated by ~~strikethrough~~.

DATED this 16th day of April, 2009.

/s/ Patricia Noland
Hon. Patricia Noland, President
Arizona Association of Superior Court Clerks

Supreme Court R- 08-0032

APPENDIX A

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.

1. IN COUNTIES WHERE THE CLERK OF COURT MAINTAINS AN AUTHORIZED ELECTRONIC COURT RECORD, THE PROBATE INFORMATION FORM SHALL NOT BE PLACED IN A SEALED ENVELOPE BEFORE FILING WITH THE CLERK AND THE CLERK SHALL PROCESS THE FORM IN AN ELECTRONIC MANNER CONSISTENT WITH SENSITIVE DATA FORMS REQUIRED IN OTHER CASE TYPES.

2. IN ALL OTHER COUNTIES AND FOR ALL CONFIDENTIAL DOCUMENTS OTHER THAN THE PROBATE INFORMATION FORM, 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.

- 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. confidential information contained in a non-confidential document be redacted, regardless of whether the document has already been filed with the court. The redaction shall be performed by the originator of the document ~~in instances where the document has yet to be filed.~~
- 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 ADMINISTRATIVE STAFF

AND OTHER AUTHORIZED COURT PERSONNEL AS NECESSARY FOR PROCESSING AND MANAGING PROBATE CASES;

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;
 3. judicial officers, COURT ADMINISTRATIVE STAFF AND OTHER AUTHORIZED COURT PERSONNEL AS NECESSARY FOR PROCESSING AND MANAGING PROBATE CASES;
 4. any person authorized by the court, upon a showing of good cause, to view or obtain a copy of such document or information; and
 5. 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.

[NO CHANGES TO REMAINDER OF COMMENT]