

1 Honorable Jay M. Polk
2 Probate and Mental Health Department Presiding Judge
3 Superior Court of Arizona in Maricopa County
4 101 W. Jefferson St.
5 Phoenix, AZ 85003
6 (602) 372-0879

7
8 IN THE SUPREME COURT OF THE STATE OF ARIZONA

9 In the Matter of:

Supreme Court No. R-_____

10 PETITION TO AMEND RULES 2,
11 12, AND 16 OF THE RULES OF
12 PROBATE PROCEDURE

13
14 Pursuant to Rule 28, Arizona Rules of the Supreme Court, the Presiding
15 Judge of the Probate and Mental Health Department for the Superior Court of
16 Arizona in Maricopa County petitions this Court to amend Rules 2, 12, and 16 of
17 the Arizona Rules of Probate Procedure as proposed below in Attachment A.

18 The proposed amendments to the current rules are intended to address a gap in the
19 existing Probate Rules that were identified during the outbreak of the Covid
20 pandemic in 2020 regarding virtual appearances at probate proceedings. In
21 particular, nothing in existing Probate Rules allowed an interested person to attend
22 an Initial Hearing on a petition via electronic means (e.g., telephone or video
23 conferencing) to make an oral objection. As a result, the Arizona Supreme Court
24 issued Administrative Order No. 2020-67, which temporarily modified Probate
25 Rules 16(b), 17(a)(1), and 17(a)(2)(B) to allow the petitioner and other interested
26 persons to “attend” the initial hearing electronically.

27 These amendments would update the rules to better facilitate virtual
28 appearances at probate proceedings. First, the proposed amendments would

1 amend the definition of “attend” in Probate Rule 2 to clarify that a person can
2 “attend” a court proceeding virtually if so permitted or required by the court.
3 Second, the proposed amendments would amend Rule 12(a)(2) to substitute the
4 term “virtual” for “telephonic” in the definitions section of the Rule, and would
5 add further language to make the definition for “virtual” consistent with the
6 anticipated proposed change to the Rules of Juvenile Court by the Juvenile Rules
7 Task Force.¹ Third, the proposed amendments would amend Probate Rule 12(b)
8 to clarify that the court can either permit or require a virtual attendance and that
9 the court can do so either on a party’s motion or on the court’s own motion.
10 Fourth, the amendments would add a new Probate Rule 12(i) that explains who
11 is responsible for providing the instructions for a virtual appearance.

12 The proposed amendments would also amend Probate Rule 16(a) to add a
13 requirement that a notice of hearing provide the instructions for *how* one can
14 attend an initial hearing virtually (if the court has so required or permitted) and a
15 statement as to whether the virtual attendance is permissible or required.

16
17 Respectfully submitted this ____ day of January, 2021.

18
19 /s/ Jay M. Polk
20 Hon. Jay M. Polk
21 Presiding Judge
22 Probate and Mental Health Department
23 Superior Court of Arizona, Maricopa County

24 Original and six (6) copies delivered this
25 _____ day of _____, 2021 to:
26 _____

27 ¹The proposed definition of “virtual” for Probate Rule 12(a)(2) is
28 based on the most recent draft of the Juvenile Rules Task Force’s proposed
change to Juvenile Rule 12(b) as of December 29, 2020.

1 Clerk of the Arizona Supreme Court
2 1501 W. Washington, Suite 402
3 Phoenix, AZ 85007

4 Copy mailed this
5 ___ day of ___, 2021 to:

6 David K. Byers, Director
7 Administrative Office of the Courts
8 1501 W. Washington St.
9 Phoenix, Arizona 85007

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1 **ATTACHMENT A**

2 (new language is underlined and deletions are ~~struck through~~)

3
4 **Rules of Probate Procedure**

5 **Rule 2. Definitions.**

6
7 (a) through (c) [no changes]

8
9 (d) “Attend” means to be present, either personally or by counsel, at a
10 court event. If the court permits or requires, a person may attend a court event
11 virtually, as described in Rule 12.

12 (e) through (y) [no changes]

13
14 **Rule 12. ~~Telephonic and Video~~ Virtual Attendance and Testimony**

15 (a) **Definitions.**

16
17 (1) “*Proceeding.*” When used in this rule, “proceeding” means a court
18 event that interested persons or their attorneys have an opportunity to attend.
19 These events include, but are not limited to, a trial, hearing, oral argument, and
conference.

20 (2) “~~Telephonic~~Virtual.” When used in this rule, “~~telephonic~~virtual” or
21 “virtually” means by telephone, video conferencing, or other ~~available~~ audio or
22 audiovisual technology allowing two or more persons to communicate.

23 (b) **When Permitted.** A person who wishes to attend a proceeding is
24 expected to do so by appearing in open court for the proceeding unless the court
25 permits or requires virtual attendance. ~~Parties and their attorneys are expected to~~
26 appear in open court for court proceedings unless the court, in its discretion,
27 permits telephonic attendance under this rule. The court, on a party’s motion or on
28 its own, may allow or require a person to telephonically virtually 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

1 proceeding, including the judicial officer and, if applicable, the court reporter or
2 an electronic recording system; and

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

5 **(c) How Requested.** Unless otherwise ordered by the court, a person who
6 wishes to ~~telephonically~~ virtually attend or testify at a proceeding must either file
7 a written motion or make an oral motion in open court. The request may be for a
8 particular proceeding or for multiple proceedings. A written motion made under
9 this rule must be served on all parties and any person who has filed a demand for
10 written notice and must be accompanied by a proposed order.

11 **(d) Time for Making Request.** Unless otherwise provided by local rule, a
12 written or oral motion to allow ~~telephonic~~ virtual attendance or testimony must be
13 made in a timely manner considering the circumstances at the time the request
14 was made. Circumstances may include but are not limited to (1) the promptness of
15 the party in making the request; (2) the nature of the proceeding, including
16 whether it is contested or evidentiary; (3) whether all other parties agree to the
17 ~~telephonic~~ virtual attendance or testimony; (4) the reason why ~~telephonic~~ virtual
18 attendance or testimony is being requested; and (5) logistical factors.

19 **(e) Objection to Request.** A party opposing a written motion made under
20 this rule must file a response no later than 5 court days after the motion is served.
21 The court may modify or waive this time limit.

22 **(f) Ruling.** The court may rule on a written motion made under this rule
23 before a response is filed, and without a reply or oral argument.

24 **(g) Use of Exhibits During Telephonic Virtual Testimony.** Unless
25 ~~otherwise ordered by the court~~ orders otherwise, before a party may question a
26 person testifying ~~telephonically~~ virtually about an exhibit, that party must:

27 (1) have provided that person and all parties, in advance, with a copy of that
28 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~~ virtually.

(h) Costs of Telephonic Virtual Attendance or Testimony. Unless the
court orders otherwise, ~~the~~ the person requesting ~~telephonic~~ virtual attendance or

1 testimony must arrange it, and, ~~unless the court orders otherwise,~~ pay the related
2 costs.

3 **(i) Instructions for Virtual Attendance or Testimony.** If the court
4 permits or requires virtual attendance or testimony, the court must either provide
5 instructions for attending the proceeding virtually or require the party who
6 requested the virtual attendance or testimony to provide those instructions.

7
8 **Rule 16. Notice of Initial Hearing on Petition**

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

11 (1) the title of the petition to be heard;

12 (2) the date, time, and place of the initial hearing; ~~and~~

13 (3) the name of the judicial officer before whom the petition is set for
14 hearing; and

15 (4) if the court has authorized virtual attendance at the initial hearing,

16 (i) a statement that specifies whether the court has permitted, or
17 required, virtual attendance, and

18 (ii) instructions for virtually attending the initial hearing.

19
20 **(b) through (e) [no changes]**