

# **Rule 9. Probate Division Matters**

## **9.1 General Administration**

### **(a) Probate judge**

The presiding judge of the superior court shall designate the presiding judge of the probate division, who shall be charged with all actions involving trust and probate matters, guardianships, conservatorships, fiduciary actions, adult adoptions, mental health hearings, and supervision of mental health cases. All such matters are active cases until an order is entered closing the file or the registrar issues a closing certificate. The presiding judge of the superior court shall designate probate court commissioners. The judicial divisions consisting of the probate judge(s) and probate court commissioners shall constitute the probate division of the superior court.

### **(b) Administrative directives; Approval of forms; Informational guides**

#### **(1) Administrative directives**

The presiding probate judge may adopt administrative directives not in conflict with rules or policies adopted by the supreme court for the probate division, court administrator, and court clerk, which provide for the orderly processing of probate cases. A copy of the administrative directives shall be available to the public at the clerk's office of the Pima County Superior Court, the Pima County Law Library and at the Pima County Bar Association office

#### **(2) Forms; guides**

The presiding probate judge shall require the use of forms approved by the supreme court, and by administrative directive may approve informational guides for use in connection with actions identified in Rule 9.1(a). A copy of the informational guides shall be available to the public at the clerk's office of the Pima County Superior Court, the Pima County Law Library and at the Pima County Bar Association.

### **(c) Probate calendar specialist**

The court administrator shall assign to the probate division a probate calendar specialist and such other personnel as may be required. The probate calendar specialist shall maintain a calendar of all probate matters to be heard by each judicial division and shall perform other duties as the presiding probate judge shall direct.

**(d) Caption of pleadings; Consolidation**

**(1) Caption of pleadings**

The caption of the pleading shall contain the date of birth of the decedent, minor, protected person, or incapacitated person.

**(2) Consolidation**

When there are two or more petitions relating to the estate of the same decedent or the guardianship or conservatorship of the same ward, all the petitions shall be consolidated in the file bearing the lowest file number.

**(e) Fiduciary information; change of address**

**(1) Fiduciary information**

All petitions and applications requesting appointment of a fiduciary must contain the street address and mailing address of the person to be appointed. The petition or application shall be accompanied by a Verified Statement and an information sheet containing the fiduciary's name, certificate number if applicable, date of birth, social security number, identifying information, street address, mailing address, current employer and employer's address, and the relationship to the decedent, minor protected person, or incapacitated person. The information sheet shall not be placed in the court file.

**(2) Change of address**

During the term of the appointment, every fiduciary shall immediately notify the court in writing of a change of mailing address. The change of address notice may be delivered personally to the probate division of the clerk of the court or sent by first class mail, postage prepaid, to the following address: Clerk of the Superior Court, Probate Division, Pima County Court, 110 W. Congress, Tucson, Arizona 85701. A separate notice shall be filed for each case in which the fiduciary holds appointment. The fiduciary shall, absent good cause, pay all costs of the court or the estate, which result from the failure to notify the court. An attorney representing a fiduciary shall inform the client in writing of this requirement. Each Statement of Registrar and each court order appointing a fiduciary shall contain a provision notifying the fiduciary of this continuing duty.

**(f) Duties of fiduciary**

**(1) Submission of general order**

Each petitioner and applicant for appointment of a guardian, conservator, or personal representative shall file with the petition or application a copy of the

court's general order to the fiduciary which the proposed fiduciary has signed to certify that the fiduciary has received and read the general order.

**(2) Signing of general order**

Letters of appointment may not be issued to a guardian, conservator, or personal representative until any required bonds are filed and a judicial officer has signed both the order or statement of appointment and the copy of the general order which has been signed by the fiduciary.

**(g) Assignment of cases**

All matters arising under Title 14 of the Arizona Revised Statutes shall be assigned to the presiding probate judge, except the following:

- (1) Uncontested matters heard by a court commissioner pursuant Rule 96(a)(5) Rules of the Supreme Court;
- (2) Any matter separately assigned by the presiding probate judge and heard by a court commissioner acting as judge pro tempore;
- (3) Any matter referred by the presiding probate judge for reassignment.

**(h) Uncontested matters**

Uncontested probate matters shall be heard each court day at 9:00 a.m., except a different time may be set upon good cause. Upon the matter becoming contested, as defined in 9.5(a), the court commissioner shall assign the matter to the presiding probate judge for all further proceedings.

**(i) Hearings**

**(1) Types**

Matters requiring hearings may be set and noticed for appearance in open court or on a non-appearance calendar.

**(2) Non-appearance calendar**

Each probate court commissioner and probate judge shall maintain a nonappearance calendar for uncontested matters which do not require personal appearance of the parties or counsel. Any uncontested matter except the appointment of a guardian or conservator may be heard on the nonappearance calendar unless the court notifies the filing party that an appearance is required. A proposed form of order, judgment, or decree shall be submitted with the pleading.

**(3) Setting dates**

Each probate commissioner and judge shall set the date and time for hearings on matters assigned to their division. Except for emergencies, requests for injunctive relief, or as otherwise provided for under the Arizona Rules of Civil Procedure, the hearing date shall not be less than twenty-one days from the filing date of the applicable pleading absent good cause.

**(4) Accelerations**

A motion to accelerate a hearing shall state good cause, identify the time constraint, and be accompanied by an order to shorten time. The motion to accelerate shall be accompanied by a copy of the substantive petition. No hearing shall be accelerated to a date earlier than that required by statute or rule.

**(5) Emergencies and request for injunctive relief**

Emergency matters consist of matters requiring the temporary protection of property pursuant to A.R.S. §14-5602, the temporary suspension or appointment of a conservator pursuant to A.R.S. §14-5401.01, or the temporary suspension or appointment of a guardian pursuant to A.R.S. §14-5310. All emergency hearings and hearings on requests for injunctive relief shall be set on the calendar of the presiding probate judge unless otherwise directed by the presiding probate judge.

**(6) Continuances**

Requests for continuances may be made by 1) filing a motion to continue, in which event the requesting party shall also file a proposed form of order and notice of hearing, and shall give notice and shall file proof of such notice to all interested persons entitled to notice by statute, rule, or court order; 2) filing a written stipulation of all parties and persons requesting notice, accompanied by a form of order and identifying the party who shall mail notice to all interested persons entitled to notice by statute, rule, or court order and file proof of notice; or 3) oral request at the hearing. Requests for continuances shall be filed with the Clerk of Court and a copy shall be delivered to the calendar services division of court administration and the assigned division prior to the trial or hearing. Continuances may also be granted at the discretion of the court for good cause.

**(7) Form and Proof of Notice**

**(i) Form**

All notices shall include the title of the pleading filed, the type of hearing set, the date, time, and place of the hearing. Each notice of hearing shall include the following warning to interested persons:

**YOU ARE RESPONSIBLE FOR  
PROTECTING YOUR INTERESTS.**

This matter may not be independently investigated or verified by the court. If you object to any part of the petition, you must file a written objection with the court describing the legal basis for your objection. Failure to file a written objection may jeopardize your interests. Without your written objection, you should expect that the requested relief will be granted. If you question any other action of the fiduciary, file an appropriate written petition or motion with the court.

This is a legal matter. If you have questions, seek legal advice from an attorney. You have the right to represent yourself. If you represent yourself you must correctly follow court procedures.

**(ii) Proof of Notice**

The party who is required to give notice shall file a proof of notice and a copy of the notice given at least seven days prior to the hearing or provide copies thereof to the judicial officer with evidence that the originals have been filed with the clerk of court. The proof of notice shall state the time and manner of notice. The proof of notice shall identify any noticed person who is known by the party to be a minor or a person under disability and, as to such person, state whether notice was given to the guardian, conservator, or court appointed attorney of the person.

**(8) Waivers of notice**

Matters in which notice has been waived may be presented for approval to the presiding probate judge or a probate court commissioner who shall set the matter

for hearing without the requirement of notice. Such matters shall be set and considered as time permits. If a matter is time sensitive, the petition or motion shall identify the time constraint. If all required waivers of notice, stipulations, and consents are filed with the petition or motion, the court may grant the requested relief without further delay. In such cases, the party seeking relief shall, within 14 days of the order, mail or deliver a copy of the order to all interested persons and file proof of notice thereof.

**(j) Compensation of attorneys and fiduciaries**

In all matters filed in court related to compensation of fiduciaries and attorneys, the party requesting compensation or approval of compensation shall file a verified, detailed statement of the services rendered and the time involved. If a motion for attorneys' fees is contested, opposing parties may respond to the motion, and a hearing may be granted in the discretion of the court. In addition, the court may refer issues relating to the value of services to a Special Master under Rule 53.

**(k) Court reporters, special needs, and interpreters**

Written requests for court reporters, special needs accommodations, or interpreters shall be filed with the clerk and a copy directed to the division hearing the matter at least 48 hours in advance of the hearing. Any party needing interpreter services is responsible for providing and paying for such services. The court may impose the cost of court interpreter services on non-indigent parties. A party may seek leave of the court at an uncontested hearing to use the court interpreter services, family, or friends.

**(l) Annual reports, noncompliance, fines**

When an annual report of a guardian or annual accounting by a conservator is not timely filed, the court may continue the matter once for compliance on the nonappearance calendar. Any further continuance must be on written motion for good cause shown. If the required documents are not timely filed before the time of the continued hearing, a judge or commissioner of the probate division may make such order as permitted by law, including taxation of costs, or attorneys' fees then or subsequently incurred; or the imposition upon the guardian, conservator, personal representative or counsel of further sanctions or penalties provided by statute, rule or authority of the court, including contempt of court

**(m) Court orders, noncompliance, fines**

For failure of a guardian, conservator or personal representative to comply with an order of the court for filing an inventory, posting a bond, filing proof of a restricted account, filing proof of expenditures, filing proof of settlement and disbursement and other orders for

compliance, at the time of the first hearing set on the nonappearance calendar, a judge or commissioner of the probate division may make such order as permitted by law, including taxation of costs, or attorneys' fees then or subsequently incurred; or the imposition upon the guardian, conservator, personal representative or counsel of further sanctions or penalties provided by statute, rule or authority of the court, including contempt of court. A sanction may not be imposed if a motion to extend the deadline for compliance is filed prior to the expiration of the deadline and good cause is shown.

**(n) Consents and waivers, notary required**

Each consent or waiver filed shall be notarized before a notary public or before a deputy clerk upon showing of proper identification, or subscribed as provided in Rule 80(i) of the Rules of Civil Procedure.

**(o) Motion for telephonic or video appearance**

Any party or counsel desiring to appear other than in person shall file a written motion consistent with Rule 9.1(i) stating good cause with notice to all interested persons. No case or hearing shall be given preference for hearing by reason of an order permitting an appearance other than in person. The party requesting a telephonic or video appearance shall make necessary arrangements and pay for any associated costs.

**(p) Motions to Withdraw as Counsel**

In addition to all applicable rules regarding withdrawal of counsel from active cases, counsel for a conservator or a personal representative shall include with the motion to withdraw a status report in conformity with Rule 9.3(b)(2). In addition to all applicable rules regarding withdrawal of counsel from active cases, counsel for a guardian shall include with the motion to withdraw a current report of guardian in conformity with Rule 9.2(e). This requirement shall be waived only by a written stipulation of all interested persons as defined in A.R.S. §14-1201(26) or a court order after notice and hearing. Counsel must also provide a verified, itemized statement of all services for which payment has been made or is expected. Such statement shall conform with the requirements of Rule 9.1(j) hereof, shall indicate all sums paid, and state whether a claim for unpaid fees or expenses is being made to any successor fiduciary. Any attorney who does not make a claim for unpaid fees and expenses prior to withdrawal is deemed to have waived any further claims.

## **9.2 Guardianships and Conservatorships**

**(a) Guardianships and conservatorships, disclosure affidavit**

A completed disclosure affidavit as required by Arizona Revised Statutes §14-5106 shall be filed with all petitions for appointment of a temporary or permanent guardian or conservator.

**(b) Guardian of minor, fingerprints**

Where the proposed guardian of a minor is required to be fingerprinted pursuant to Arizona Revised Statutes §14-5206, the proposed guardian shall be fingerprinted within five days of filing the petition for appointment of guardian of a minor. Information about the fees and the procedure for fingerprinting may be obtained by contacting the clerk of the court.

**(c) Court appointed attorneys, medical examiners, and investigators**

In any proceeding in which a court appointed attorney, medical examiner, or investigator is requested, the petitioner shall submit a form of order with the name and address for the attorney and investigator left blank for completion by the court. The petitioner shall include in the form of order the name and address of the medical examiner. The presiding probate judge shall maintain a rotating list of court appointed attorneys and court appointed investigators for Title 14 and Title 36 matters. For good cause shown, the court may appoint an attorney or investigator other than those listed.

**(d) Temporary appointment of guardian or conservator**

When petitioning for an emergency appointment of temporary guardians or conservators, the petitioner shall submit conformed copies of the petition and all required pleadings to the presiding probate judge, or in the absence of the presiding probate judge, to the probate assignment commissioner.

**(e) Annual report of guardian**

Guardians appointed for adult incapacitated persons pursuant to Title 14 shall file each year on the anniversary of the appointment or as otherwise ordered by the court, a report providing information required by A.R.S. §14-5315 as set forth in a form approved by the supreme court. The annual report will be set for review each year on the nonappearance calendar.

**(f) Conservatorship inventories and accounts**

**(1) Inventories**

All inventories filed pursuant to Chapter 5 of Title 14, Arizona Revised Statutes, shall be in accordance with forms approved by the supreme court.

**(2) Accounts**

**(i) Forms**

All accounts filed pursuant to Chapter 5 of Title 14, Arizona Revised Statutes, shall be in accordance with forms approved by the supreme court.

**(ii) Accompanying documents**

All accounts filed pursuant to Chapter 5 of Title 14, Arizona Revised Statutes, must be accompanied by:

- (A) A current court Account Information Sheet approved by the presiding probate judge;
- (B) A copy of the statement for each account listed in the account which includes the ending date of the accounting period;
- (C) A proposed form of order. The order shall include provisions allowing the court to set i) the date for the next annual review hearing to be set by the court; ii) the date for the next annual accounting period year end; and iii) the increase or decrease of the fiduciary bond, if appropriate.

**(g) Appointment or reappointment of attorney**

When an account is filed pursuant to Chapter 5 of Title 14, Arizona Revised Statutes and the rights of the protected person may be compromised because the protected person is unrepresented, the court may appoint an attorney to represent the protected person.

**(h) Appointment of attorney for approval of settlement for minor**

If the rights of an unrepresented minor may be compromised because the minor is unrepresented, the court may appoint an attorney to represent the minor.

## **9.3 Decedents' Estates**

**(a) Estate inventories and accounts**

**(1) Inventories**

All inventories filed pursuant to Chapter 3 of Title 14, Arizona Revised Statutes, shall be in accordance with forms approved by the supreme court.

**(2) Accounts**

All accounts filed pursuant to Chapter 3 of Title 14, Arizona Revised Statutes, shall be in accordance with forms approved by the supreme court.

**(b) Review of pending decedent estates; status report**

**(1) Completion; verification**

At the time a personal representative or special administrator is appointed, the court shall order the fiduciary to file a status report between sixty and thirty days before the second anniversary of the appointment and set a review hearing on the non-appearance calendar to review any status report filed by the fiduciary or the fiduciary's counsel.

**(2) Status report**

The status report shall include 1) reasons why the estate has not been closed; 2) tasks remaining to be completed; 3) distributions to beneficiaries; 4) inventory of assets remaining; 5) status of insurance and taxes on assets, if applicable; 6) name and address of unpaid creditors including amounts owed; and 7) estimated time for completion of the estate administration. The personal representative shall mail a copy of the status report to all interested persons no later than 30 days prior to the review hearing and shall file proof of notice with the court.

**(3) Early completion**

The procedure described in Rule 9.3(b)(2) shall be followed on each subsequent anniversary of the appointment until the estate is closed. If the estate is closed prior to any status date, the status and compliance hearing dates shall be vacated. If for any reason the dates are not vacated at the time of closing the estate, the court may automatically vacate the status and compliance dates by minute entry without further notice.

**(4) Non-compliance**

For failure of the fiduciary or the fiduciary's counsel to comply with this rule, a judge or commissioner of the probate division may make such order as permitted by law, including taxation of costs, or attorneys' fees then or subsequently incurred; or the imposition upon either counsel or the fiduciary of further sanction or penalty provided by statute, rule or authority of the court, including contempt of court.

**(5) Case processing report**

The presiding probate judge shall each year cause a review and report to be made on all inactive probate cases. The presiding probate judge shall take appropriate action in those cases exhibiting undue delay.

## **9.4 Adult Mental Health**

**(a) Mental health hearing calendar.**

Hearings pursuant to Chapter 5, of Title 36, Arizona Revised Statutes, entitled “Mental Health Services,” shall be conducted at such times and places as may be designated by the presiding judge of the probate division.

**(b) Hearings**

**(1) Length of hearing.**

Hearings on petitions for court ordered treatment shall not exceed one (1) hour unless otherwise ordered by the court on its own motion or for good cause upon a party’s request. Any request by a party for an extended length of hearing shall be filed not later than two (2) days prior to the hearing.

**(2) Hearings open to Public.**

Hearings on petitions for court ordered treatment shall be open to the public, unless otherwise ordered by the judicial officer presiding over the hearing, and shall conclude by 5:00 p.m., except as otherwise ordered.

**(3) Stipulations to continue or expedite hearing.**

Any stipulation of the parties to continue a hearing on a petition for court ordered treatment, or any request to expedite the hearing, shall be filed not later than noon on the day prior to the hearing.

**(4) Motions.**

Any motion hearings related to mental health cases shall be scheduled at the earliest available hearing date. If the hearing on the motion cannot be set by the court within two (2) business days after filing of the motion, the court may conduct a telephonic hearing with counsel to expedite scheduling the hearing on the motion or, alternatively, to hear the arguments on the motion telephonically. Unless otherwise ordered by the court, no motion hearing shall exceed (30) thirty minutes.

**(5) Changes affecting court calendar.**

All matters, including stipulations, which affect the court calendar must be approved by the division to which the case is assigned and shall be submitted not later than noon on the day prior to the hearing, unless the court approves otherwise.

**(6) Written testimony.**

By stipulation of the parties, witness testimony at hearings may be presented by written testimony in lieu of oral testimony.

**(7) Telephonic testimony.**

The judicial officer assigned to the hearing, for good cause, may allow telephonic testimony of a witness at a hearing on a petition for court ordered treatment. Any such request by either party shall be promptly presented to the judicial officer presiding over the hearing and opposing counsel.

**(c) Disclosure of witnesses and exhibits**

Each party shall comply with the following disclosure requirements:

- (1) Each party shall promptly exchange a list of all witnesses, including their names and telephone numbers.
- (2) Each party shall promptly exchange a list of all exhibits.
- (3) Such disclosure shall be made not later than two (2) days prior to the time of the hearing.
- (4) Each party shall promptly supplement the witness and exhibit list whenever a new witness or exhibit is discovered.

**(d) Confidentiality of files.**

Pursuant to A.R.S. §36-509, the clerk of the superior court or court staff shall allow access to mental health files only as follows:

- (1) To disclose only the following information:
  - (i) The fact that a mental health file exists for any named individual.
  - (ii) The number of that file.
  - (iii) Any scheduled hearing date.
  - (iv) The time and place of the hearing, and the name of the judicial officer assigned to preside at that hearing.
- (2) The court docket shall list the docket number only and that shall remain public.
- (3) Access to the contents of a mental health file shall not be allowed except in

compliance with A.R.S. §36-509.

- (4) If the clerk or court staff is uncertain whether a person requesting information or access is entitled to the same under A.R.S. 36-509, the person shall be referred to the presiding judge of the probate division.

**(e) Transfer to the state hospital**

If the Department of Health Services does not admit a person court ordered to the Arizona State Hospital within twenty (20) days after the entry of the court order for transfer, the county attorney's office shall file written notice thereof with the court with a copy to the judicial officer who presided over the hearing. The judicial officer may set a hearing to determine the status of the patient's admission to the Arizona State Hospital and whether alternatives to admission to the Arizona State Hospital exist at that time. The court may designate the hearing as either evidentiary or non-evidentiary.

## **9.5 Contested Probate Matters**

**(a) Contested matter**

A contested probate matter arises upon the filing with the court of any of the following:

- An objection to an informal probate or appointment proceeding;
- An objection to a formal testacy or appointment proceeding;
- An opposition to a petition;
- An application for injunction;
- An order to show cause arising under Title 14, Arizona Revised Statutes;
- A complaint in a probate proceeding.

If a complaint in a probate proceeding involves a certified fiduciary, the judicial officer shall notify the Fiduciary Program in compliance with Rule 1.2.2 of the Administrative Code.

**(b) Reference and assignment of contested matters**

All contested matters referred to in Rule 9.1(a) shall be preferred for trial and shall be assigned for trial before the presiding probate judge in conformity with Rule 9.1(g).

**(c) Form, content and captions, service**

All objections, oppositions, and complaints, and all further pleadings in contested probate matters shall conform to Rule 10 of the Arizona Rules of Civil Procedure. In a contested

probate matter, a separate caption showing the parties to the dispute shall be set forth beneath the original caption and shall be filed under the assigned probate case number. Service of an objection or opposition shall be given as provided in A.R.S. §14-1401 (General Notice Provisions); A.R.S. §14-5309 (Guardianship Notice); A.R.S. §14-5405 (Conservatorship Notice); A.R.S. §14-3403 (Formal Probate Notice). Service of a complaint and subsequent pleadings shall be given as provided in Rules 4 and 5 of the Arizona Rules of Civil Procedure.

**(d) Objections and oppositions**

**(1) Filing**

Except for good cause shown, all objections and oppositions to matters set for a non-appearance or an appearance hearing shall be made either by filing a written objection or opposition with the probate clerk (and at the same time providing a copy to the judge or commissioner then scheduled to hear the matter) at least three days prior to the hearing date with appropriate notice to all interested parties, or by appearing in person or through an attorney at the time and place set forth in the notice of hearing.

**(2) Pleading practice**

For purposes of contested matters, written objections and oppositions shall be treated as an answer and any further pleadings and the time limits for filing such additional pleadings and motions shall be in accordance with Rules 6 through 16.2 of the Arizona Rules of Civil Procedure.

**(e) Assignment of contested cases; status and scheduling conference**

When a probate matter becomes contested, the case shall be assigned to the presiding probate judge and a status and scheduling conference shall be set. At the status and scheduling conference the court shall set such dates and deadlines for the further course of the case, including disclosures under Rule 26.1, Arizona Rules of Civil Procedure, as the court deems appropriate.

**(f) Mandatory settlement conferences.**

**(1) Application.**

This rule applies to all contested matters scheduled for a trial or hearing of one day in length or longer.

**(2) Scheduling.**

At the status and scheduling conference, the court will schedule a mandatory settlement conference pursuant to Rule 16(g) of the Arizona Rules of Civil Procedure at least two weeks prior to the trial or hearing date.

**(3) Pretrial statement information: court's discretion to vacate.**

The pretrial statement shall include any allegation of good cause for not proceeding with the settlement conference. The settlement conference may be vacated at the court's discretion.

**(4) Settlement conference judges pro tempore: Arbitration credit.**

The judge or judges assigned to the court's probate division shall compile a list of attorneys qualified and willing to serve as judges pro tempore for purposes of presiding over and facilitating the mandatory settlement conferences. The judge(s) assigned to the probate division will direct and implement, through the probate calendar specialist and other personnel assigned to the probate division, procedures for appointment of judges pro tempore from the approved list and for providing notice to parties of such appointment. Any attorney included on such list of judges pro tempore may, upon the attorney's request, be deleted from the court's list of persons subject to appointment as arbitrators pursuant to Rule 73, Arizona Rules of Civil Procedure. Judges pro tempore, for purposes of any court ordered settlement conference, shall be paid in the same manner as the Superior Court in Pima County pays those individuals appointed to serve as arbitrators.