

ARIZONA SUPERIOR COURT, PIMA COUNTY

REPRESENTING YOURSELF IN PROBATE COURT

The court system is here to provide fair, orderly, and peaceable resolutions of disputes. The court does not take sides, nor does it advocate for an individual person. It is not like court TV. The following information is NOT all you need to know about the law or the rules applicable to your case. It may help you, however, to avoid some of the typical problems people have when they represent themselves in court.

The following is for your convenience. It does not cover all situations. If there is a conflict between the information contained in this document and any court rule, statute, or case law, then you must comply with the court rule, statute, or case law.



Rely on this information at your own risk. If you have questions or concerns about legal issues, consult with an attorney. The court does not appoint attorneys to represent competent persons in probate cases.

1. The Right to Represent Yourself in Court

You have the right to represent yourself in court. The legal term for a person who represents himself or herself is *in propria persona* or *pro se*. Such status is frequently referred to as “Pro Per.” This right, however, does not permit you to represent the interests of other people in court if you are not an attorney. A power of attorney does not permit you to represent others in court.

You do have the right to hire an attorney to represent you at your own expense. If you choose to represent yourself, you do so at your own risk. It is not the Judge’s job to protect you from making mistakes; nor will the Judge give you advice about how to proceed with your case.

2. Court Personnel

A. The Judge and the Judge’s staff

Neither the Judge nor the Judge’s staff are permitted to answer questions about your case, instruct you on how to proceed, or give you legal advice. Do not call the Judge or the Judge’s staff to talk about or tell them about your case.

Basic fairness requires the Judge to give each party a fair opportunity to be heard and to respond to what the other party tells the Judge. You should not contact the Judge or the Judge’s staff without the knowledge of the other interested persons. To contact the Judge’s office is known as *ex parte* communication and is prohibited. Neither party to the case should have any contact with the Judge or judicial staff without the other party being present.

You may, however, provide courtesy copies to the Judge of documents you have filed and provided

to all of the interested parties to the case. You must indicate when and to whom you have provided copies on the last page of the document, or on a Proof of Notice, if one is required.

B. The Clerk of Court

The Clerk of the Superior Court is the record keeper for the court as well as the collector of all fees, fines, bonds, and restitution. The Clerk's Office is the first stop in initiating any Superior Court action in probate.



The Clerk of Court and staff are not permitted to answer questions about your case, tell you what to do, or to give you legal advice. Do not call the Clerk of the Court to discuss your case.

C. Court Reporters

Arizona Superior Courts are courts of record except as to some matters heard by Court Commissioners. A court reporter takes down everything that is said in order to make a record of the case. It is extremely important that you speak clearly and slowly. Do not interrupt another person when it is his or her turn to speak because the court reporter can only record one person at a time.

1. How to order a transcript of a hearing

In certain circumstances, you may need to obtain a transcript of a hearing. Transcripts of court hearings, if available, can be ordered directly from the court reporter. After each hearing, the court will issue a Minute Entry. A Minute Entry is the document that records the court's findings and any orders that were entered. It is the official court record of a hearing. If you need to order a transcript of a hearing, look for the court reporter's name on the Minute Entry from that hearing. Call the managing court reporter's office at 520-740-3114 to obtain the phone number of the court reporter who covered the hearing. Contact the court reporter to request a copy of the transcript. Each court reporter sets his or her own rates per page. Be sure to ask what that charge will be. Preparation of the transcript may take several weeks. The Judge does not control the court reporter's work, or the rates charged.

D. The Pima County Probate Registrar

The Pima County Probate Registrar's duties include the following:

- 1.** Review and grant or deny applications for informal appointment of personal representative and applications for informal admission of will to probate.
- 2.** Review affidavit of succession to real property and issue or refuse to issue certified copy of the affidavit for recording.
- 3.** Review appointment of foreign conservator.
- 4.** Review appointment of foreign personal representative and proof of authority bond.
- 5.** Review and grant or deny appointment in subsequent administration.
- 6.** Review and grant or deny applications for endorsement of conservator's letters.
- 7.** Review and grant or deny applications for appointment of special administrator.
- 8.** Close cases 1 year after the filing of closing statement.



The Registrar and staff are not permitted to answer questions about your case, instruct you on how to proceed, or give legal advice.

3. Probate Law

Probate law is found in statutes, court rules, and case law. Statutes and case law govern the *substantive law* of probate cases. The Arizona Rules of Court - which include the Arizona Rules of Civil Procedure, and the Pima County Local Rules, govern the *procedure* that all parties who bring a case to court must follow.

A. STATUTES

Arizona adopted a version of the Uniform Probate Code in 1974. Arizona's probate statutes are found in Title 14 (Volume 6) of the Arizona Revised Statutes. (Not all statutes that may be important to your case are found in Title 14.)

B. RULES OF COURT

The rules of court that apply to probate cases in the Arizona Superior Courts are found in Arizona Rules of Court. These rules include the Rules of Civil Procedure and the Pima County Local Rules. The rules apply to all parties including parties who represent themselves. It is not fair to require one party to a case to obey the rules but not require the other parties to follow those same rules. The following rules apply to probate cases:

- i. Arizona Rules of Civil Procedure
- ii. Arizona Rules of Evidence
- iii. Pima County Local Rule 4

C. CASE LAW

The decisions of the appellate courts in Arizona are contained in the Arizona Reports.

D. WHERE TO GO TO FIND STATUTES, RULES AND CASE LAW

- o The statutes are available online at www.azleg.state.az.us.
- o The rules are available online at www.supreme.state.az.us/rules/.
- o The Local Rules for Probate - Local Rule 4 - are available online (www.sc.co.pima.az.us).

In addition to online research, the statutes, rules, and case law are available at the following locations:

The Pima County Law Library
Pima County Court House
2nd Floor
110 W. Congress
Tucson, AZ 85701
Phone: 520-740-8456

The University of Arizona College of Law
201 E. Speedway
Tucson, AZ 85721
Phone: 520-621-1413

4. Procedures for Bringing a Case to Court

A. PROCEDURAL DUE PROCESS: FORMAL PROCEEDINGS

What if your opponent sent you notice of an important hearing on the same day it was to occur? You would not be able to prepare your case or summon witnesses on your own behalf. What if you arrived at hearing only to find that the judge had read letters from the other side's witnesses? Would you feel that the judge was prejudiced? Would you feel deprived of the right to cross-examine those witnesses?

Both Federal and Arizona law entitle each person to due process. Each party has the right to sufficient advance notice of hearings. Each hearing must take place before an unbiased judge or commissioner. Each party will have the opportunity to present legally admissible evidence and to have his or her point of view heard.

'Procedural due process' is a collection of procedures which assure each side a fair opportunity to explain his or her case to an impartial judge. In Arizona, procedural due process requires four steps as follows:

1. **Petition, complaint, motion or other pleading**

The party who is asking the court's assistance must file a **petition, complaint, motion, or other pleading**. These are known collectively as pleadings. Pleadings are your request for relief and should state two things: first, the important facts of the case; and second, the law as it applies to your case.

2. **Notice to interested persons**

The party must give **notice** to all interested persons by sending or delivering (or in some cases by publishing in a newspaper) a copy of the petition, complaint, motion, or other pleading and a copy of the notice or order that sets the hearing date. This notice must be given as required by the applicable rule [Arizona Rules of Probate Procedure 8 or statute [A.R.S. 14-1401(A)]. For example, in many probate matters, notice must be given at least 14 days before the hearing if notice is given by mail. [A.R.S. § 14-1401; Arizona Rules Civil Procedure 6(c)]. The statutes and rules determine to whom notice must be given and the

deadline by which notice must be given. See Section 4(C) for more information about notice.



A party who wishes to object to the petition, complaint, or motion MUST file a written objection at least three days before the scheduled hearing or appear at the hearing and orally object. The person orally objecting shall subsequently file a written objection as directed by the court. *Arizona Rule of Probate Procedure 17(D)(2)* . If no written objection is filed within the required time, the request will usually be granted without further inquiry by the court.

3. Hearing

A **hearing** is held. In some hearings, such as trials, each party may produce evidence. In other hearings, such as hearings on motions, no evidence is offered but each party may argue their position on the issue to the court. See Section 5(B) for more information about hearings.

4. Order or Judgment by the court

The Judge decides the case. The decision is the court's **order** or **judgment**.

Informal Proceedings

Some probate matters involving decedent's estates (See A.R.S. §14-3311. Begin by filing an Application to the Probate Registrar. These matters are known as 'informal' matters. Rather than the 'formal' process of filing a Petition, giving notice, and having a hearing before a Judge, informal proceedings involve the following steps:

1. **Application to the Probate Registrar;**
2. **Statement of Registrar;**
3. **Notice to interested parties.**



Guardianship and/or Conservatorship cases cannot proceed informally because due process gives the allegedly incapacitated person the right to have a hearing

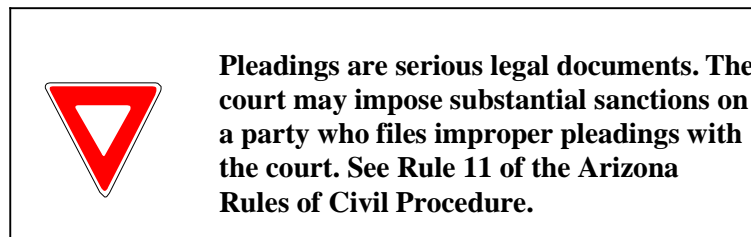
B. PETITIONS, APPLICATIONS, COMPLAINTS, MOTIONS AND OTHER PLEADINGS

All **petitions, applications, complaints, objections, motions**, and other pleadings must comply with the Arizona Rules of Civil Procedure Rules 10 and 11 and Pima County Local Rule 4.4. They must also conform with the following requirements:

1. Pleadings must be legible and be double-spaced. Typed or computer-generated documents are preferred. Handwritten documents are permitted but must be legible.
2. Pleadings must contain the following information
 - Name, address, phone number of petitioner or attorney
 - Case caption - must include the decedent's or ward's name and his or her date of birth
 - Case number

- Title of the document
 - Name, address, phone number of proposed fiduciary
 - Date signed
 - The signature of the party or the party's attorney
3. Any petition requesting the appointment of a guardian, conservator, or personal representative must be accompanied by a copy of the Court's General Order to the Fiduciary.

Information regarding forms is provided at www.sc.co.pima.az.us
Click on Self-Service forms >Probate/Guardianship



C. NOTICE TO INTERESTED PERSONS; PROOF OF NOTICE

1. What is Notice?

The Arizona Revised Statutes, Arizona Rules of Civil Procedure, and the Pima County Local Rules require that notice be given to interested persons. A party who files a pleading with the court must give notice. Neither the court nor the clerk of court will do that for you. Notice requires that the other interested persons receive the following:

1. A copy of your **pleading**, and
2. A copy of the **Notice of Hearing**, or **Order to Show Cause**, or other **Order** setting the hearing date.
3. The Notice of Hearing must include the **warning** required by Pima County Local Probate Rule 4.11.

The **general** probate notice requirements can be found in A.R.S. §14-1401

Specific notice requirements for **guardianships** are in A.R.S. §14-5309.

Specific notice requirements in **conservatorships** are in A.R.S. §14-5405.

2. Methods for Providing Notice

The type of notice you may be required to give to an interested party will depend on the requirements of the statute. The following is a description of each method.

a. Personal Service

By delivering a copy of the petition and notice of hearing to the person at his or her office or place of residence, if known. If a process server is used, the process

server then files an Affidavit of Service with the court and gives a copy to you.

b. Notice by Mail. A.R.S. §14-1401

Mailing a copy of the petition and the notice of hearing to the person being notified. This can be done by certified, registered, or ordinary first-class mail; and must be sent to his or her office; place of residence, if known; or post office address.


c. Published Notice A.R.S. §14-1401

Notice by publication means publishing notice of the date, time, and location of the hearing in a newspaper of general circulation in the county where the hearing is being held. The Notice must be published three times prior to the hearing. The first notice must be at least 14 days prior to the hearing.



Notice may be given by publication only in the following circumstances:

- i. If the address or identity of the person is not known and cannot be ascertained with reasonable diligence.
- ii. When notice by publication is *required* by law.

	If you do not give the required notice, then any order the court makes will be invalid.
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3. Proof of Notice

After giving notice, you must file a **Proof of Notice**. The Proof of Notice is filed in the court file and is evidence to the court that notice was properly provided. The Proof of Notice must comply with Local Rule 4.11(F) and must include the title of the document given, to whom the notice was given, the method by which notice was given, and the date notice was given. The Proof of Notice must be signed by the person who gave the notice.

5. Filing Documents and Obtaining a Hearing

Each new case opened at the Superior Court is assigned a case number. A file is then created into which documents and orders of the court are placed. Parties to a case may file documents in the court file upon the payment of a filing fee. **Only original documents are accepted for filing by the Clerk of Court.** Court files are kept in the custody of the Clerk of Court and are accessible by the general public. Files cannot be removed from the courthouse.

Documents mailed to or dropped off with the Clerk of Court are simply filed into the court file and will not be set for hearing unless you take the appropriate steps to set the matter for hearing. If you wish to have a hearing regarding the document you are filing, you must request a hearing and provide each interested party with a copy of each document filed. The Judge will not know you have filed a document nor take action on the matter unless you set the matter for hearing on the court calendar.



In order to have a matter decided by the Judge you must have your matter set for hearing. Merely filing a petition will not bring the matter to the attention of the Judge.

A. FILING DOCUMENTS

- File original documents and appropriate filing fee with the Clerk of Court by mailing or delivering to the following address:

Clerk of Court, Probate
Pima County Superior Court
110 W. Congress
Tucson, AZ 85701



You must pay a filing fee for each case in which you appear as a party. All checks must be made payable to the Clerk of the Superior Court.

- The Clerk of Court will not accept faxes or photocopies of documents for filing.
- Include a self-addressed stamped envelope and a copy if you wish to have a copy conformed and returned to you. The court will conform one copy of each document at no charge. The term “conform” means the document is time/date-stamped by the Clerk of Court.

B. OBTAINING A HEARING

1. Types of Hearings

There are two types of hearings: **appearance** hearings, and **non-appearance** hearings. The Judge will determine which type of hearing will be set. You are not required to be present at ‘non-appearance’ hearings. You are required to be present at all appearance hearings.

2. How to Set a Matter for Hearing?

a. Obtaining a Hearing in Person

Step 1 - File your original document(s)

Bring the following documents to the Probate Clerk’s desk in the Superior Court:

- i. Original, plus 1 copy of the document you wish to file (petition, motion, etc.)
- i. Original, plus 1 copy of a Notice of Hearing.
- ii. Two self-addressed stamped envelopes; one for the conformed petition, motion, etc. and one for the conformed Notice of Hearing (make sure you have enough postage).

Step 2 - Hearing Date

The court will insert a hearing date on the original Notice of Hearing and mail a conformed copy back to you, using the self-addressed stamped envelope you provided.

Step 3 - Provide Notice of the Hearing

After you receive your conformed copy of the Notice of Hearing back from the court, you must immediately provide notice of the hearing date, time and location to all interested persons. See Section 3(C) above.

Step 4 - File a Proof of Notice

You must provide proof to the court that you gave adequate notice to interested persons. To do so you must file a Proof of Notice that indicates to whom notice was provided, the date notice was given, and by what method notice was given. If you provide notice by publication; your proof of notice is the Affidavit of Publication from the newspaper that indicates the notice and date(s) of publication.

b. Obtaining a Hearing by Mail

Step 1 - Mail the documents

Mail the following documents to the Probate Clerk's Office (address below).

- i. Original plus 1 copy of any document you wish to file
- ii. Original plus 1 copy of the Notice of Hearing
- iii. A self-addressed stamped envelope (make sure you have enough postage)

Clerk of Court, Probate
Pima County Superior
Court
110 West Congress Street
Tucson, AZ 85701

Step 2 - Hearing Date

The court will insert a hearing date on the original Notice of Hearing and mail a conformed copy back to you, using the self-addressed stamped envelope you provided.

Step 3 - Provide Notice of the Hearing

After you receive your conformed copy of the Notice of Hearing back from the court, you must immediately provide notice of the hearing date, time, and location to all interested persons and then file a Proof of Notice with the court. See Section 4(C) above.

Step 4 - File a Proof of Notice

You must provide proof to the court that you gave adequate notice to interested persons. To do so you must file a Proof of Notice that indicates to whom notice was provided, the date notice was given, and by what method notice was given. If you

provide notice by publication, your proof of notice is the Affidavit of Publication from the newspaper that indicates the notice and date(s) of publication.



You cannot initiate a new case by mail. You must come to court to open a new case.

6. Appearing in Court - DO's and DON'Ts:

DO!

- ✓ Be Courteous. Be as polite to everyone as you want them to be to you.
- ✓ Address people as Mr. or Ms. or Doctor or other appropriate title. Do not refer to people by their first name. Address the Judge as 'Your Honor.'
- ✓ Wear appropriate clothes. Shorts, halter tops and T-shirts are not appropriate. Remove your hat when you enter the courtroom.
- ✓ Wait patiently and quietly until your case is called.
- ✓ When your case is called come forward and announce your presence for the record. When the Judge asks counsel to announce their presence you should state your name and state that you are representing yourself.
- ✓ When a witness is on the witness stand and an improper question is asked, you may stand and say 'Objection, your Honor.' Be prepared to tell the Judge what rule of evidence makes the question objectionable.
- ✓ Arrive several minutes early. If a hearing is set for 9:00 a.m. be in the court room at 8:50 a.m. Otherwise your case may be called and may proceed without you and you may lose the case. If you are late, the matter may be vacated, and you may have to start over or the court might impose a fine or other sanction.
- ✓ Be present. Your absence does not necessarily prevent the case, hearing, or trial from proceeding without you.
- ✓ Be prepared. Have all of your exhibits and documents with you in court. Have copies of any document you intend to offer to the court as evidence.
- ✓ Bring something to write on, you may need to take note of dates, times, and other important information.
- ✓ You should also bring a calendar if you use one for your own appointments.
- ✓ Answer "Yes" or "No" to questions requiring such a response. Do not say "Uh-huh" or "yeah" or nod your head.
- ✓ Obey all orders of the court, including orders to be carried out after you leave the Court.

DON'T!

- ⌘ Do not bring any cell phones or pagers into the courtroom. If they ring, the Judge may order you to leave the courtroom or may confiscate the instrument.
- ⌘ Do not use profanity or vulgarity in the courtroom.
- ⌘ Do not raise your voice to the Judge or to anyone else in the courtroom.
- ⌘ Do not threaten anyone.
- ⌘ Do not make any racist, sexist or ethnic slurs or otherwise demeaning or disparaging remarks about anyone.
- ⌘ The court does not offer child care services. Do not bring children into the Courtroom unless you have another adult to watch the child while you conduct your case.
- ⌘ Do not make any intimidating gestures including any gang signs or signs that may be misinterpreted as gang signs.
- ⌘ Do not interrupt anyone. Let each person speak as directed by the Judge.

Contempt of Court



A Judge may hold a person in Contempt of Court if he or she refuses (either directly or indirectly) to comply with the court's orders, or if a person behaves in a manner which lessens the dignity of the court. A Judge has the authority to hold a person in contempt of court for improper conduct and such conduct may result in a fine or a jail sentence. If a person fails to obey the orders of the court, the Judge could put that person in jail until such time as he or she does comply.

7. How to Find an Attorney

- A. **Pima County Bar Association Lawyer Referral Service**
Telephone: (520) 623-8258.
- B. **State Bar of Arizona**
Telephone: (520) 623-9944.
- C. See **Yellow Pages** of Telephone book under: *Attorneys/Wills, Estate Planning & Probate*.
- D. Ask a **friend co-worker** or **neighbor** for the name of a probate attorney.
- E. Ask **your attorney** from a prior case for a referral to a probate attorney.
- F. **Southern Arizona Legal Aid** - You must qualify financially in order to obtain services from Legal Aid.
Telephone: (520) 623-9461
- G. **Step Up to Justice** - 320 N. Commerce Park Loop, Suite 100, Tucson, AZ 85745; **website:**
www.stepuptojustice.org; Telephone: (520) 276-3396

8. Forms and Instructions

Some, but not all, forms and instructions are available from the following sources:

- A. **Pima County Bar Association** - www.pimacountybar.org
177 N. Church Ave.
Tucson, AZ 85701
Telephone: (520) 623-8258

- B. **Public Computers at the Courthouse**
Computers are available for use by the public on the 2nd Floor of the Courthouse in the Law Library.

- C. **Arizona Probate Code Practice Manual**
For a more comprehensive set of instructions and forms, the Arizona Probate Code Practice Manual may be purchased from the State Bar of Arizona.
Telephone: (602) 340-7321

- D. **Paralegals**
Paralegals may help you prepare forms and follow required procedures. They may **not** represent you in court. See Yellow Pages of the Telephone Book under: Paralegals.

- E. **Pima County Superior Court Website** www.sc.co.pima.az.us
Click on the Self-Service Forms and then click on Probate/Guardianship

- F. **Supreme Court Website** www.Azcourts.gov/probate

- G. **Clerk of Court - Probate Desk**
110 W. Congress
Tucson, AZ 85701
Telephone: (520) 740-3230

9. The Court Calendar

The daily calendar is made available each morning on the TV screens located on the First Floor of the Superior Court Building. The calendar is also available on the Internet at www.sc.co.pima.az.us. Changes to the calendar happen frequently throughout the day, therefore, the online calendar might not be completely up to date.