

Hon. Valerie Wyant, President
Arizona Association of Superior Court Clerks
200 N. San Francisco St.
Flagstaff, AZ 86001
928-679-7615
fotinosj@cosc.maricopa.gov

IN THE SUPREME COURT STATE OF ARIZONA

In the Matter of)	Supreme Court No. R-18-0044
)	
PETITION TO AMEND THE ARIZONA)	COMMENT IN SUPPORT OF
RULES OF PROBATE PROCEDURE)	PETITION TO AMEND THE
)	ARIZONA RULES OF PROBATE
)	PROCEDURE WITH PROPOSED
)	AMENDMENTS

The Arizona Association of Superior Court Clerks (“Clerks”) submits the following Comment in support of the Petition to Amend the Arizona Rules of Probate Procedure (“Petition”) proposed by the Task Force on the Arizona Rules of Probate Procedure (“Task Force”). The Clerks were represented on the Task Force. The Petition seeks to “restyle the existing rules and make substantive changes that help ensure ‘a consistent, predictable, prompt, efficient and just resolution of probate cases.’” The Clerks are in support of the majority of the proposed amendments set forth in the Petition for the reasons set forth in Sections 3 of the Petition. However, in reviewing the Petition and the proposed amendments, the Clerks want to bring the following issues to the attention of the Arizona Supreme Court. The Clerks maintain that some of the proposed rules need additional revisions to allow the Clerks to perform their obligations when it comes to the processing of documents received in probate cases subject to the Arizona Rules of Probate Procedure.

In this Comment, the Clerks only intend to raise those proposed rule changes that the Clerks request clarification on or would like revisions to be implement as part of the proposed amendments.

PROPOSED RULES

Rule 6(c)

In reviewing the definition of a “party” the Clerks have observed that the category of “intervener” should be included as one of the options for the definition of “party.” The omission of “intervener” may have been an oversight on the part of the Task Force.

Rule 7(c)

The new verbiage provides that “[i]f the court grants the petition, the case number will remain the same, but the caption must be amended to reflect that the conservatorship or protective order is for an adult.” The Clerks are opposed to having to “amend” the caption, but instead think it would be more appropriate to have Court Administration, upon the issuance of an Order from the assigned judicial officer, change the nature of action from a minor guardianship or conservatorship to an adult guardianship or conservatorship. At least in Maricopa County, using iCIS, the Clerk is unable to change the caption of a case. Further, if a case is opened in the AJACS system as a Guardianship – Minor case, the Clerk cannot change the case type to Guardianship – Adult.

Rule 8(c)

The Clerks take issue with the fact that under the proposed amendment to Rule 8(c) a party will be permitted to file a confidential document as an exhibit attached to a pleading or motion. The problem with allowing a confidential document to be “attached” to a motion or pleading is it is not the responsibility of the Clerks to separate out

documents that are attached to a publicly-accessible pleading that are to be treated as confidential documents. In other words if a publicly-accessible motion is filed with a Clerk's Office and attached to it are six (6) exhibits, three (3) of which are to be treated as confidential documents, the Clerk would not separate those out from the motion, and the entire motion, along with all of the exhibits would be treated as a publicly-accessible document. The Clerks request that the Rule provide that for certain exhibits to a pleading or motion to be treated as confidential those exhibits will need to be placed in an envelope with the title of the pleading or motion on it as well as the names of the exhibits and the exhibits number.

Rule 9(e)(1)(D)

The Clerks are opposed to having to “replace” a document as such implies that the Clerk will need to remove the original document from the case file and docket and replace it with an alternative or substitute document. The Clerks do not believe that they should be removing and replacing documents from a case file. The Clerks would prefer that Subsection (D) provide that the court may order that “a filed document containing confidential information be sealed and an identical document with confidential information redacted or removed be filed that will be accessible to the public.”

Rule 9(b)

The Clerks believe the reference in the second sentence should be changed to Rule 8(b)(2)(E).

Rule 13(b)

The Clerks would prefer to have a single Probate Information Form that could be used for decedent's estate cases as well as temporary or permanent guardianship or conservatorship cases.

In addition, the current proposed Forms, Forms 11 and 12 are missing the following two fields of information that the Clerks believe should be provided on the Forms: (1) Nature of the Action; and (2) Interpreter Needs.

Rule 13(c)1(A) and (B)

The Clerks would prefer to have a single Notice of Change of Address Form that could be used by fiduciaries and guardians of wards. The Clerks would also like clarification as to whether proposed Forms 12 and 13 are intended to replace the use of Updated Probate Information Form for changes of address for fiduciaries and wards as is currently required by current Rule 10(1)(c). The Clerks believe that such replacement is the intent behind the new Rule, but would like clarification. Further, if this Court is to adopt proposed Probate Forms 12 and 13, it should be noted that Form 13 should be updated to remove the verbiage "OF THE ESTATE OF" and "Deceased."

Rule 14(c)(1)

The Clerks read this proposed amended Rule to mean that subsequent applications and petitions for the same decedent are to be filed into the original, or first given case number, which the Clerks can accomplish. However, the Clerks would like confirmation that a filing fee would still be assessed for the filing of a subsequent or an opposing petition in accordance with A.R.S. § 12-284.

Rule 26(f)

The Clerks are in favor of the requirement that a party submitting a proposed order must include with it copies to be conformed and postage-paid envelopes addressed to each party who has entered an appearance in this case, as probate cases currently are handled manually and do not allow for any eFile component. However, in light of the fact that it is the understanding of the Clerks that at some point in the future eFile may be an option in probate cases, Orders may then not have to be mailed through U.S. Mail, but could be distributed electronically. It may be wise to add in some additional verbiage for electronic distribution of Orders when technologically feasible so as to not have to re-amend the Rules.

Rule 46(b)

The Clerks maintain that the statutory reference in this Rule should be A.R.S. § 14-5315(C), not Subsection (B).

Rule 46(d)

The Clerks maintain that if medical reports are attached to the annual guardianship reports they will NOT be treated as confidential documents under proposed Rule 8, unless the filing party specifically follows the directives set forth in Rule 8(c) and separates the medical reports from the annual guardianship report and places the medical reports in an envelope with the title of the report and the fact that the envelope contains a confidential medical record. The Clerks do not go page by page through annual guardianship reports that are submitted, so if a medical report is attached to the publicly-accessible annual guardianship report, it would not be treated as a confidential document. Because this is a reoccurring issue that the Clerks observe, i.e., medical reports being

