



The Arizona Experience: How the Legislature and the Courts Responded to Public Criticism of Probate Courts

May 3, 2012

Hon. Rosa Mroz

Presiding Judge of Probate and Mental Health

Maricopa County Superior Court, Arizona

The background of the slide is a faded, sepia-toned photograph of a grand classical building. The building features a prominent portico with several tall, fluted columns supporting a heavy entablature. The architecture is reminiscent of neoclassical or Beaux-Arts styles. The image is intentionally faded to serve as a subtle backdrop for the text.

TRAINING AND EDUCATION

Training and Education

Judicial Officer Training

- ❑ *New statute:* Judicial officers presiding over probate cases shall participate in training as prescribed by the supreme court.

Status:

- ❑ Arizona Judicial College recommends computer-based, “Probate 101” course for judges as well as annual (or as needed) program for updates about the law.
- ❑ Maricopa County: mandates training in-house for judicial officers coming into the probate department and annual refresher training at the time of rotations.

Training and Education

Counsel, GAL, and Investigator Training

- New rule requires attorneys serving as court-appointed attorneys or GALs, and court appointed investigators to complete a training course before 1st appointment.
 - Need re-training every 5 years.
 - Requires certificate of completion to be filed with the appointing court.

Status:

- Arizona State Bar is developing and delivering the training.
- Maricopa County: all court-appointed attorneys and GALs must receive training before they are eligible to be placed on the appointment list.

Training and Education

Training for Non-Licensed Fiduciaries

- Requires all non-licensed G/Cs and P/Rs to complete a training program approved by the Supreme Court before letters of appointment are issued, unless ordered by court.
 - Exempts licensed fiduciaries and financial institutions
- Emergency temporary appointment exception: training must be completed within 30 days after appointment or before the permanent appointment, whichever is first
- Maricopa County has an on-line training video for guardians:
<http://www.superiorcourt.maricopa.gov/SuperiorCourt/ProbateAndMentalHealth/guardianship/guardianshipcvt.htm>



**COURT'S INTERACTION
WITH THE PUBLIC**

COURT'S INTERACTION WITH THE PUBLIC

- New statute and rule require the court to provide specific finding as to why a person was passed over for appointment as G/C by person with lower priority upon written request by a party.
 - Request must be made within **10 days after** entry of the order appointing the G/C.

COURT'S INTERACTION WITH THE PUBLIC

- ❑ Supreme Court to rename and expand the Seniors and Probate Website to provide information to all interested persons

- ❑ Supreme Court website:

- <http://azcourts.gov/PublicServices/SeniorsProbateLaw.aspx>

- ❑ Maricopa County: maintains its own website with forms:


- <http://www.superiorcourt.maricopa.gov/SuperiorCourt/ProbateAndMentalHealth/index.asp>

http://azcourts.gov/PublicServices/SeniorsProbateLaw.aspx

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Seniors & Probate Law Probate and Mental Health

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Arizona Judicial Branch

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Seniors & Probate Law

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- Victim Rights
- Self-Service Center
 - Self Service Forms/Guide

[Arizona Attorney General Senior Service Center](#) addresses health care concerns in the event that a senior citizen becomes unable to make those decisions for themselves. This site includes general information about Arizona laws related to incapacity and provides forms with instructions for Durable Health Care Power of Attorney, Living Will, Pre-Hospital Medical Directive, Durable Mental Health Care Power of Attorney, and, Letter to my Agent (Representative).

[AzLawHelp.org](#) has information about civil legal issues, organizations that provide free legal help to low income clients, and other resources for people who can't afford an attorney. Self-help instructions and forms are available to download for people who want to help themselves and for legal aid advocates who want to assist their clients.

[Arizona Revised Statute, Title 14](#) is the section of Arizona law covering a decedent's wills, trusts, estates, guardianships and protective proceedings.

[Law For Seniors](#) is a website which provides contact information for the many services and legal information available to Arizona seniors. The purpose is to act as a starting point for older residents to know options, rights, laws, benefits, and special services available. The site was created by the Arizona Bar Foundation with the specific goal of providing a guide to seniors on laws, policies and procedures which frequently change.

[Fiduciary Licensing Program](#) is designed to help ensure that Arizona's elderly, mentally incapacitated and other

Internet 100%

 Search

- [Probate/Mental Health Home](#)
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Superior Court > Probate And Mental Health

In recent years, the **Probate and Mental Health Department of the Court** has made significant strides and improvements in its quality, efficiency and monitoring capabilities to better serve and protect people unable to care for themselves, including the elderly, minors, mentally ill and wards of the court. Judges and commissioners assigned to the Probate/Mental Health Department oversee more than \$300 million in conservatorship assets each year. With the help of several probate registrars, these judicial officers are also responsible for disposition of 8,000 new probate and mental health matters filed each year in Maricopa County.

At any given time, there are more than 25,000 pending probate cases of all kinds in the county. Although the term "probate" refers only to establishment of the validity of a will, the judges and court commissioners assigned to the Probate Court are responsible for a broad variety of matters in addition to decedents' estates. Most of the new probate cases filed involve decedents' estates. But the vast majority are resolved informally without the involvement of a judge or court commissioner. Only when there is a dispute does the judicial officer have to become involved.

Download Forms from Self-Service Center

NCSC's Report on Probate Reforms
- Click to View -

Probate Improvement Plan
- Click to View -

Probate Case Management Protocol
- Click to View -

Guardianship Training
- Click to View -

Accounting 1,2,3's
- Click to View -

COURT'S INTERACTION WITH THE PUBLIC

Maricopa County Model

Accounting 1-2-3

- Collaborate with Maricopa County Public Fiduciary to provide basic accounting training to non-professional conservators for free every quarter.



COST MONITORING AND CONTROL

COST MONITORING AND CONTROL

- New rule requires fiduciary's attorney to encourage fiduciary to perform the duties that he is authorized to perform on his own rather than through the attorney
 - to reduce legal expenses
 - Example: prepare inventory and appraisement; annual guardian report; annual accounting

COST MONITORING AND CONTROL

Vexatious Conduct

- New rule provides remedies for vexatious conduct:
 - “habitual, repetitive conduct undertaken solely or primarily to harass or maliciously injure another party or that party’s representative, cause unreasonable delay in proceedings, cause undue harm to the Subject Person, or cause unnecessary expense. It does not include conduct undertaken in good faith.”

COST MONITORING AND CONTROL

Vexatious Conduct

- If court finds vexatious conduct, it may order:
 - Prior court approval before vexatious person can file pleadings and other papers;
 - Other parties not required to respond unless court orders; **and/or**
 - Fiduciary, fiduciary's attorney, court-appointed attorney, GAL, trustee or personal representative do not have to respond to that person's future requests for information unless court orders
 - Other civil remedy or any other provision of law also available

COST MONITORING AND CONTROL

Unreasonable Conduct

- New statute allows court to order a person engaging in unreasonable conduct to reimburse fees and costs to the ward's estate.
- Intended to be remedial rather than punitive, so that the ward's estate is not drained due to litigious or unreasonable conduct by another person in the case.
- The conduct that the statute seeks to limit includes (1) unjustified court proceedings, or; (2) unreasonable or excessive demands on a fiduciary, the fiduciary's attorney, court-appointed counsel or representative.

COST MONITORING AND CONTROL

Repetitive Filings

- New statute and rule allows the court to summarily deny repetitive filing on its own or after the filing of a notice.
 - Purpose: limit repetitive litigation or actions which can cause the ward's estate to incur unnecessary costs in having to respond.
- A party may file a notice that another party has made a repetitive filing requesting the same or substantially similar relief in the preceding **12 months**, without detailing a change in circumstances
 - Must be filed no later than the deadline for response/objection
 - Stays the deadline for response/objection until further court orders
 - Must contain title and date of the repetitive filing, title and date of earlier filing, and date of the court's ruling on the earlier filing

COST MONITORING AND CONTROL

Prudent Management Of Costs

- New statute and rule require fiduciaries to:
 - prudently manage costs;
 - preserve assets; and
 - protect against any costs that exceed the probable benefits
- Unless directed by the governing instrument or court order
 - Example: trust documents

COST MONITORING AND CONTROL

Prudent Management Of Costs

- Requires GAL, G/C, G/C's attorney, or Subject Person's attorney to timely disclose that projected costs of complying with a court order may exceed the probable benefits to the Subject Person, estate or trust.
- Court can enter or modify orders to protect or further best interest of the Subject Person, estate or trust against projected costs that exceed probable benefits.

COST MONITORING AND CONTROL

Prudent Management Of Costs

- Court and fiduciary may consider market rates for goods and services:
 - during initial appointment of a fiduciary or attorney;
 - at hearings on budget objections;
 - requests to substitute fiduciary or attorney.
- Court may order competitive bids for goods or services.

COST MONITORING AND CONTROL

Guardian Ad Litem Appointment

- New rule clarifies GAL appointment process
- Appointment order shall state reasons for appointment, and duration of the appointment
- Assumes that GAL is one more person who needs to get paid from the estate.

COST MONITORING AND CONTROL

Substitution of Fiduciaries

- New statute allows substitution of G/C without finding of improper conduct.
 - Purpose: allows the court to substitute a fiduciary simply because it's in the ward's best interest due to personality conflicts between the fiduciary, the ward or other interested persons in the case if it's in the ward's best interests to do so.
- G/C and G/C's attorney may be compensated to defend against a petition for substitution only upon petition and only for the amount ordered by the court.

COST MONITORING AND CONTROL

Substitution of Fiduciaries

- Ward may petition for substitution of G/C at any time.
- Interested persons can only petition for substitution of G/C **once a year** unless court has reason to believe that there is issue of endangerment to the ward/estate.

COST MONITORING AND CONTROL

Alternative Dispute Resolution

- New statute and rule allows the court to order parties to participate in any form of ADR, including arbitration.
- Requires parties to:
 - Participate in good faith
 - Confer in person or by phone about ADR within **30 days** after the matter becomes contested.
 - Notify court re: outcome within 15 days after the conference.

Maricopa County Probate Department Statistics as of 2/29/12

- Number of Probate Cases 24,180
 - Wills and Trusts 8,203
 - Guardianship only 4,230
 - **Adult Conservatorship** **2,257**
 - Minor Conservatorship 9,490
- Number of Mental Health Cases 2,815
- Number of Judicial Officers 12

COST MONITORING AND CONTROL

Alternative Dispute Resolution: Maricopa County Model

- Early resolution saves litigation costs.
- Case management protocol requires early settlement conference as soon as case becomes contested unless cost of ADR exceeds its benefit.
- Our court offers free ADR through use of court commissioners, retired judges, and judge pro tems.
- Approx. 50% settlement rate

COST MONITORING AND CONTROL

Alternative Dispute Resolution: Maricopa County Model

- If case does not settle, it is assigned from a commissioner to a judge for trial at the earliest possible time.
- Strive to resolve G/C cases within 90 – 120 days.

COST MONITORING AND CONTROL:

Maricopa County Model

Web-X

- Using the internet for court appearances
 - Termination of minor conservatorships
 - Wards who are unable to travel to court
- Goal: save on cost of appearance hearings

COST MONITORING AND CONTROL

Sustainability of the Estate

- New rule requires conservators for an adult to disclose whether annual expenses exceed income:
 - If yes: Are assets available less liabilities sufficient to sustain the conservatorship during the protected person's projected lifespan?
 - If no: conservator must disclose management plan.
- Unless ordered by the court, conservator shall disclose information required by this rule, including assumptions and calculations.
- When disclose?
 - At time of inventory
 - At time of annual account
 - Following any material changes in circumstances

COST MONITORING AND CONTROL

Use of Budgets

- New rule requires conservators for adult to create and follow a budget
 - unless the court orders otherwise.
 - Permits court to enter order that the court finds to be in the protected person's best interest that:
 - Limits expenditures; or
 - Requires conservator to proceed in any other lawful manner

COST MONITORING AND CONTROL

Use of Budgets

- Must be filed at time of filing of inventory and at each annual account
- Conservator must file amendment to the budget within **30 days** after reasonably projecting that expenditures in any specific category will exceed the approved budget by a threshold prescribed by the Arizona Supreme Court
- Must be provided to all persons entitled to a copy of the conservator's annual accounts

COST MONITORING AND CONTROL

Use of Budgets

- Interested person may file written objection to budget (or amendment) within **14 days** after the budget (or amendment) is filed.
 - Conservator has burden of proving that a contested budget item is reasonable, necessary and in the best interest of the protected person.
 - If an interested person fails to timely object, the budget item is deemed presumptively reasonable at the time of conservator's account.

COST MONITORING AND CONTROL

Use of Budgets

- Court may overrule all or part of the objection, order a reply to be filed, or set a hearing.
- Court may set a hearing or order that a budget is accepted in absence of an objection.
- Court may approve, disapprove, or modify the budget to further the protected person's interest.

COST MONITORING AND CONTROL

Role of Protected Person's Attorney

- Presumes that protected person's attorney is not discharged unless the court finds cost of continued representation exceeds probable benefits.
- Imposes continuing duty on protected person's attorney to monitor conservator's inventory, budgets and accounts until attorney is discharged.

COST MONITORING AND CONTROL

Basis for Compensation

- New statute and rule require G/C, attorney, or GAL who intends to be compensated from the ward's estate to give written notice of the basis of such compensation when they first appear in a case and at least 30 days before they change their rates.
- Purpose: By giving everyone early notice as to the kind of fees and costs that are likely to be incurred, it will:
 - reduce the “sticker shock” when the fee petitions are filed
 - make interested persons more mindful of the demands placed on attorneys and fiduciaries in light of the fees they are expected to be charging the estate.

COST MONITORING AND CONTROL

Basis for Compensation

- Mandates that compensation sought must be reasonable and necessary considering the listed factors in the statute.
 - Burden of proving reasonableness is on person seeking compensation.
- Requires the court to follow the statewide fee guidelines when determining whether fees are reasonable.

COST MONITORING AND CONTROL

Statewide Fee Guidelines

To be adopted by 9/1/12

Current law requires court to consider time and labor required; novelty and difficulty of issues; level of skill necessary, fees customarily charged, size of the estate, benefit to the estate, etc...

Actual practice and attorney/fiduciary expectations: $\text{time expended} \times \text{billing rate}$.

COST MONITORING AND CONTROL

Statewide Fee Guidelines

Competing proposals:

- Probate Committee: Statewide Fee Guidelines which set out billing guidelines, points of reference, and compensation factors.
- Maricopa County Superior Court: Fixed hourly rate and fee structures for attorneys, paralegals and fiduciaries
 - modeled after Harris County guidelines
 - Rates based on biennial survey by the State Bar
- Maricopa County Superior Court: Cap on total fees based on size of the estate

COST MONITORING AND CONTROL

Time Limits

- New statute and rule state that attorneys and GAL fees that are not timely submitted to the conservator are deemed waived.
- Statute establishes a deadline of 4 months
- Only applies to G/C cases.

COST MONITORING AND CONTROL

- New rule requires conservators to file budgets, accountings, and sustainability calculations on standardized forms.
 - to increase judicial oversight of conservatorships
 - to bring uniformity and comparability to judicial oversight of conservatorships.
- These forms are still being developed.

COST MONITORING AND CONTROL

Information to Interested Persons

- New statute requires conservator to attach a copy of the ward's consumer credit report to inventory
 - Must be dated within 90 days before the filing of the inventory
- Persons entitled to notice of the conservator's annual account may request in writing to conservator that they be provided with a report of receipts and disbursements, or be allowed to view and/or be provided with copies of the ward's financial records & conservator's and conservator's attorney's billing statements.
 - Can request not more than once every 30 days
 - Conservator must provide information no later than 30 days after receiving the request.



Judicial Oversight

Judicial Oversight

Minor to Adult Guardianship

- If the court believes that the minor has a disability or impairment that may require the minor to have a guardian after his 18th birthday, then court **shall** set a status conference not less than 90 days before the 18th birthday to see if a petition for adult guardianship needs to be filed.

Judicial Oversight

The background of the slide features a faded, sepia-toned image of a grand classical building with prominent columns and arches, likely a government or judicial structure.

- New rule provides for various remedies and sanctions for a fiduciary's failure to comply with legal requirements or court orders:
 - Order to Show Cause
 - Suspending/terminating G/C's authority to act
 - Issuance of fiduciary arrest warrant

Judicial Oversight

Maricopa County Model: Compliance Calendar

- Goal: provide timely monitoring of court orders
- Court held once a week
- Types of court orders being monitored:
 - Post bond & issue letters of appointment within 10 days
 - File proof of restricted accounts & recorded restriction on real property within 30 days
 - File Inventory and Appraisement within 90 days
 - File proof of receipt, use or repayment of funds within 30 days
 - File proof of annuity contract within 30 days

Judicial Oversight

Conflict of Interest

- New rule precludes petitioner for G/C from nominating a specific attorney to represent the subject person unless:
 - Good cause; or
 - Attorney has an existing or prior attorney-client relationship with subject person.

Judicial Oversight

Conflict of Interest

- New rule: Attorney cannot serve as subject person's attorney or GAL if attorney has an existing attorney-client relationship with the nominated or appointed fiduciary (even in a different matter)
- unless ordered by the court.

Judicial Oversight

Conflict of Interest

- New statute: Court appointed investigator & persons/entities closely related to the investigator shall not serve as fiduciary, attorney or professional in the same case.
- Maricopa County practice: Not limited to the same case. We also do not appoint court accountants or persons/entities related to the accountant to serve as fiduciary, attorney or professional.

Judicial Oversight

Protection of Person: Maricopa County Model

Guardianship Review Program

- currently uses volunteers to visit wards (2% coverage).
- Visit every ward using a risk assessment model
- includes a more professional investigative unit attached to Probate Court to investigate every complaint of whatever nature concerning a ward or protected person under supervision of the court.

Judicial Oversight

Protection of Person/Assets

- New rule requires every order appointing a G/C or P/R to contain the following language:

“Warning: this appointment is not effective until the letters of appointment have been issued by the clerk of the superior court.”

Judicial Oversight

Protection of Assets

- New rule requires orders appointing G/C or P/R to plainly state any restrictions on the fiduciary's authority to manage estate assets.
- Unless ordered by the court, any letters that issue shall contain the following language: “Funds shall be deposited into an interest bearing, federally insured restricted account at a financial institution engaged in business in Arizona. No withdrawals of principal or interest may be made without certified order of the superior court. Unless otherwise ordered by the court, reinvestment may be made without further court order so long as funds remain insured and restricted in this institution at this branch.”

Judicial Oversight

Protection of Assets

- New rule requires fiduciary to file proof of restricted account **within 30 days** of order, unless ordered by the court.
- Burden on attorney who is representing the fiduciary, subject person, or insurance company and who receives any proceeds for the subject person's benefit to ensure that the restricted account:
 - is established
 - is properly titled
 - money safely deposited
 - proof of restriction is timely filed with the court.

Judicial Oversight

Protection of Assets

- New rule requires orders appointing G/C or P/R to plainly state any restrictions on the authority to sell, lease, encumber or convey real property of the estate.
- If there are restrictions, and unless ordered by the court, the order shall contain the following language: “No realty shall be leased for more than one year, sold, encumbered or conveyed without prior court order.”

Judicial Oversight

Protection of Person/Assets

- New rule requires the clerk of the court to ensure that language restricting the G/C and P/R's authority in the court's order of appointment appears in the letter of appointment.

Judicial Oversight Protection of Assets

- New statute and rule requires conservator to file and record a certified copy of the letter in all counties, **in any state**, where the estate owns real property.
- Conservator is required to file copy of recorded letters **within 30 days** after the county recorder has issued the recorded letter.

Deferred for Further Study

- Proposal establishing the fiduciary's authority to file documents directly with the court and appear in court proceedings without legal representation
- Supreme Court to address fiduciary's authority to act without an attorney under the Arizona Code of Judicial Administration.

Deferred for Further Study

- Proposal requiring court investigators to perform a risk assessment during the pre-appointment investigation of a subject person to suggest to the court what level of post-appointment monitoring should occur in guardianships
- Supreme Court waiting for evaluation and testing of the proposed risk assessment tool.

Deferred for Further Study

- Proposal requiring the conservator to submit a Good Faith Estimate of all projected monthly costs with a petition for conservatorship
- Supreme Court developing sample Administrative Order authorizing individual counties' Superior Courts to establish pilot programs.