Maricopa County Superior Court
Probate Court Department

Case Management Improvement Plan For

Adult Guardianship and Conservatorship Cases

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I. Introduction.

In June 2010, the Probate Department commenced an internal assessment of guardianship and conservatorship processes and procedures to enhance accountability of estates, reduce costs, and improve services to the public. This assessment arose out of a routine reevaluation that occurred with the recent change of leadership at the Maricopa County Superior Court, consideration of the *Comprehensive Probate and Mental Health Department 2010-2015 Strategic Plan* approved by the Superior Court Judicial Executive Committee in June 2010, and in response to heightened public scrutiny of the Probate Court.

This review requires a comprehensive look at all of the Probate Department's processes and procedures applicable to guardianship and conservatorship cases. Some of the needed changes have already been implemented, some are in the design stage, and others will require statutory changes by the Arizona legislature or rule changes by the Arizona Supreme Court. The process of improvement is by its nature perpetual, and the Maricopa County Superior Court has always, and will continue to, strive for excellence in providing the public with the best judicial system possible. The initiatives in this plan are not exhaustive of changes that may need to occur, but represent only an initial analysis of Probate Court. The Maricopa County Superior Court has also commissioned the National Center for State Courts (NCSC) to conduct an in-depth study of adult guardianship and conservatorship cases handled by the Probate Court, and this plan will need to be supplemented to properly address any new issues identified by the National Center team.

Additional modifications may also be required as a result of possible rule changes from the Arizona Supreme Court anticipated from recommendations from the Committee on Improving Judicial Oversight and Processing of Probate Matters established by the Supreme Court Administrative Order No. 2010-52 on April 30, 2010. The Committee is tasked to:

1) "consider if any changes to applicable statutes and court rules would help streamline the process for cases in which an incapacitated or vulnerable child reaches the age of majority and is in need of a guardian";

2) "examine the current procedures, court rules, statutes, and training of judicial officers and make recommendations for any needed improvements";

3) "develop statewide fee guidelines for professional fiduciaries and court-appointed attorneys in probate matters";

4) "make recommendations on a process for reviewing and awarding fees and, where a dispute regarding the fees arises, alternative dispute resolution options that provide timely and less costly resolution of the fee dispute"; and

5) "review and consider the National Center for State Courts Report, 'Adult Guardianship Court Data and Issues: Results from an Online Survey, March 2,

2010,' and determine if any of its recommendations should be implemented in Arizona."

Although this statewide Committee is examining probate procedures and processes for all Probate Courts throughout Arizona, it provides an opportunity to explore valuable information and proposals for statutory and rule changes that can only be enacted by the Arizona Legislature or promulgated by the Arizona Supreme Court to assist improvements to the Maricopa County Probate Court.

II. Probate Court Cases.

The term "Probate Court" is used generically to reference the court that hears not only estate probate and intestate matters, but also a variety of other cases traditionally handled by the court. The nature of many of these "probate" cases requires them to remain pending in the court for a number of years. Although the court has entered rulings and addressed all pending issues in these cases, they remain pending until all annual accountings or future petitions are filed, the estate is fully administered, the protected minor reaches majority, the ward is no longer incapacitated or dies, or the protected adult is no longer in need of protection. The longevity of these cases requires continuing court oversight and resources until termination. A total of 5,469 new cases were filed in the Probate Court in fiscal year 2010 (July 1, 2009 to June 30, 2010). The most recent statistical report for the Department indicates the type and number of pending cases currently managed by the court:

Type of Case	Number of Cases Pending July 31, 2010
Estate Probate & Trust Administration	9,344
Conservatorship of Minor	9,082
Conservatorship of Adult	303
Guardianship of Minor	1,970
Guardianship of Adults	2,989
Guardianship of Adult with Mental Health	651
Guardian/Conservator of Minor	1,577
Guardian/Conservator of Adult	1,725
Guardian/Conservator of Adult with MH	227
Adult Adoptions	9
Mental Health Cases	2,582
Total	30,459

These statistics indicate that approximately 60% (18,524) of the pending probate case load is comprised of guardianships and/or conservatorships, with 31% (5,895) involving adult incapacitated or protected persons. Since 2007, the Probate Department has sustained a 33% cut in administrative positions and no additional judicial officers have been added until the recent establishment of a

second probate judge calendar. The probate case load is unique to the court because new cases filed each year are added to cases filed in prior years that still require at least annual attention for a number of years to review annual accountings and other issues that come back to the court. In times of serious budgetary constraints it is an increasing challenge to ensure all 30,000 probate cases receive the desired level of supervision.

It is also important to recognize that the fundamental systems and processes of the Probate Court are structurally sound, and operate efficiently and fairly in the vast majority of these cases filed or reviewed each year. The Probate Court has hard working judicial officers, administrators, examiners, accountants and investigators that strive every day to provide professional monitoring and oversight of the tens of thousands of cases for which they have responsibility. For every case that critics may find objectionable, there are thousands of cases that proceed through the Probate Court from year to year without incident, criticism, or unreasonable expense to the litigants. The vast majority of guardianship and conservatorship cases receive proper oversight and monitoring. This fact was recognized in December 2007 when the AARP Public Policy Institute issued a detailed report entitled *Guarding the Guardians: Promising Practices for Court Monitoring* (http://assets.aarp.org/rgcenter/il/2007_21_guardians.pdf) that reported the results of a detailed study of four exemplary probate courts nationally. One of the probate courts cited in the study as "exemplary" by AARP was the Maricopa County Probate Court. The study reported findings with respect to how the Maricopa County Probate Court monitors guardianship and conservatorship cases in the face of declining budgets and staff, as follows:

> In recent years, while the number of cases has grown, the number of staff has remained stable or decreased, so the Department has sought creative ways to maximize staff and technological resources. Highlights include its case management functions, investigators, volunteer monitors, accountants, use of bonding and restricted accounts, and monitoring database.

The scope of this plan is currently focused primarily on adult guardianship and conservatorship cases. Any need for improvement in decedent estate cases, mental health matters, minor guardianships, minor conservatorships, and the miscellaneous hybrid or consolidated cases handled by the Probate Court will be largely identified in a routine review in of these areas in the near future in conjunction with upgrading of the court's case management system.

Further refinement to this plan may also be required as the NCSC completes its study and recommendations and further data is compiled by court administration, but there is currently general consensus of the Probate bench that improvement in several aspects of adult guardian and adult conservator cases is needed as soon as possible. Specifically, there is a need to reduce the

cost and complexity of the adult guardianship and conservatorship processes, and to improve oversight and accountability of these processes.

III. Initiatives to Reduce Cost & Complexity of Adult Guardianship & Conservatorship Cases.

To effectively reduce the costs charged to the estates of protected persons and wards, it is necessary to review all of the financial expenditures from an estate, the reasons they are incurred, whether they can be reduced, and, if so, how best to accomplish a reduction. In this review, we can group these costs into two broad categories: 1) the costs and charges to an estate to care for the ward including room and board, medical and dental treatment, transportation, comfort care services, and similar expenses; and 2) costs and fees associated with the court process itself in both guardian and conservator proceedings primarily consisting of attorneys fees and costs to represent a fiduciary or party to the proceeding, accounting fees to account for estate assets, and fees charged by fiduciaries to provide services to the ward or incapacitated person.

<u>Initiative 1</u>: Encourage statutory changes to A.R.S. §14-5311 and §14-5410 to allow more flexibility to appoint fiduciaries at a lower cost to the estate by placing more emphasis on appointment of qualified family members, more heavily considering the financial impact of the appointment on the estate, and specifically clarifying that non-profit organizations and the public fiduciary may be appointed more often in appropriate cases.

A fundamental element required to preserve the estate of a protected person is the appointment of a fiduciary with good character who will act with integrity to properly care for the ward and manage assets of the estate in the best interests of the incapacitated or protected person. Not all families are able to care for their incapacitated or protected relatives due to financial, physical, emotional, geographical, or other constraints. When a relative is available to be appointed who has the requisite ability and character, the ward will be properly cared for, and the risk is reduced that the estate will be dissipated with unreasonable or unnecessary expenditures.

Most guardianship and conservatorship proceedings that are filed require prompt action to appoint a fiduciary to meet the needs of a person who has recently become incapacitated or in need of protection, but care must be taken in the first instance to ensure that the most qualified fiduciary willing to serve is appointed. In this area it may be appropriate to propose legislation to require broader use of fingerprinting and credit checks to better limit the appointment of inappropriate fiduciaries, and minimize future litigation seeking the removal of a fiduciary. The committee is informed that such legislation is currently being considered by the Supreme Court probate committee so further recommendation will not be provided in this plan.

Litigation to remove a fiduciary can severely dissipate estate assets. Taking the time and care necessary to appoint the most qualified fiduciary at the outset will reduce unnecessary expenditures from the estate caused by litigating the fitness and performance of a questionable fiduciary, even if the fiduciary is qualified or has greater statutory priority.

Not all persons in need of care or protection have suitable relatives to serve in a fiduciary capacity, but where one exists, the cost to provide care to the ward and management of estate assets will almost always be significantly reduced by the appointment of a qualified relative. Relatives have long been willing and able to do what private fiduciaries cannot do by providing services to their incapacitated or protected relative with modest, and often no, financial benefit to themselves. When the absence of a qualified relative requires reliance on profit-centered private fiduciaries, the market forces of competitively bid contracts should be utilized to provide a more cost-efficient alternative for care than presently exists. In addition, the size and dynamics of some estates would be better served by utilizing the services of a non-profit fiduciary or the public fiduciary at a reduced cost. These options should be included as statutory priority options to encourage non-profit organizations to increase their presence in providing such services and clarify the ability of the court to appoint such organizations and the public fiduciary in circumstances where appropriate relatives are not available for appointment.

Statute changes that would expand appointment options for the courts and weigh more heavily the financial cost to the estate as a factor in the appointment are proposed as follows:

A.R.S. §14-5311. <u>Who may be guardian; priorities.</u>

A. Any qualified person may be appointed guardian of an incapacitated person, subject to the requirements of section 14-5106.

B. The court may consider the following persons for appointment as guardian in the following order:

1. A guardian or conservator of the person or a fiduciary appointed or recognized by the appropriate court of any jurisdiction in which the incapacitated person resides.
2. An individual or corporation nominated by the incapacitated person if the person has, in the opinion of the court, sufficient mental capacity to make an intelligent choice.
3. The person nominated in the incapacitated person's most recent durable power of attorney.
4. The spouse of the incapacitated person.
5. An adult child of the incapacitated person.

6. A parent of the incapacitated person, including a person nominated by will or other writing signed by a deceased parent.

7. Any relative of the incapacitated person with whom the incapacitated person has resided for more than six months before the filing of the petition.

8. The nominee of a person who is caring for or paying benefits to the incapacitated person.

9. If the incapacitated person is a veteran, the spouse of a veteran or the minor child of a veteran, the department of veterans' services.

10. A not-for-profit organization or entity authorized to provide fiduciary services.

11. The public fiduciary.

12~~10~~. A fiduciary, guardian or conservator.

C. A person listed in subsection B, paragraph 4, 5, 6, 7 or 8 may nominate in writing a person to serve in that person's place. With respect to persons who have equal priority, the court shall select the one the court determines is best qualified to serve.

D. For good cause the court may pass over a person who has priority and appoint a person who has a lower priority or no priority. "Good cause" includes the estimated cost of the fiduciary's fee and the ability of the ward to pay the fee without adversely affecting the ward's financial ability to provide for the ward's reasonable and necessary living expenses.

E. If a person listed in subsection A, paragraph 4, 5, 6, 7 or 8 of this section is unavailable to serve as guardian, the court may appoint the public fiduciary.

A.R.S. §14-5410. Who may be appointed conservator; priorities.

A. The court may appoint an individual or a corporation, with general power to serve as trustee, as conservator of the estate of a protected person subject to the requirements of section 14-5106.

The following are entitled to consideration for appointment in the order listed:

1. A conservator, guardian of property or other like fiduciary appointed or recognized by the appropriate court of any other jurisdiction in which the protected person resides.

2. An individual or corporation nominated by the protected person if the protected person is at least fourteen years of age and has, in the opinion of the court, sufficient mental capacity to make an intelligent choice.

3. The person nominated in the protected person's most recent durable power of attorney.

4. The spouse of the protected person.

5. An adult child of the protected person.

6. A parent of the protected person, or a person nominated by the will of a deceased parent.

7. Any relative of the protected person with whom the protected person has resided for more than six months before the filing of the petition.

8. The nominee of a person who is caring for or paying benefits to the protected person.

9. If the protected person is a veteran, the spouse of a veteran or the minor child of a veteran, the department of veterans' services.

10. A not-for-profit organization or entity authorized to provide fiduciary services.

11. The public fiduciary.

12~~10~~. A fiduciary, guardian or conservator.

B. A person listed in subsection A, paragraph 4, 5, 6, 7 or 8 of this section may nominate in writing a person to serve in that person's place. With respect to persons having equal priority, the court shall select the one it determines is best qualified to serve. The court, for good cause, may pass over a person having priority and appoint a person having a lower priority or no priority. "Good cause" includes, but is not limited to, the estimated cost of the fiduciary and other professional fees and the ability of the protected person to pay the fee without adversely affecting the protected person's financial ability to provide for the protected person's reasonable and necessary living expenses.

C. If a person listed in subsection A, paragraph 4, 5, 6, 7 or 8 of this section is unavailable to serve as conservator, the court may appoint the public fiduciary.

Initiative 2: Seek statute and/or rule changes to require any person or entity seeking appointment as a Guardian or Conservator to disclose in the petition or in a notice filed no later than the first hearing a reliable estimate of the total monthly costs and fees that will be incurred until the next annual accounting is timely filed and approved, with specific monthly components expenses for:
1) Monthly cost of housing & care of the ward;
2) Monthly cost of comfort care services;
3) Monthly fiduciary fees & expenses to be charged by the Guardian and/or Conservator;

4) Monthly attorneys' fees expected to include the next annual accounting proceeding on a pro rata basis and a separate amount for the initial proceeding through the appointment of the Guardian and/or Conservator;
5) Monthly accounting fees expected to include the next annual accounting proceeding on a pro rata basis;
6) The initial cost to prepare the inventory and appraisement; and
7) Any extraordinary or unusual costs or expenses anticipated for the next year pro rated, on a monthly basis, with a detailed explanation of the request.
Once approved by court order, the fiduciary would not be authorized to exceed the cumulative monthly estimates without prior court order except for taxes owed by and reasonable and necessary medical and dental expenses of the ward or protected person.

There are multiple reasons why the court and all interested parties should be aware of the estimated costs and fees to be incurred by the estate before they are actually committed or expended. First, the incapacitated or protected person to the extent of their ability, and that person's relatives should be fairly and accurately apprised of the cost of various care options prior to the appointment to enable them to assess realistic options. A ward and the ward's family may predictably desire the ward be placed in a care facility that offers a wide range of costly amenities and options, but when confronted with the cost of the options and considering the number of years such care may be required, all interested parties may come to favor a more modest option that will provide adequate care for a much reduced cost and for a longer period of time. Similarly, retaining a private fiduciary may appear to be an attractive option to employed relatives of an incapacitated person, but in evaluating the cost of such care in light of their income from employment, a relative may well decide to curtail employment to some degree for a time to care for an incapacitated person with a much more modest payment to the relative to compensate for the loss of employment income.

Making all parties aware of these estimated costs should also help reduce future acrimony and litigation between family members. If family members see large unanticipated reductions in the estate on an annual basis, it is predictable in some cases that significant tension and litigation may ensue as they attribute the reductions to ulterior motives or inappropriate actions. If everyone is fully notified of the various options with reliable and reasonable estimates of realistic future care costs, the resulting reductions in the estate will be anticipated and much less likely the subject of litigation.

The court is also vitally interested in the various options to care for the ward that will serve the best interests of the ward, avoid unnecessary expenditures from the estate, and preserve the estate for the longest possible period of time. Having realistic and informed options available is extremely important to the court in the selection of an appropriate fiduciary, considering the

imposition of spending restrictions, and taking other actions to help preserve the estate of the ward. Requiring estimates within seven customary expense categories will also help to establish a reasonable "market" value for reasonable charges and better acquaint judicial officers with a wider range of options when making future appointments informed by the knowledge of what care is realistically available and at what costs without the confusion of innumerable cost centers and charges.

Prior disclosure of estimated costs in an understandable format is also needed to provide transparency to the cost of care, and to avoid the estate being subject to unanticipated charges, surcharges and undisclosed costs. Each person and entity acting as a fiduciary has different ideas on how to charge and account for costs and fees charged to the estate. A standardized accounting methodology is needed to bring uniformity and comparability to this process. The care of each ward and incapacitated person has much in common with others similarly situated that supports standardization of accounting processes in this area. At the core, each incapacitated person will reside in a home, residence or care facility of some type, and a cost will be incurred. The reasonable cost for an appointed fiduciary to care for the ward and manage the estate is similarly predictable, as are the anticipated costs for an appointed attorney to represent interested parties, and, in some cases, for an accountant to prepare the annual accountings. These costs are easily grouped into a standardized accounting format.

The cost of comfort care services may be broadly defined and includes many costs and services, some predictable and others extremely discretionary. It is necessary to track this category separately to prevent unreasonable expenditures. It is predictable that a caregiver will need to transport a ward for doctor visits, pick up prescriptions, open mail, and perform other repetitive tasks. All such required services should be statutorily included within a quoted amount for housing and care. Discretionary expenses that are not required for survival, but may significantly improve the quality of life should be summarized in one group and compared to subsequent accounts in the estate and in similarly situated estates. Such grouping of these highly discretionary expenses into one category will provide better accountability and allow the court to more readily identify unreasonable costs in this area.

A fiduciary has broad discretion in selecting the extent and level of service required to honor the fiduciary's legal duty and preserve the assets of the estate to the maximum extent. Sometimes, tension exists in these differing goals, but moving to a system of predictability and uniformity will reduce the tension, make the process more transparent and understandable, and reduce the cost to the estate in a significant number of estates, particularly those with complex accountings and significant asset portfolios.

Certainly there will be those who believe six categories of costs and a seventh "catch-all" is too simplistic in the complex world of conservator asset management. Our experience is to the contrary. With thousands of estate accountings to review, it is much more difficult for a judicial officer to make a thorough assessment of the accounting in a reasonable time period when accountings are presented in different formats with infinite variations of complexity. A standardized format in the order of appointment whose expense categories are mirrored in the annual accounting will allow each judicial officer to discern at a glance the amounts and trends in each category. The additional designation of appropriate subcategories and requiring submission of specific back-up documentation with each accounting commensurate with the size, complexity and characteristics of the estate will provide sufficient additional detail to audit and validate the summary form accounting document and maintain integrity of the accounting.

Some will argue that the future costs of care cannot possibly be predicted with precision at the beginning of a case. This is more likely to be true with unsophisticated family members who are unfamiliar with the costs of caring for incapacitated persons as well as with the court process. Most people faced with the prospect of turning over the care of their loved one to others, however, are forced to quickly become educated on the cost of care out of necessity. For others, it is in the best interests of their family member and vital for planning purposes to immediately discover and compare the various options and costs to care for their loved one. Frankly, if a person or entity is going to serve competently as a fiduciary they will be required to become knowledgeable on the costs of various care options prior to contracting for such services. Professionals who make their living caring for others are already familiar, if not expert, in predicting these costs. Indeed, many would criticize some professionals for being too good at the process by creating too many profit centers and separate costs that may cumulatively burden the estate unreasonably.

Few fiduciaries will be able to predict in advance the exact cost of care within the identified categories, and some may be reticent to do so for fear of being held to these amounts in the next annual accounting. Indeed, in order to maintain the integrity of estate assets, there should be a strong presumption and expectation that the fiduciary will not stray in significant measure from the estimated amounts. Modest variances should be allowed, and unpredictable events that significantly increase costs in the ward's best interests deserve some deference, but significant deviations from the estimated costs should be closely scrutinized and should normally be submitted for prior court approval prior to being incurred. The order of appointment should require no amounts be expended beyond the authorized estimates, excluding required taxes, medical and dental costs. Since the order would authorize a monthly expenditure for the listed categories, the conservator would have continuing authorization to care for the ward for a short time beyond 12 months at the same expenditure level to

allow time for the annual accounting to be reviewed and approved and a new expenditure order entered, provided the annual accounting is timely filed.

Accordingly, A.R.S. §§ 14-1201, -5303, -5304, 5404, -5407, and -5419 should be amended as follows:

A.R.S. §14-1201. Definitions.

In this title, unless the context otherwise requires:

1. – 6. [no change]

7. "Comfort care" means all discretionary personal care provided to a ward or incapacitated person other than housing, utilities, person hygiene or care, medical or dental treatment, medication, food, nourishment, transportation, insurance and taxes that is not essential for survival but is designed to improve the quality or prolong the enjoyment of life of the ward or incapacitated person.

8. – 60. [no change except renumbering]

A.R.S. §14-5303. Procedure for court appointment of a guardian of an alleged incapacitated person.

A. [no change]

B. The petition shall contain a statement that the authority granted to the guardian may include the authority to withhold or withdraw life sustaining treatment, including artificial food and fluid, and shall state, to the extent known:

1. - 8. [no change]

9. A reliable estimate of all monthly costs associated with the guardianship that will be necessary to care for the ward until the first or next accounting is timely filed and approved, with separate reliable monthly estimates for:

a. The average monthly cost of housing and care of the ward;
b. The average monthly cost of comfort care services for the ward;
c. The average monthly fiduciary fees and expenses expected to be incurred by the guardian;

d. The amount of attorneys' fees incurred and expected to be incurred by all appointed attorneys through the issuance of a court order appointing a guardian as requested in the petition;
e. The average monthly attorneys' fees and expenses expected to be incurred by all appointed attorneys until the approval of the first or next accounting;
f. The average monthly accounting fees and expenses expected to be incurred by all accountants or other professionals preparing accountings until approval of the first or next accounting;
g. The expected cost to prepare the initial inventory and appraisement if required by §14-5418; and
h. The average monthly costs of all other miscellaneous costs or expenses not listed in paragraphs a through g above with a detailed explanation of requested cost or expense.

In the event the petitioner is unable to provide reliable estimates of any of these amounts in the petition, the petitioner shall state in the petition all detailed efforts made by the petitioner to obtain the estimates, and shall thereafter file and provide a written notice containing such reliable estimates to all persons listed and in the manner provided in §14-5309 at least five (5) judicial days prior to the first hearing scheduled to consider the appointment of a temporary or permanent guardian.

10. When the appointment of a guardian other than those listed in §14-5311, subsection B, paragraph 4, 5, 6, 7, 11 or 12 is sought, the petitioner shall submit with the petition a competitive bid signed by a person or entity unrelated to the person or entity for which appointment is sought covering the average monthly cost the person or entity bidding would charge for the housing, care and comfort services of the ward, and a separate competitive bid signed by a person or entity unrelated to the person or entity for which appointment is sought covering the average monthly fiduciary fees and expenses the person or entity bidding would charge to discharge the duties of guardian.

A.R.S. §14-5304. Findings; order of appointment; limitations; filing.

A. [no change]
B. [no change]
C. [no change]
D. In the absence of good cause shown, an order appointing a guardian shall prohibit the guardian from expending any amounts from the

estate of the ward without prior court order except for monthly amounts specifically approved in the order of appointment for:

1. The average monthly cost of housing and care of the ward;
2. The average monthly cost of comfort care services for the ward;
3. The average monthly fiduciary fees and expenses expected to be incurred by the guardian;
4. The amount of attorneys' fees incurred and expected to be incurred by all appointed attorneys through the issuance of a court order appointing a guardian as requested in the petition;
5. The average monthly attorneys' fees and expenses expected to be incurred by all appointed attorneys until the approval of the first or next accounting;
6. The average monthly accounting fees and expenses expected to be incurred by all accountants or other professionals preparing accountings until approval of the first or next accounting;
7. The expected cost to prepare the initial inventory and appraisement required by §14-418; and
8. The average monthly costs of all other miscellaneous costs or expenses not listed in paragraphs 1 through 7 above with a detailed order authorizing the maximum costs or expenses approved by the court.

DE. The guardian shall not expend any sums from the estate in excess of reasonable amounts within the authorization ordered pursuant to subsection D without prior court approval except for taxes owed by the ward or protected person, and reasonable and necessary medical and dental expenses of the ward or protected person. The reasonableness of all expenditures by the guardian shall be determined by the court upon filing of required accounts. For good cause shown the court may approve expenditures made in excess of those authorized pursuant to subsection D, but no expenditure shall be approved as reasonable that does not benefit the ward or the ward's estate even if within the limits previously authorized.

F. The guardian shall file an acceptance of appointment with the appointing court.

A.R.S. §14-5404. Original petition for appointment or protective order.

A. [no change]

B. The petition shall set forth, to the extent known:

1. - 7. [no change]

8. A reliable estimate of all monthly costs associated with the conservatorship that will be necessary to care for the protected person until the first or next accounting is timely filed and approved, with separate reliable monthly estimates for:

a. The average monthly cost of housing and care of the protected person;
b. The average monthly cost of comfort care services for the protected person;
c. The average monthly fiduciary fees and expenses expected to be incurred by the conservator;
d. The amount of attorneys' fees incurred and expected to be incurred by all appointed attorneys through the issuance of a court order appointing a conservator as requested in the petition;
e. The average monthly attorneys' fees and expenses expected to be incurred by all appointed attorneys until the approval of the first or next accounting;
f. The average monthly accounting fees and expenses expected to be incurred by all accountants or other professionals preparing accountings until approval of the first or next accounting;
g. The expected cost to prepare the initial inventory and appraisement required by §14-5418; and
h. The average monthly costs of all other miscellaneous costs or expenses not listed in paragraphs a through g above with a detailed explanation of requested cost or expense.

In the event the petitioner is unable to provide reliable estimates of any of these amounts in the petition, the petitioner shall state in the petition all detailed efforts made by the petitioner to obtain the estimates, and shall thereafter provide a written notice containing such reliable estimates to all persons listed and in the manner provided in §14-5405 at least five (5) judicial days prior to the first hearing scheduled to consider the appointment of a temporary or permanent conservator.

9. When the appointment of a conservator other than those listed in §14-5410, subsection A, paragraph 4, 5, 6, 7, 11 or 12 is sought, the petitioner shall submit with the petition a competitive bid signed by a person or entity unrelated to the person or entity for which appointment is sought covering the average monthly cost the person or entity bidding would charge for the housing, care and comfort services of the protected person and a separate

competitive bid signed by a person or entity unrelated to the person or entity for which appointment is sought covering the average monthly fiduciary fees and expenses the person or entity bidding would charge to discharge the duties of conservator.

A.R.S. §14-5407. Procedure concerning hearing and order on original petition.

A. [no change]
B. [no change]
C. [no change]
D. [no change]
E. [no change]
F. In the absence of good cause shown, an order appointing a conservator shall prohibit the conservator from expending any amounts from the estate of the protected person without prior court order except for taxes owed by the ward or protected person, reasonable and necessary medical and dental expenses of the ward or protected person, and monthly amounts specifically approved in the order of appointment for:

1. The average monthly cost of housing and care of the protected person;
2. The average monthly cost of comfort care services for the protected person;
3. The average monthly fiduciary fees and expenses expected to be incurred by the conservator;
4. The amount of attorneys' fees incurred and expected to be incurred by all appointed attorneys through the issuance of a court order appointing a conservator as requested in the petition;
5. The average monthly attorneys' fees and expenses expected to be incurred by all appointed attorneys until the approval of the first or next accounting;
6. The average monthly accounting fees and expenses expected to be incurred by all accountants or other professionals preparing accountings until approval of the first or next accounting;
7. The expected cost to prepare the initial inventory and appraisement required by §14-5418; and
8. The average monthly costs of all other miscellaneous costs or expenses not listed in paragraphs 1 through 7 above with a detailed order authorizing the maximum costs or expenses approved by the court.

G. The conservator shall not expend any sums from the estate in excess of reasonable amounts within the authorization ordered pursuant to subsection F without prior court approval except for taxes owed by the

ward or protected person, and reasonable and necessary medical and dental expenses of the ward or protected person. The reasonableness of all expenditures by the conservator shall be determined by the court upon filing of required accounts. For good cause shown the court may approve expenditures made in excess of those authorized pursuant to subsection F, but no expenditure shall be approved as reasonable that does not benefit the protected person or the estate of the protected person even if within the limits previously authorized.

A.R.S. §14-5419. Accounts; definition.

A. [no change]

B. The court may take any appropriate action on filing of annual or other accounts. In connection with any account, the court may require a conservator to submit to a physical check of the estate in the conservator's control, to be made in any manner the court may specify. In the absence of good cause shown, any order entered with respect to an annual or other account shall prohibit the conservator from expending any amounts from the estate of the protected person without prior court approval except for average monthly amounts approved in an order applicable until the next account is due, taxes owed by the ward or protected person, and reasonable and necessary medical and dental expenses of the ward or protected person.

C. to J. [no change]

To supplement the recommended statutory changes to A.R.S. §14-5303, -5304, -5404, and -5407 above, and to provide a framework to initiate a pilot project in Maricopa County Probate Court without delay, the following additional rule additions are recommended:

Rule 17.1. Petitions for appointment of a guardian for an alleged incapacitated person.

A. A petition for the appointment of a guardian for an alleged incapacitated person pursuant to §14-5303 shall be filed with the Clerk of the Superior Court, and shall set forth:

1. A statement that the authority granted to the guardian may include the authority to withhold or withdraw life sustaining treatment;
2. The statements required by §14-5303, subsection B, paragraphs 1, 2, 3, 4, 5, 6, 7 and 8.
3. A reliable estimate of all monthly costs associated with the guardianship that will be necessary to care for the ward until the

first or next accounting is timely filed and approved, with separate reliable monthly estimates for:

a. The average monthly cost of housing and care of the ward;
b. The average monthly cost of comfort care services for the ward;
c. The average monthly fiduciary fees and expenses expected to be incurred by the guardian;
d. The amount of attorneys' fees incurred and expected to be incurred by all appointed attorneys through the issuance of a court order appointing a guardian as requested in the petition;
e. The average monthly attorneys' fees and expenses expected to be incurred by all appointed attorneys until the approval of the first or next accounting;
f. The average monthly accounting fees and expenses expected to be incurred by all accountants or other professionals preparing accountings until approval of the first or next accounting;
g. The expected cost to prepare the initial inventory and appraisement required by §14-5418; and
h. The average monthly costs of all other miscellaneous costs or expenses not listed in paragraphs a through g above with a detailed explanation of requested cost or expense.

B. In the event the petitioner is unable to provide reliable estimates of any of the amounts or estimates listed in paragraph A, the petitioner shall state in the petition all detailed efforts made by the petitioner to obtain the estimates, and shall thereafter file and provide a written notice containing such reliable estimates to all persons listed and in the manner provided in §14-5309 at least five (5) judicial days prior to the first hearing scheduled to consider the appointment of a temporary or permanent guardian.

C. Unless the petition seeks appointment of a guardian that is the spouse of the incapacitated person, an adult child of the incapacitated person, a parent of the incapacitated person including a person nominated by will or other writing signed by a deceased parent, a relative of the incapacitated person with whom the incapacitated person has resided for more than six months before the filing of the petition, the public fiduciary, or a previously appointed fiduciary, guardian or conservator, the petitioner shall also file with the petition a competitive bid signed by a person or entity unrelated to the person or entity for which appointment is sought covering the average monthly cost the person or entity bidding would

charge for the housing, care and comfort services of the ward, and a separate competitive bid signed by a person or entity unrelated to the person or entity for which appointment is sought covering the average monthly fiduciary fees and expenses the person or entity bidding would charge to discharge the duties of guardian.

D. In the absence of good cause shown, any order entered with respect to an annual or other account shall prohibit the conservator from expending any amounts from the estate of the protected person without prior court approval except for average monthly amounts approved in an order applicable until the next account is due, taxes owed by the ward or protected person, and reasonable and necessary medical and dental expenses of the ward or protected person.

Rule 17.2. Petitions for appointment of a conservator or protective order.

A. A petition for the appointment of a conservator of a protected person or person allegedly in need of protection pursuant to §14-5404 shall be filed with the Clerk of the Court, and shall set forth a reliable estimate of all monthly costs associated with the conservatorship that will be necessary to care for the protected person until the first or next accounting is timely filed and approved, with separate reliable monthly estimates for:

1. The average monthly cost of housing and care of the protected person;
2. The average monthly cost of comfort care services for the protected person;
3. The average monthly fiduciary fees and expenses expected to be incurred by the conservator;
4. The amount of attorneys' fees incurred and expected to be incurred by all appointed attorneys through the issuance of a court order appointing a conservator as requested in the petition;
5. The average monthly attorneys' fees and expenses expected to be incurred by all appointed attorneys until the approval of the first or next accounting;
6. The average monthly accounting fees and expenses expected to be incurred by all accountants or other professionals preparing accountings until approval of the first or next accounting;
7. The expected cost to prepare the initial inventory and appraisement required by §14-5418; and

8. The average monthly costs of all other miscellaneous costs or expenses not listed in paragraphs a through g above with a detailed explanation of requested cost or expense.

B. In the event the petitioner is unable to provide reliable estimates of any of these amounts listed in paragraph A, the petitioner shall state in the petition all detailed efforts made by the petitioner to obtain the estimates, and shall thereafter provide a written notice containing such reliable estimates to all persons listed and in the manner provided in §14-5405 at least five (5) judicial days prior to the first hearing scheduled to consider the appointment of a temporary or permanent conservator.

C. Unless the petition seeks appointment of a conservator that is the spouse of the protected person, an adult child of the protected person, a parent of the protected person including a person nominated by will or other writing signed by a deceased parent, a relative of the protected person with whom the incapacitated person has resided for more than six months before the filing of the petition, the public fiduciary, or a previously appointed fiduciary, guardian or conservator, the petitioner shall also file with the petition a competitive bid signed by a person or entity unrelated to the person or entity for which appointment is sought covering the average monthly cost the person or entity bidding would charge for the housing, care and comfort services of the protected person, and a separate competitive bid signed by a person or entity unrelated to the person or entity for which appointment is sought covering the average monthly fiduciary fees and expenses the person or entity bidding would charge to discharge the duties of conservator.

D. In the absence of good cause shown, any order entered with respect to an annual or other account shall prohibit the conservator from expending any amounts from the estate of the protected person without prior court approval except for average monthly amounts approved in an order applicable until the next account is due, taxes owed by the ward or protected person, and reasonable and necessary medical and dental expenses of the ward or protected person.

Initiative 3: Assign a second probate judge to Probate Court to hear or assign all contested matters as soon as possible after they become contested.

The U.S. Census estimates that one quarter of Arizona's population is at least 55 years of age. An aging population will result in increased petitions for guardianships and conservatorships. The growing caseload is compounded by

increased litigation and case complexity. Contested Probate cases involving large estates require more judicial resources. Additionally, caseload trends show Mental Health filings will continue to grow in the next five years.

The Presiding Probate Judge has administrative responsibilities and establishes policy for Mental Health Court, Veteran's Court, and Probate Court at seven locations in Maricopa County. Five commissioners hear probate and mental health cases. One commissioner hears mental health cases at Desert Vista Behavioral Treatment Center and the Arizona State Hospital. Three regional commissioners hear blended probate, family, and civil calendars. Contested matters from all nine commissioners are generally transferred to the Presiding Probate Judge's calendar.

All of these factors combine to prevent every contested case from being fully heard and resolved by a judge as early in the process as possible. Prompt hearings obviously provide early resolution of probate conflicts and stabilize the care of wards by determining the need for and identity of the fiduciary to provide care and manage estate assets. Early court intervention and hearing of probate matters will also greatly reduce the need and commensurate costs for attorneys, fiduciaries and other professionals to attend protracted court proceedings. Assigning a second judge to the Probate Department will significantly increase the judicial resources available to hear contested probate matters and help preserve estate assets.

In addition, the Probate Court hears probate cases that arise out of an estate, trust or protective proceeding but are predominately civil in nature. These hybrid cases also require early court intervention and management, exploration of appropriate alternative dispute resolution procedures, and timely hearings to minimize fees to an estate or trust. The increase in the numbers, nature and complexity of these cases also support assigning a second civil judge to hear contested probate cases and these hybrid probate-civil cases.

A second probate judge in the Probate Department will also allow for better succession planning when the Probate Presiding Judge rotates to a new assignment or retires. The Probate Presiding Judge will presumptively serve in the Probate Department for a total of five years, and rotation of a new Associate Probate Presiding Judge into the Department for a year or more before that term ends will allow a fully trained and knowledgeable Presiding Judge to lead the Department without a training period.

This initiative was completed on November 1, 2010 with the assignment of a second superior court judge, the Honorable Gary Donahoe, to Probate Court.

<u>Initiative 4</u>: Seek a rule change to allow the court to require the parties in contested probate matters to participate in a variety of alternative dispute resolution (ADR) processes to resolve disputes early and save costs to the estate.

Alternative dispute resolution processes are widely proven to reduce the length and commensurate cost of litigation. With the addition of a second probate judge, every contested probate case will be managed and resolved more expeditiously. Each case is different and the judicial officers in Probate Court should be explicitly authorized to require the parties to participate in an appropriate alternative dispute resolution process designed to resolve the parties' dispute at a reasonable cost.

Probate Rule 28(A) currently applies the provisions of Civil Rule 16(g) to probate cases and allows the court to direct the parties to submit their dispute to any ADR program created or authorized by local court rules, and requires the parties to confer and consider ADR processes. Maricopa County Local Rule 3.10 requires that civil disputes where the amount in controversy is less than $50,000 be submitted to compulsory arbitration, but excepts those cases "excluded by Rule 72, Rules of Civil Procedure". In turn, Civil Rule 72 removes from compulsory arbitration those cases where any party "seeks affirmative relief other than a money judgment" or "an award in excess of the jurisdictional limit for arbitration" of $50,000. Few probate cases seek solely a money judgment, and virtually every probate controversy seeks other affirmative relief, thereby removing most probate cases from the compulsory arbitration provisions of Civil Rule 72. Further, Probate Rule 29 expressly precludes probate cases from participating in compulsory arbitration under Civil Rules 72 through 76, unless "the parties to a contested matter agree otherwise".

Similarly, Civil Rule 16.1, presumably made applicable to probate cases by Probate Rule 3(A), allows the court "in any action in which a motion to set and certificate of readiness is filed" to require the parties to participate in a settlement conference "at the request of any party". The process described by Civil Rule 38.1 requiring a Motion to Set and Certificate of Readiness be filed to schedule a trial is not currently used in Probate Court pursuant to Probate Rule 28(C). Although Civil Rule 16.1(a) states clearly that "[t]he court may schedule a settlement conference upon its own motion", it could be argued that this authority only exists in cases that follow the Rule 38.1 process to set trials with a motion to set.

Civil Rule 16(b), made applicable to probate cases by Probate Rule 28(A)(2), allows the court in probate cases to conduct comprehensive pretrial conferences, and within that venue "consider alternative dispute resolution". Based upon the authority of Civil Rules 16.1 and 16(b), it appears that the Probate Court does have legal authority to require the parties to at least participate in settlement conferences, but this authority is not explicitly made

applicable to probate cases and does not authorize other forms of ADR. Probate Court is in need of a concise and comprehensive probate rule specifically authorizing various forms of ADR in probate cases. A proposed new Probate Rule would read:

Rule 29. Alternative Dispute Resolution.

Deleted: Arbitration

A. Unless the parties to a contested matter agree otherwise, Rules 72 through 76, Arizona Rules of Civil Procedure, pertaining to compulsory arbitration, shall not apply.

B. Initiation of ADR. At any time upon the court's own motion or the motion of any party, the court may direct the parties to participate in one or more ADR processes, including arbitration, mediation, settlement conferences, open negotiations or other ADR process or in a private dispute resolution process agreed upon by the parties.

C. Duty to Consider ADR. No later than thirty (30) days after a probate proceeding becomes contested as defined by Rule 27, the parties shall confer, either in person or by telephone, about:

1. the possibilities for a prompt settlement or resolution of the case; and

2. whether the parties might benefit from participation in some alternative dispute resolution process, the type of process that would be most appropriate in their case, the selection of an ADR service provider, and the scheduling of the proceedings.

D. Duty to Attempt Settlement, Agree on ADR, and Report to Court. The attorneys of record and all unrepresented parties who have appeared in the case are jointly responsible for attempting in good faith to settle the case or agree on an ADR process and for reporting the outcome of their conference to the court. Within fifteen (15) days after their conference or at the Resolution Management Conference, whichever is earlier, the parties shall inform the court, using a statement substantially similar to Form xx, Joint Alternative Dispute Resolution Statement To The Court, of the following:

1. if the parties have agreed to use a specific ADR process, the type of ADR process to be used, the name and address of the ADR service provider they will use, and the date by which the ADR proceedings are anticipated to be completed;

2. if the parties have not agreed to use a specific ADR process, the position of each party as to the type of ADR process appropriate for the case or, in the alternative, why ADR is not appropriate; and

3. if any party requests that the court conduct a conference to consider ADR.

Initiative 5: Initiate an early mandatory settlement conference program for all contested matters with the assigned Commissioner prior to transfer to a judge for hearing.

The great bulk of adult guardian and conservatorship cases are not contested and are routinely heard and resolved by Probate Court Commissioners. When a dispute does arise in a probate case, it is axiomatic that the financial cost of the dispute is directly proportional to the length and scope of litigation. Contested litigation is a primary contributor to the rapid depletion of some conservator estates. When unnecessary litigation can be reduced and disputes resolved quickly, substantial assets can be saved for the ward's estate. With the addition of a second probate judge as accomplished in Initiative 3, each Commissioner should be able to conduct a settlement conference soon after any probate case becomes contested. If resolved through settlement no further costs will be incurred by the estate for litigation. If not resolved, the matter will be immediately referred to a probate judge to hear the matter.

To initiate this program without delay, the court recalled a retired judge, the Honorable Robert Myers, who previously served as the Probate Presiding Judge and Presiding Judge of the superior court, to conduct probate settlement conferences in contested cases. From August 25, 2010 to January 3, 2011, a total of 31 settlement conferences were conducted in contested cases, and 61% (19 cases) were fully settled through this process. Three additional cases were settled by the parties themselves prior to the court holding a settlement conference. From and after December 1, 2010 mandatory settlement conferences have and will be conducted in contested cases by the assigned commissioner prior to transfer to a probate judge. This program will be augmented with additional ADR resources as the facts and circumstances of each case require.

The proposed changes to Probate Rule 29 recommended in Initiative 4 would allow the court to require mandatory settlement conferences and other appropriate ADR procedures at any time they are appropriate in any probate case.

Initiative 6: Urge promulgation of rules to focus issues, encourage faster resolution of disputes and mutual cooperation between parties, including rules allowing court interviews of wards and incapacitated persons, abbreviated disclosure, and early resolution conferences.

Many contested guardianship and conservatorship disputes arise out of strained or toxic family relationships with each party asserting a different solution for the care of a ward or incapacitated person and/or the management of the estate. Such family probate disputes significantly correlate to disputes in family court involving disagreement over the care and costs of minor children. Significant differences are also present, but selected family court rules that have been extremely effective in reducing family rancor and driving the early resolution of family court disputes could provide similar benefits in many probate disputes.

Just as in family court disputes where the wishes of an older minor child need to be considered in a custody dispute, the best interests of a potentially incapacitated adult require the court to consider that person's desires relative to care and placement to the extent possible. Often vulnerable adults are reluctant to openly favor one close relative over another in their presence. In such situations, some continuing disputes could be resolved or narrowed with a rule allowing the court to interview the vulnerable adult's wishes regarding the appointment of a guardian or conservator and the person who should be appointed. All such interviews should be recorded under circumstances agreeable to the parties.

Similarly, many family court disputes have been guided to early resolution using Resolution Management Conferences designed to facilitate early settlement and timely management of remaining disputed issues. This rule would allow the court to explore settlement options and processes, resolve issues, enter temporary orders, manage discovery and trial preparation, and schedule appropriate hearings designed to finally resolve the dispute as soon as possible with a minimal cost to the estate. Two rules adapted from the *Arizona Rules of Family Law Procedure* that should be adopted for contested probate court disputes are:

Rule 24.1. Court Interviews of Subject Persons.

On motion of any party, or its own motion, the court may, in its discretion, conduct an *in camera* interview with the subject person, to ascertain the person's wishes as to the appointment or continued appointment of a guardian or conservator and the person's wishes concerning the person or entity to be appointed. The interview can be conducted at any stage of the proceeding and shall be recorded by a court reporter or any electronic medium that is retrievable in perceivable form. The record of the interview may be sealed, in whole or in part, based upon good cause and after considering the best interests of the subject person. The parties may stipulate that the record of the interview shall not be provided to the parties or that the interview may be conducted off the record.

Note: A "subject person" is defined by Probate Rule 2(R) to mean "the decedent, alleged incapacitated person, ward, person allegedly in need of protection, or protected person."

Rule 28. Pretrial Procedure.

A. Resolution Management Conference (RMC); Preparation and Matters to Be Discussed. (Replaces existing Rule 28(A) in its entirety.)

1. Upon a matter becoming contested, upon written request of any party, or upon its own motion, the court shall schedule one or more Resolution Management Conferences that shall be held as soon as practicable by the court, unless extended for good cause shown.

2. Within the time set by the court in the particular case, or if no time is set then not less than five (5) judicial days prior to the date of the Resolution Management Conference, each party shall:

a. personally meet and confer with the opposing party or parties and their counsel to resolve as many issues as possible (if there is a current court order prohibiting contact of the parties or a significant history of domestic violence between the parties, the parties shall not be required to personally meet or contact each other in violation of the court order, but the parties and their counsel shall take all steps reasonable under the circumstances to resolve as many issues as possible);

b. comply with all applicable disclosure requirements set forth in Rule 26.1, *Arizona Rules of Civil Procedure*;

c. prepare and file a written Resolution Statement setting forth any agreements and a specific and detailed position the party proposes to resolve all disputed issues in the case, without argument in support of the position (the Resolution Statement shall be submitted in a form substantially similar to Form xx; and

d. comply with the ADR reporting requirements of Rule 29.

3. At any Resolution Management Conference under this rule, the court may:

a. enter binding agreements on the record in accordance with Rule 80(d), *Arizona Rules of Civil Procedure*;

b. determine the positions of the parties on the disputed issues and explore reasonable solutions to facilitate settlement of the issues;

c. enter temporary orders in accordance with the stipulations of the parties or, if agreed to by the parties, based upon the discussions, avowals, and arguments presented without an evidentiary hearing on the contested issues;

d. order evaluations, assessments, appraisals, testing, appointments, or other special procedures needed to properly manage the case and resolve the disputed issues;

e. schedule an evidentiary hearing, a trial date and any other necessary hearings or conferences;

f. resolve any discovery and disclosure schedules and disputes, establish reasonable limitations and regulation thereof, and approve appropriate agreements of the parties regarding discovery and disclosure;

g. eliminate non-meritorious claims or defenses;

h. permit the amendment of pleadings;

i. assist in identifying those issues of fact and law that are still at issue;

j. refer a matter for settlement conference;

k. order other ADR processes;

l. set a date for filing the joint pretrial statement required by Rule 16, *Arizona Rules of Civil Procedure*;

m. impose time limits on trial proceedings or portions thereof, and issue orders regarding management of documents, exhibits, and testimony; and

n. make such other orders respecting pretrial matters as the court deems appropriate without consent of the parties.

B. Pretrial Orders. After any conference held pursuant to this rule, an order shall be entered reciting the action taken. This order shall control the subsequent course of the action unless modified by a subsequent order.

C. Sanctions. If a party or attorney fails to obey a scheduling or pretrial order, or any provision of this rule, or if no appearance is made on behalf of a party at a Resolution Management Conference, a pretrial conference, an evidentiary hearing, a trial or other scheduled hearing, or if a party or party's attorney is substantially unprepared to participate in the conference, or if a party or party's attorney fails to participate in good faith in a conference, hearing, or trial, or in the preparation of a resolution statement or joint pretrial statement, the court, upon motion or its own initiative, shall, except upon a showing of good cause, make such orders with regard to such conduct as are just, including, among others:

1. an order refusing to allow the disobedient party to support or oppose designated claims or defenses or prohibiting that party from introducing designated matters in evidence;

2. an order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any party thereof, or rendering a judgment or temporary order;

3. in lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders, except an order to submit to a physical or mental examination;

4. if the conduct is by a fiduciary, an order substituting or removing the fiduciary and appointing a temporary or permanent successor fiduciary.

In lieu of or in addition to any other sanction, the court shall require the party, or the attorney representing the party, or both, to pay the reasonable expenses incurred because of any noncompliance with this rule, including attorneys' fees or an assessment to the clerk of the court, or both, unless the court finds that the noncompliance was substantially justified, or that other circumstances make an award of expenses unjust.

D.[same as Rule 28(B)].
E.[same as Rule 28(C)].

Initiative 7: Seek a rule change designed to reduce costs of accountings and improve oversight of estates by requiring simplified standardized accounting forms and procedures consistent with the accounting needs and practices of the fiduciary and complexity of the estate.

Annual accountings in conservatorship cases are now presented in a wide variety of formats, styles and levels of complexity ranging from the rudimentary account for a simple estate prepared by a self-represented conservator with no financial experience to a lengthy sophisticated business account prepared by a certified professional covering multiple businesses and infinitely more complex transactions. Given the thousands of accountings that must be reviewed each year, it is essential that additional standardization be brought to the accounting review process. The goal for such standardization is to achieve simplicity and transparency on every account, and continue to obtain sufficient backup documentation and detail to facilitate a detailed audit of all financial transactions when needed.

Standardization should begin with a standard format for an Inventory and Appraisement form much like the form commonly used in practice today that provides a summary of real and personal property and includes a total for all assets owned. Every accounting should be summarized in a brief standardized form beginning with the summary and total of assets from the Inventory and Appraisement form, or similar summary from the last annual accounting in years following the first account. Standardized income, receipts and additions to the estate during the accounting period would then be added to the beginning or prior year's assets within a few common categories, e.g. Social Security income,

pension income, investment income, adjustments to asset values (with adequate explanation for the adjustment in value), etc.

The next section for expenditures and deductions from the estate should include summary categories that match those defined in the original petition and first Order of Appointment of the fiduciary to allow the court to easily compare each category of expenses with those actually incurred during the accounting period. Thus, this section would show total expenses during the accounting period in each category, and a second column for the monthly amounts for easy comparability with the order, for: 1) Monthly cost of housing & care of the ward; 2) Monthly cost of comfort care services; 3) Monthly fiduciary fees & expenses to be charged by the Guardian and/or Conservator; 4) Monthly attorneys fees expected to include the next annual accounting proceeding on a pro rata basis and a separate amount for the initial proceeding thru the appointment of the Guardian and/or Conservator; 5) Monthly accounting fees expected to include the next annual accounting proceeding on a pro rata basis; 6) The cost to prepare the initial Inventory and Appraisement; and 7) Any extraordinary or unusual costs or expenses for the next year pro rated on a monthly basis with a detailed explanation of the request.

The final section of the standardized form would then detail the remaining assets in the estate in a format that would easily allow for the adjustments to bonding requirements or to orders of restriction. Several additional standardized forms will need to be developed. A partial list of needed standardized forms includes:

Letters with appropriate restrictions
Inventory & Appraisement
Notice of Reliable Estimated Expenses
Order of Appointment
Summary Accounting Form
Order Approving Accounting & Future Expenditures
Position Statement for RMC

<u>Initiative 8</u>: Urge the adoption of appropriate fee shifting statutes and/or rules to protect an estate from paying for unreasonable and unnecessary fees and charges, as well as unnecessary litigation.

Currently A.R.S. §§14-5314 and -5414 both require professionals be reasonably compensated from the estate of the ward or protected person if the petition is granted. Both statutes are substantially similar. A.R.S. §14-5314 applicable to guardianships with the differing conservatorship language of §14-5314 added in [*italics*] reads as follows:

> A. If not otherwise compensated for services rendered, an investigator, accountant, lawyer, physician, registered nurse,

psychologist or guardian who is appointed pursuant to this article [*conservator who is appointed in a protective proceeding*], including an independent lawyer representing the alleged incapacitated person pursuant to §14-5303, subsection C [*a lawyer of the person alleged to be in need of protection pursuant to §14-5407, subsection B*], is entitled to reasonable compensation from the estate of the ward [*protected person*] if the petition is granted, or from the petitioner if the petition is denied.

B. If the petitioner withdraws the petition or if the petition is dismissed [*court dismisses the petition*] because of the petitioner's failure to prosecute, the court may order that the compensation of the investigator, accountant, lawyer, physician, registered nurse, psychologist or guardian [*conservator who is*] appointed pursuant to this article, including an independent lawyer representing the alleged incapacitated person pursuant to §14-5303, subsection C [*a lawyer of the person alleged to be in need of protection pursuant to §14-5407, subsection B*], be paid either from the ward's [*protected person's*] estate or by the petitioner, depending on the facts and circumstances. In making this determination, the court may consider any evidence it deems appropriate.

C. A lawyer who is employed by the guardian [*conservator*] to represent the guardian [c*onservator*] in the guardian's [*conservator's*] appointment or duties as guardian [*conservator*] is entitled to reasonable compensation from the ward's estate if the petition is granted. If the petitioner withdraws the petition or if the court dismisses the petition because of the petitioner's failure to prosecute, the court may order that the compensation of the proposed guardian's [*conservator's*] lawyer be paid either from the ward's [*protected person's*] estate or by the petitioner, depending on the facts and circumstances. In making this determination, the court may consider any evidence it deems appropriate.

D. A lawyer who is employed by the petitioner to represent the petitioner in seeking the appointment of a guardian [*conservator*] is entitled to reasonable compensation from the ward's estate if the petition is granted.

For purposes of A.R.S. §§14-5314 and -5414, the term "petition" is statutorily defined in A.R.S. §14-5314(G) and -14-5414(G) to mean a petition for the appointment of a guardian and/or conservator, as well as a petition for temporary appointment of a guardian and/or conservator. Because of these definitions, the application of the provisions allowing the court to reallocate or deny fees pursuant to §14-5314 or -5414 are ambiguous when petitions are filed to remove a guardian pursuant to A.R.S. §14-5307, or petitions seek additional

or reduced security, further accounting, distribution or removal of a conservator pursuant to §14-5416 and are subsequently unsuccessful or withdrawn. In extremely toxic probate litigations it is not uncommon for some litigants to continue the fight beyond the initial appointment proceeding and then for all sides to seek reimbursement from the estate of the ward or protected person regardless of the outcome. The current statutory structure simply does not clearly and sufficiently notify parties or the court what payment is authorized from the estate in petitions filed subsequent to appointment.

The recent Arizona Court of Appeals recently issued an opinion in the case of *In re the Guardianship of Sleeth*, 597 Ariz. Adv. Rep. 27, ___ Ariz. ___, ___ P.3d ___ (1CA-CV 10-0093, 12-9-10). This case significantly clarifies the law with respect to awarding of attorney's fees in probate cases in Arizona. The concepts articulated in this decision should now provide the framework for new statutory provisions regarding attorney's fees and fiduciary fees. Accordingly, we support adoption of the following statutory changes as soon as possible:

A.R.S. §**14-5109. Reasonableness of professional fees.**

A. Every guardian, conservator, attorney and other professional who is appointed pursuant to A.R.S. Title 14, Chapter 5 has a duty to:

1. Act in the best interests of the ward, minor ward, incapacitated person or protected person and such person's estate;
2. Avoid engaging in excessive or unproductive activities;
3. Preserve the assets of the ward, minor ward, incapacitated person, protected person and estate; and
4. Affirmatively assess the financial cost of pursing any action compared to the reasonably expected benefit to the ward, minor ward, incapacitated person or protected person and such person's estate.

B. In determining the reasonableness of compensation for services rendered by an investigator, accountant, lawyer, physician, registered nurse, psychologist, guardian or conservator pursuant to §§14-5314 and -5414, the court shall consider the best interest of the ward, minor ward, incapacitated person or protected person, and shall consider the following factors to the extent applicable in determining the reasonableness and necessity of compensation and expenses to be approved:

1. Whether the services provided any benefit or attempted to advance the best interests of the ward, minor ward, incapacitated person, protected person or estate;

2. The extent the services were needed or of corresponding value to the ward, minor ward, incapacitated person or protected person;
3. The usual and customary fees charged in the relevant professional community for such services;
4. The risks and responsibilities associated with the services;
5. The size and composition of the estate;
6. The character of the work performed including its difficulty, intricacy, importance, and responsibility imposed;
7. The amount of time required;
8. The skill and expertise required;
9. The ability, training, education, experience, professional standing, and skill of the provider of the services;
10. The success, failure and results of the work performed;
11. The extent that the services were provided in the most efficient and cost-effective manner feasible;
12. Whether there was appropriate delegation to paraprofessionals;
13. The fidelity or disloyalty displayed by the fiduciary, attorney or professional;
14. Any estimate the fiduciary, attorney or professional has given of the value of the services; and
15. Any fee guidelines adopted by the court.

C. The attorney, fiduciary or professional seeking compensation has the burden of proving the reasonableness and necessity of compensation and expenses sought.

A.R.S. §14-5314. Compensation of appointees; definitions.

A. If not otherwise compensated for services rendered, an investigator, accountant, ~~lawyer,~~ physician, registered nurse, psychologist or guardian who is appointed by the court pursuant to this article, ~~including an independent lawyer representing the alleged incapacitated person pursuant to section 14-5303, subsection C,~~ is entitled to reasonable compensation from the estate of the ward if the petition is granted, or from the petitioner if the petition is denied. In determining reasonable compensation, the court shall, among other factors, consider the ability of the ward to pay the compensation, any applicable fee guidelines and any contract that the provider may have with the county.

B. If not otherwise compensated for services rendered, a lawyer appointed by the court to represent the alleged incapacitated person, including an independent lawyer representing the alleged incapacitated person pursuant to section 14-5303, subsection C, is entitled to reasonable compensation from the estate of the ward if the petition is granted, or from the petitioner if the petition is denied. In determining

reasonable compensation, the court shall, among other factors, consider the ability of the ward to pay the compensation, any applicable fee guidelines and whether the lawyer can be reasonably compensated pursuant to a contract with the county.

C~~B~~. If the petitioner withdraws the petition or if the petition is dismissed because of the petitioner's failure to prosecute, the court may order that the compensation of the investigator, accountant, lawyer, physician, registered nurse, psychologist or guardian appointed pursuant to this article, including an independent lawyer representing the alleged incapacitated person pursuant to section 14-5303, subsection C, be paid either from the ward's estate or by the petitioner, or apportioned between the ward's estate and the petitioner, depending on the facts and circumstances. In making this determination, the court may consider any evidence it deems appropriate including the ability of the ward to pay the compensation, any applicable fee guidelines and the provisions of section 14-5314.01.

D~~C~~. A lawyer who is employed by the guardian to represent the guardian in the guardian's appointment or duties as guardian may be awarded ~~is entitled to~~ reasonable compensation from the ward's estate if the petition is granted. If the petitioner withdraws the petition or if the court dismisses the petition because of the petitioner's failure to prosecute, the court may order that the compensation of the proposed guardian's lawyer be paid either from the ward's estate or by the petitioner, or apportioned between the ward's estate and the petitioner, depending on the facts and circumstances. In making these determinations, the court may consider any evidence it deems appropriate including the ability of the ward to pay the compensation, the benefit derived by the ward from the representation, any applicable fee guidelines and the provisions of section 14-5314.01.

E~~D~~. A lawyer who is employed by the petitioner to represent the petitioner in seeking the appointment of a guardian may be awarded ~~is entitled to~~ reasonable compensation ~~from the ward's estate~~ if the petition is granted. The court may order that the amount determined to be reasonable be paid either wholly from the ward's estate or by the petitioner, or apportioned between the ward's estate and the petitioner, depending on the facts and circumstances. In making this determination, the court may consider any evidence it deems appropriate including the ability of the ward to pay the compensation, any applicable fee guidelines and the provisions of section 14-5314.01.

F~~E~~. If the court compensates the provider of a service, the court may charge the estate for the reasonable cost of the service and shall deposit these monies in the probate fund pursuant to section 14-5433.

~~F~~. If compensation by the ward or the petitioner is not feasible the court shall determine and pay reasonable compensation for services rendered by an investigator, accountant, lawyer, physician, registered nurse, psychologist or guardian appointed in a guardianship proceeding.

H. Fees and costs shall not be awarded to any party who files a petition that the court finds raises an issue previously adjudicated where there has been no material change of circumstances justifying reconsideration of the prior ruling. The court may order the petitioner to pay the attorney's fees and costs of any party opposing a repetitive petition.

~~G~~. For the purposes of this section:

1. "Guardian" includes both a guardian and a temporary guardian.

2. "Petition" means a petition filed pursuant to section 14-5303, subsection A or section 14-5310, subsection A.

3. "Ward" includes an alleged incapacitated person.

A.R.S. §14-5314.01. Attorney fees.

A. The court from time to time, after considering the financial resources of the parties and the reasonableness of the positions each party has taken throughout the proceedings, may order a party to pay a reasonable amount to another party for the costs and expenses of maintaining or defending any proceeding under this title. On request of a party, the court shall make specific findings concerning the portions of any award of fees and expenses that are based on consideration of financial resources and that are based on consideration of reasonableness of positions. The court may make these findings before, during or after the issuance of a fee award.

B. If the court determines that a party filed a petition or asserted a defense under one of the following circumstances, the court shall award reasonable costs and attorney fees to the other party:

1. The petition or defense was not filed in good faith.

2. The petition or defense was not grounded in fact or based on law.

3. The petition or defense was filed for an improper purpose, such as to harass the other party, to cause an unnecessary delay or to increase the cost of litigation to the other party.

C. For the purpose of this section, costs and expenses may include attorney fees, deposition costs, fees paid to a service provider pursuant to section 14-5314, and other reasonable expenses as the court finds necessary to the full and proper presentation of the action, including any appeal. "Party" includes the ward, alleged incapacitated person, guardian or other interested person or entity who has filed a notice of appearance, a petition or an objection in the proceeding. "Petition" includes any written request to the court for relief pursuant to Title 14.

A.R.S. §14-5414. Compensation and expenses; definitions.

A. If not otherwise compensated for services rendered, an investigator, accountant, ~~lawyer,~~ physician, registered nurse, psychologist or conservator who is appointed by the court in a protective proceeding, ~~including a lawyer of the person alleged to be in need of protection pursuant to section 14-5407, subsection B,~~ is entitled to reasonable compensation from the estate of the protected person if the petition is granted or from the petitioner if the petition is denied. In determining reasonable compensation, the court shall, among other factors, consider the ability of the ward to pay the compensation, any applicable fee guidelines and any contract that the provider may have with the county.

B. If not otherwise compensated for services rendered, a lawyer appointed by the court to represent the person alleged to be in need of protection, including an independent lawyer of the person alleged to be in need of protection pursuant to section 14-5407, subsection B, is entitled to reasonable compensation from the estate of the protected person if the petition is granted, or from the petitioner if the petition is denied. In determining reasonable compensation, the court shall, among other factors, consider the ability of the ward to pay the compensation, any applicable fee guidelines and whether the lawyer can be reasonably compensated pursuant to a contract with the county.

C~~B~~. If the petitioner withdraws the petition or if the petition is dismissed because of the petitioner's failure to prosecute, the court may order that the compensation of the investigator, accountant, lawyer, physician, registered nurse, psychologist or guardian appointed pursuant to this article, including a lawyer of the person alleged to be in need of protection pursuant to section 14-5407, subsection B, be paid either from the ward's estate or by the petitioner, or apportioned between the ward's estate and the petitioner, depending on the facts and circumstances. In making this determination, the court may consider any evidence it deems appropriate including the ability of the ward to pay the compensation, any applicable fee guidelines and the provisions of section 14-5414.01.

D~~C~~. A lawyer who is employed by the conservator to represent the conservator in the conservator's appointment or duties as conservator may be awarded ~~is entitled to~~ reasonable compensation from the estate if the petition is granted. If the petitioner withdraws the petition or if the court dismisses the petition because of the petitioner's failure to prosecute, the court may order that the compensation of the proposed conservator's lawyer be paid either from the protected person's estate or by the petitioner, or apportioned between the protected person's estate and the petitioner, depending on the facts and circumstances. In making these determinations, the court may consider any evidence it deems appropriate including the ability of the protected person to pay the compensation, the benefit derived by the protected person from the representation, any applicable fee guidelines and the provisions of section 14-5414.01.

E~~D~~. A lawyer who is employed by the petitioner to represent the petitioner in seeking the appointment of a conservator may be awarded ~~is entitled to~~ reasonable compensation ~~from the ward's estate~~ if the petition is granted. The court may order that the amount determined to be reasonable be paid either wholly from the protected person's estate or by the petitioner, or apportioned between the protected person's estate and the petitioner, depending on the facts and circumstances. In making this determination, the court may consider any evidence it deems appropriate including the ability of the protected person to pay the compensation, any applicable fee guidelines and the provisions of section 14-5414.01.

F~~E~~. If the court pays for any of these services it may charge the estate for reasonable compensation. The clerk shall deposit monies it collects in the probate fund pursuant to section 14-5433.

G~~F~~. Compensation payable to the department of veterans' services, when acting as a conservator of the estate of a veteran or a veteran's surviving spouse or minor child or the incapacitated spouse of a protected veteran, shall not be more than five per cent of the amount of monies received during the period covered by the conservatorship. A copy of the petition and notice of hearing shall be given to the proper officer of the veterans administration in the manner provided in the case of any hearing on a guardian's account or any other pleading. A commission or compensation is not allowed on the monies or other assets received from a prior conservator or on the amount received from liquidation of loans or other investments.

H. Fees and costs shall not be awarded to any party who files a petition that the court finds raises an issue previously adjudicated where there has been no material change of circumstances justifying reconsideration of the prior ruling. The court may order the petitioner to

pay the attorney's fees and costs of any party opposing a repetitive petition.

I~~C~~. For the purposes of this section:

1. "Conservator" includes a conservator, temporary conservator or special conservator.

2. "Petition" means a petition filed pursuant to section 14-5401.01, subsection A or section 14-5404, subsection A.

3. "Protected person" includes a person who is alleged to be in need of protection.

A.R.S. §14-5414.01. Attorney fees.

A. The court from time to time, after considering the financial resources of the parties and the reasonableness of the positions each party has taken throughout the proceedings, may order a party to pay a reasonable amount to another party for the costs and expenses of maintaining or defending any proceeding under this title. On request of a party, the court shall make specific findings concerning the portions of any award of fees and expenses that are based on consideration of financial resources and that are based on consideration of reasonableness of positions. The court may make these findings before, during or after the issuance of a fee award.

B. If the court determines that a party filed a petition or asserted a defense under one of the following circumstances, the court shall award reasonable costs and attorney fees to the other party:

1. The petition or defense was not filed in good faith.

2. The petition or defense was not grounded in fact or based on law.

3. The petition or defense was filed for an improper purpose, such as to harass the other party, to cause an unnecessary delay or to increase the cost of litigation to the other party.

C. For the purpose of this section, costs and expenses may include attorney fees, deposition costs, fees paid to a service provider pursuant to section 14-5314, and other reasonable expenses as the court finds necessary to the full and proper presentation of the action, including any appeal. "Party" includes the protected person, the person alleged to be in need of protection, conservator or other interested person or entity who has filed a notice of appearance, a petition or an objection in the proceeding. "Petition" includes any written request to the court for relief pursuant to Title 14.

Rule 33. Compensation for Fiduciaries and Attorney's Fees.

A. Unless otherwise ordered by the court, a petition that requests approval of compensation for a personal representative, trustee, guardian, conservator, guardian ad litem, attorney representing such fiduciary, or an attorney representing the subject person in a guardianship or conservatorship proceeding for services rendered in proceedings under A.R.S. Title 14 shall be accompanied by a statement that includes the following information:

1. If compensation is requested based on hourly rates, a detailed statement of the services provided, including the tasks performed, the date each task was performed, the time expended in performing each task, the name and position of the person who performed each task, and the hourly rate charged for such services;

2. An itemization of costs for which reimbursement is sought that identifies the cost item, the date the cost was incurred, the purpose for which the expenditure was made, and the amount of reimbursement requested, or, if reimbursement of costs is based on some other method, an explanation of the method being used for reimbursement of costs; and

3. If compensation is not based on hourly rates, an explanation of the fee arrangement and computation of the fee for which approval is sought.

B. Copies of all petitions for compensation and fee statements shall be provided to or served on each party and person who has appeared or requested notice in the case. Proof of such service shall be filed with the court.

C. If a petition for compensation or fees is contested, the objecting party shall set forth all specific objections in writing, and a copy of such written objections shall be given to or served on each party and person who has appeared or requested notice in the case. Proof of service or delivery of such notice shall be filed with the court.

D. When an attorney or fiduciary fee statement accompanies an annual accounting, the fee statement shall match the charges reported in the annual accounting or a reconciliation of the fee statement to the accounting shall be provided by the fiduciary.

E. The superior court may adopt fee guidelines designating compensation rates that may be used in determining the reasonableness of fees payable to licensed fiduciaries and attorneys in cases under A.R.S. Title 14.

F. Unless ordered by the court, neither a personal representative nor a personal representative's attorney is required to file a petition for approval of such person's fees.

G. Unless otherwise ordered by the court, where payment of fiduciary fees or attorneys' fees is requested from the estate of a protected person or by a ward, a petition for approval of such fees shall be filed with the court within one year after the service is rendered.

Initiative 9: Urge amendments to A.R.S. §14-5307(B) to limit unreasonable, vexatious or frivolous challenges to prior determinations of capacity or to remove a fiduciary without good cause.

Frequent filing of petitions to remove a fiduciary or to re-litigate the issue of capacity or the need for protection of a ward or protected person, can create an undue financial burden on the estate if not reasonably regulated. Currently A.R.S. §14-5307(B) attempts to provide the court discretion to limit the filing of such petitions for up to a year, but it appears to be internally inconsistent in achieving this goal. A.R.S. §14-5307(B) provides that:

B. An order adjudicating incapacity may specify a minimum period, not exceeding one year, during which no petition for an adjudication that the ward is no longer incapacitated may be filed without special leave. Subject to this restriction, the ward **or any person interested in his welfare** may petition the court for an order that the ward is no longer incapacitated and for the removal or resignation of the guardian. A request for this order may be made by informal letter to the court or judge. Any person who knowingly interferes with the transmission of this request may be found in contempt of court.

Assuming that the phrase "any person interested in his welfare" would be interpreted consistently with the definition of "interested person" set forth in A.R.S. §14-1201(26), almost any person who would normally be interested in filing such challenges appears to still be permitted to file, and continue to file such petitions to remove a guardian and determine the ward's capacity again without meaningful restriction. What the first sentence of A.R.S. §14-5307(A) restricts, the second sentence appears to remove.

Frequently, circumstances change in guardianship or conservatorship matters that require the court to revisit a finding of capacity, consider the replacement of a guardian or conservator, or enter other appropriate orders to address issues not presented previously. If the changes recommended elsewhere in this report are implemented, some subsequent litigation to

challenge prior decisions should be eliminated. With more information about potential fiduciaries and costs associated with their services provided to the probate court and families at the outset, more appointment options, increased reliance on alternate dispute resolution processes, earlier court intervention in contested matters, more transparent accounting standards, stronger court oversight and supervision, and more transparent accounting processes, potential litigants will potentially file and pursue fewer unwarranted challenges to prior case resolutions. With additional changes to fiduciary and attorney fees statutes and rules also recommended here, incentives to pursue costly litigation with limited or no benefit to the ward or protected person would be further discouraged.

Even with these recommended changes, however, not every fiduciary will prove worthy of the trust placed in them, not all vexatious, harassing or unreasonable litigation will end, and not every incapacity is permanent. It is essential for the best interest of the ward or protected person that interested persons continue to have access to the courts after the initial appointment of a fiduciary to address needed changes in the care plan and estate plan. It is equally important that emotional, ill-conceived challenges that provide no benefit to anyone are limited and the estate protected from undue dissipation from such challenges.

It is our collective experience that many petitions will be filed after appointment of a fiduciary seeking change to prior decisions. Some will have significant merit, some will be fairly neutral in their benefit to the ward or protected person but costly in their pursuit, and some will be unreasonable, vexatious or harassing in nature. Whatever the issue presented and irrespective of its merit, there should be additional statutory procedures and protections adopted to limit unreasonable, vexatious or harassing claims, and to require that all litigants consider the costs and benefits of the proposed action before exposing the estate to additional costs and expenses.

In this regard, a statute should be adopted to require a threshold showing of claim legitimacy before an expensive litigation process develops. This concept is not new and has long been present in post-decree family court proceedings seeking to modify child custody orders as set forth in A.R.S. §25-411. There are many corollaries between unreasonable custody challenges by parents with respect to minor children in family court cases and unreasonable litigation to seek control of the person or estate of an incapacitated or protected person in probate cases. In both, some litigants will never accept a court decision that does not fully embrace their view of resolution, and estate assets simply should not be placed at risk for such repeated challenges. To limit such vexatious, unreasonable or harassing claims, the legislature should amend existing A.R.S. §14-5307 and add new section 14-5416.01 to include the following provisions:

A.R.S. § 14-5307. Removal or resignation of guardian; termination of incapacity.

A. [Same as current—Current paragraph B would be replaced with following paragraphs B, C, D & E].

B. Upon entering an order adjudicating incapacity, and after considering the reasonableness of the positions taken by the litigants, the strength of the evidence presented including the probability that the ward's incapacity may be removed in the future, the benefits to and best interests of the ward, the expected cost to the ward's estate, and such other relevant factors determined by the court, an order adjudicating incapacity, or separate order, may specify a minimum period, not exceeding one year, during which no petition for an adjudication that the ward is no longer incapacitated or for removal of a guardian may be filed by any person other than the ward without special leave of the court. The ward may petition the court for an order that the ward is no longer incapacitated and for the removal or resignation of the guardian at any time. A request for this order may be made by informal letter to the court or judge. Any person who knowingly interferes with the transmission of this request may be found in contempt of court.

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C. An interested person shall not file a petition for adjudication that the ward is no longer incapacitated earlier than one year after the order adjudicating incapacity was entered, unless the court permits it to be made on the basis of affidavits that there is reason to believe that the ward is no longer incapacitated.

D. An interested person shall not file a petition to remove a guardian earlier than one year after the order adjudicating incapacity was entered, unless the court permits it to be made on the basis of affidavits that there is reason to believe that the current guardian will endanger the ward's physical, mental, or emotional health if not removed. The court may remove the guardian only upon finding that the removal is in the ward's best interest.

E. To modify any type of guardianship order, an interested person shall submit an affidavit or verified petition setting forth detailed facts supporting the requested modification and shall give notice, together with a copy of the affidavit or verified petition, to other parties to the proceeding, who may file opposing affidavits. The court shall deny the petition unless it finds that adequate cause for hearing the petition is established by the pleadings, in which case it shall set a date for hearing on why the requested modification should not be granted.

F. The court shall assess attorneys' fees and costs against a party seeking modification if the court finds that the modification action is vexatious and constitutes harassment.

G. [Same as current subsection C].

Comment: In considering the petition, the court must initially determine whether a change of circumstances has occurred since the last guardianship order. Only after the court finds a change has occurred does the court reach the question of whether a change in the guardianship order would be in the ward's best interest. See *Pridgeon v. Superior Court,* 134 Ariz. 177, 655 P.2d 1 (1982) (interpreting A.R.S. § 25-411(E) relating to the modification of child custody orders).

A.R.S. § 14-5416.01. Removal or resignation of conservator; termination of incapacity.

A. On petition of the protected person or any person interested in his welfare, the court may remove a conservator and appoint a successor if it is in the best interests of the protected person. On petition of the conservator, the court may accept a resignation and make any other order which may be appropriate.

B. Upon entering a protective order, and after considering the reasonableness of the positions taken by the litigants, the strength of the evidence presented including the probability that the need for protection of the protected person may be removed in the future, the benefits to and best interests of the protected person, the expected cost to the protected person's estate, and such other relevant factors determined by the court, a protective order, or separate order, may specify a minimum period, not exceeding one year, during which no petition for an adjudication that the protected person is no longer in need or protection or for removal of a conservator may be filed by any person other than the protected person without special leave of the court. The protected person may petition the court for an order that the protected person is no longer in need of protection and for the removal or resignation of the conservator at any time. A request for this order may be made by informal letter to the court or judge. Any person who knowingly interferes with the transmission of this request may be found in contempt of court.

C. An interested person shall not file a petition for adjudication that the protected person is no longer in need of protection earlier than one year after the entry of a protective order, unless the court permits it to be

made on the basis of affidavits that there is reason to believe that the protected person is no longer in need of protection.

D. An interested person shall not file a petition to remove a conservator earlier than one year after the entry of a protective order, unless the court permits it to be made on the basis of affidavits that there is reason to believe that the current conservator will endanger the protected person's estate if not removed. The court may remove the conservator only upon finding that the removal is in the protected person's best interest.

E. To modify any type of conservatorship order, an interested person shall submit an affidavit or verified petition setting forth detailed facts supporting the requested modification and shall give notice, together with a copy of the affidavit or verified petition, to other parties to the proceeding, who may file opposing affidavits. The court shall deny the petition unless it finds that adequate cause for hearing the petition is established by the pleadings, in which case it shall set a date for hearing on why the requested modification should not be granted.

F. The court shall assess attorney fees and costs against a party seeking modification if the court finds that the modification action is vexatious and constitutes harassment.

G. Before removing a conservator, accepting the resignation of a conservator or ordering that need for protection no longer exists, the court, following the same procedures to safeguard the rights of the ward as apply to a petition for appointment of a conservator, may require appropriate accounts and enter appropriate orders to preserve and protect the assets of the estate, to require reimbursement or payment as needed, and to transfer assets or title thereto to appropriate successors.

Initiative 10: Adopt an appropriate fiduciary fee schedule pursuant to Probate Rule 33(E), and urge the Arizona Supreme Court to adopt an appropriate fee schedule or guidelines for attorneys and other professionals to limit fees and assist the trial courts in determining the reasonable value of professional services in probate cases.

The court is required to act in the best interests of the protected person and approve reasonable fees in all cases. There exists in Probate Court a wide range of fees and costs charged by fiduciaries, attorneys and other professionals. This disparity includes significant differences in hourly rates, expenses and fees charged, as well as categories and profit centers identified by various professionals. Not all legal and professional services are equally complex and there are certainly differences in skill and ability of various

professionals that need to be accommodated in any fee structure. While determining what is reasonable is dynamic to the facts and circumstances of each case, the parties, professionals and the court should be provided some guidance and predictability with appropriate fee standards.

The Supreme Court Probate Committee is currently working to develop appropriate fee guidelines for attorneys and fiduciaries, and we encourage the adoption of appropriate standards in this area. To facilitate a pilot project that includes appropriate fee guidelines for fiduciaries and attorneys, Rule 33(E) should be amended as follows:

> E. The superior court by administrative order may adopt fee guidelines designating compensation rates that may be used in determining the reasonableness of fees payable to certified fiduciaries and attorneys in cases under A.R.S. Title 14.

IV. Initiatives to Improve Oversight & Accountability of Adult Guardianship & Conservatorship Cases.

Initiative 11: Initiate a Compliance Court to verify and ensure bonds are filed to protect all estates, minor and adult accounts are properly restricted, and fiduciaries fully comply with court orders.

Although most attorneys and litigants comply with court orders designed to protect the ward and/or an estate, if noncompliance were to occur, significant harm could result. Of significant importance are court orders requiring a fiduciary to post a bond to protect estate assets or to place funds in a restricted account without the ability of the fiduciary or any other person to remove any amount without first obtaining a court order. Both types of orders protect the ward and the ward's estate from inadvertent and inappropriate expenditure of funds by the fiduciary. Should the fiduciary thereafter breach a duty to the estate, the estate can be made whole by payment from the bonding company that insured the fiduciary or from the financial institution that improperly allowed funds to be expended contrary to court orders of restriction.

The Probate Court should establish a Compliance Court to insure that all bonds are in fact posted prior to issuance of Letters or as otherwise required by court orders, and to guarantee accounts ordered restricted are in fact so restricted before the opportunity for loss can occur to the estate. Every case requiring a bond or restricted account not accomplished by the time the order is entered would be referred to a Compliance Court for a special commissioner to schedule hearings, take action, and refer cases to the assigned judge or commissioner for further action as indicated.

The Compliance Court began operation on October 22, 2010, and preliminary indications are that it is accomplishing its intended objective.

<u>Initiative 12</u>: Evaluate the current Guardianship Review Program and determine what changes or additions to the program would better serve the wards under supervision of the Probate Court within the budgetary limitations of the court.

Pursuant to A.R.S. §14-5308(B), a court investigator is required to "conduct an investigation before the court appoints a guardian or a conservator to allow the court to determine the appropriateness of that appointment." This statute also allows the court to direct the investigator to "conduct additional investigations to determine if it is necessary to continue the appointment." While the aspirational goal of the Probate Court would be to require a court investigator to visit each ward annually, such a goal is currently cost prohibitive, and does not appear to conform with best practices in probate courts nationally.

Court administration estimated in August 2010 that the Probate Court had 18,537 adult and minor guardianship and conservatorship cases pending. The court currently employs four investigators, and if a probate investigator were required to visit each ward once per year, 25 investigators would be required at an annual cost approaching $2,000,000. Even if the program were applied only to the approximately 5,895 pending adult guardianship and conservatorship cases, the cost would be financially prohibitive.

In addition, most of the adult guardianship and conservatorship cases would not benefit significantly from an annual visit. Most wards receive excellent care by family members, care center professionals or private fiduciaries, and scarce public resources simply should be focused to identify and address those that are not. This is borne out by the guardian review programs being conducted by the better probate courts throughout the country.

As soon as finances allow, we should improve our current Guardianship Review Program by enhancing the investigative unit attached to Probate Court to investigate every complaint of whatever nature concerning a ward or protected person under supervision of the court. This should include "hot line" telephone and e-mail contact points that are widely advertised and distributed with encouragement for anyone to report questionable conduct or abuse. Such notifications could be provided to every interested party during the initial appointment process and/or with annual accountings. Every complaint would be investigated and appropriate action taken as indicated. To the extent additional investigative resources are available, they would be used to conduct random audits on an "intelligent selection" basis. In this regard the court should develop an appropriate risk assessment index to maximize the use of scarce resources. The evaluation process would start with the initial investigator's examination, and be further refined by judicial officers and subsequent investigative contacts.

Those cases identified as higher risk would be visited regularly and receive increased court oversight by an investigative unit with appropriate skill levels.

Initiative 13: Urge modifications to A.R.S. §14-5308 to prohibit investigators from receiving compensation or being appointed as a fiduciary, attorney or professional in the same case or for the same person involved in an investigation.

It is important to remove even the appearance of improper motive or conflict in all proceedings before the court. In the event it is necessary to hire a contract investigator to conduct an investigation in a guardianship case under A.R.S. §14-5303 or in a conservatorship case pursuant to A.R.S. §14-5407, that investigator should not thereafter be appointed or allowed to appear in any future capacity involving the ward or protected person where the investigator could receive financial or other benefit. Even though the need for such future services may occur unexpectedly, fortuitously or after the passage of significant time, the potential risk, however small, suggests the solution to insure the integrity of the process.

Accordingly, A.R.S. §14-5308(A) should be amended to add subsection F to state:

> F. An investigator appointed by the court under §14-5303 and -5407, or any person or entity closely related to the investigator, shall not thereafter receive additional compensation or be appointed as a fiduciary, attorney or professional in the same case or for the same person who was the subject of the prior investigation. For this purpose "closely related" includes a spouse, child, parent, sibling, grandparent, aunt, uncle or cousin of the investigator and any business, partnership, corporation, limited liability company, trust or other entity in which the investigator or any closely related person has any financial interest, is employed, or receives any compensation or financial benefit.

Initiative 14: Urge adoption of a pilot rule to allow the Probate Court to require accounting forms to be submitted to the court electronically in a prescribed format, and develop electronic auditing capabilities to review the accountings electronically and identify areas of concern.

The probate accounting process can and should be adapted to computer technology. This will require authority from the Arizona Supreme Court authorizing the Probate Court to adopt standardized accounting forms and require all, or at least some specific, accountings to be submitted electronically with appropriate electronic tags to allow computer summary and review of the data. Once authority is granted, the Court will begin to develop computer modules for parties to submit the accountings electronically and for the court to review and analyze the accountings quickly and identify areas of concern for

investigators, court accountants, and judicial officers to address. This will be a powerful tool to provide greater accountability, save significant costs by eliminating the need to do these functions manually, and allow more time to provide greater oversight in each case.

A proposed pilot rule or local rule will need to be developed in conjunction with the development of forms and procedures requiring selected conservators to utilize standard forms and electronic processes upon establishment of the requisite technology. Our experience indicates that this process should be accomplished in a two-step process. The first step would require paper standardized forms to be developed, tested, and perfected prior to conversion to electronic forms and processes.

<u>Initiative 15</u>: Conduct a staffing analysis of Probate Court administration staff to insure adequate staffing for core functions, and seek additional staff positions and contract positions where necessary.

Over the last three years the Probate Department has lost 9.5 full-time equivalent positions due to budget cuts, hiring freezes and staff reductions occasioned by the economic downturn. In fiscal year 2007, the Probate Department had 31.5 administrative staff positions. Currently that number has been reduced 33% to 22 positions as outlined by the Probate Court Administrator in her recent staffing analysis. The administrative staffing history of Probate Court and administration's request to enhance staffing for the next fiscal year are as follows:

Probate Admin STAFF	FY 2007 STAFFING	FY 2010 STAFFING	FY 2011 STAFFING	FY 2011/12 Optimal STAFFING
Administrator/ Supervisors	6	3	5	**5**
Judicial Clerks	13	9	9	**9**
Probate Examiners	3	3	3	**5**
Accountants	2.5	2	3	**5**
Investigators: Lead Pre Appointment	1 3 2	3 1 Contract Inv.	3 1 Contract Inv.	**6**
Court Monitor: Post Appointment Investigations	0	0	0	**2**
Clinical Liaison	1	1	1	**2**
Guardian Review Program Manager	0	0	0	**1**
TOTALS	**31.5**	**22**	**25**	**35**

The Court will immediately seek additional positions indicated to improve the capabilities and performance of this group of key administrators that, *inter alia*, provide oversight to adult guardianship and conservatorship cases.

Initiative 16: Seek the addition of a probate rule to establish an inactive calendar for all probate cases to ensure all cases are properly completed or dismissed within appropriate time limits.

Effective case management requires an understanding of how many court cases are subject to action or management at any given time. Civil and family court cases that are fully resolved by entry of judgment, decree or order of dismissal are routinely and efficiently removed from the court's list of active cases to allow court administration and judicial officers to focus their attention to manage only active cases. Not infrequently, civil and family court cases are abandoned or slow to progress for a variety of reasons ranging from a conscious desire to abandon the case to uncertainty of how to proceed. In these cases, the court is often not notified of the reason for the parties' delay. Civil Rule 38.1(d) in civil cases and Family Court Rules 46(B) and 91(R) address this situation by creating an inactive calendar that places civil and family court cases on a track to be dismissed after notice to the parties giving them an opportunity to proceed with the case if they desire. If no action is taken within the prescribed times, the case is dismissed by the court, and the court can focus its scarce resources to manage the smaller universe of cases that remain active.

Criminal and juvenile court cases generally are scheduled for mandatory hearings immediately upon the filing of a criminal, delinquency or dependency proceedings with the court, and these cases proceed from hearing to hearing until sentencing or issuance of a warrant in criminal cases, disposition or warrant in delinquency cases, or entry of an order of guardianship, termination of parental rights, adoption or dismissal in dependency cases.

Management of Probate Court cases presents a hybrid case management system, and commensurate case management difficulties. Informal and formal probates and intestacy administrations are structurally like civil cases in some respects but different in others. These cases are filed with the Clerk of Court and, barring a contest or opposition, the Petitioner or Personal Representative has the responsibility to seek appointment as Personal Representative, provide notice to heirs, notify and settle creditors' claims, resolve tax issues, prepare an Inventory and Appraisement, collect and distribute assets and close out the estate. By statutory design, the court has more limited oversight of informal proceedings, especially when waivers are executed. Oversight is increased when formal court authority is sought for various actions. Conversely, guardianship and conservatorship cases proceed more like criminal or juvenile cases with court oversight primarily converging at annual accountings and reports from year to year. These cases routinely terminate with a final accounting and order of

approval and discharge, but the current rules do not adequately provide for accountability if these final steps do not occur.

Probate Rule 3(A) incorporates the Civil Rules into probate cases unless they are inconsistent or preempted by the Probate Rules. Presumptively, this would make Civil Rule 38.1(d) applicable to probate cases, but it has never been consistently applied to probate cases because Civil Rule 38.1(d) is driven by the civil requirement to file a Motion to Set and Certificate of Readiness within nine months of filing of the civil case, a procedure that generally has no clear corollary in probate cases. For better case management, probate cases need a common sense rule that fits within the unique procedures applicable to probate cases of various kinds.

The Arizona Rules of Probate Procedure should be amended to add a new Rule 15.1 and amend Rule 8 applicable to all probate cases to insure all actions required by Title 14 are accomplished as follows:

Rule 8. Service of Court Papers.

A. Whenever A.R.S. Title 14 requires the notice of a hearing or other document be served personally, service shall be conducted pursuant to rule 4(d), 4.1, and 4.2 of the Arizona Rules of Civil Procedure.

B. If service of a notice and petition or application is not made upon all persons required in the manner proscribed by A.R.S. Title 14 within 120 days after the filing of the petition or application, the court, upon motion or its own initiative after notice to the petitioner or applicant, may dismiss the petition or application without prejudice or direct that service be effected within a specified time; provided that if the petitioner or applicant shows good cause for the failure, the court shall extend the time for service for an appropriate period.

(Patterned after Civil Rule 4(i) and ARFLP Rule 40(I).

Rule 10. Duties Owed to the Court.

A. [no change]
B. [no change]
C. Duties of Court-Appointed Fiduciaries.
   1. [no change]
   2. [no change]
   3. [no change]

   4. Duties Regarding Minor's Death, Adoption, Marriage or Emancipation. The court-appointed guardian of a minor ward that dies, is adopted, marries or reaches the age of majority shall immediately notify the court in writing of such event and include a

written accounting of any assets or monies owned by the ward, or a statement that the ward is possessed of no significant assets or monies beyond personal effects in possession of the ward.

Rule 15.1. Involuntary Termination of Appointment; Dismissal; Sanctions.

A. Involuntary Dismissal of Probate, Special Administration or Subsequent Administration Proceedings. One year after the filing of an informal probate or appointment proceeding pursuant to §§14-3301 to -3311, a formal testacy or appointment proceeding pursuant to §§14-3401 to -3415, a special administration proceeding pursuant to §§14-3614 to -3618, or a subsequent administration proceeding pursuant to §14-3938, if a Closing Statement authorized under §14-3933, a petition to settle the estate pursuant to §§14-3931 to -3932, or an order terminating the appointment of a special administrator pursuant to §14-3618 has not been filed, and if the court has not set the matter for trial, hearing, or conference, the court may issue a notice that the matter will be dismissed and the appointment of the personal representative or special administrator will be terminated by the court without discharging the fiduciary from liability or exonerating any bond in not less than ninety (90) days without further notice, unless prior to the expiration of ninety (90) days a proper Closing Statement, a petition to settle, a petition to terminate the appointment of the personal representative or special administrator, or a request for hearing or conference is filed. These periods may be extended by the court for good cause shown. Unless otherwise stated in the notice or order of dismissal, the dismissal is without prejudice.

B. Involuntary Dismissal of Minor Guardianship Proceedings. A minor guardianship proceeding filed pursuant to §§14-5201 to -5212 shall be dismissed by the court upon the minor reaching the age of majority based upon information previously provided to the court of the minor's date of birth, or upon the court receiving reliable information pursuant to Rule 10 or otherwise of the minor's death, adoption or marriage unless the court has reason to believe the minor possesses any significant assets or monies in excess of personal effects not are not subject to a pending conservatorship proceeding. If the court has reason to believe that the minor possesses any significant assets or monies in excess of personal effects not are not subject to a pending conservatorship proceeding, the court shall require a report from the guardian accounting for all of the minor's assets and monies prior to dismissal.

C. Involuntary Dismissal of Guardianship or Conservatorship. In the event a guardian or conservator fails to submit a written report

required by §14-5315 or §14-5419, or fails to comply with any requirements of Title 14, court rules or a court order, the court may:

1. Issue an Order to Show Cause pursuant to Rule 35 requiring the guardian or conservator to show cause why appropriate actions should not be taken by the court;
2. Immediately suspend or terminate the authority of the guardian or conservator to take any further action on behalf of the ward or the estate;
3. Order the guardian or conservator to comply within a time certain;
4. Dismiss the guardianship or conservatorship proceeding if the court determines after reasonable investigation that dismissal is appropriate and that dismissal would not be detrimental to the ward or incapacitated person; or
5. Enter such other or additional orders as may be appropriate designed to ensure compliance with legal requirements.

D. General Involuntary Dismissal. Six months after a probate petition or application has been filed for which no provision is made for involuntary dismissal pursuant to paragraphs A, B or C of this rule, if no action or hearing occurs in the proceeding for a period of six (6) months or longer, the court may issue a notice that the matter will be dismissed in not less than ninety (90) days without further notice, unless prior to the expiration of ninety (90) days a request for further proceedings or action is filed with the Clerk of the Court.

E. Effect of Dismissal. Unless otherwise specifically ordered by the court, the entry of an order dismissing a case serves to dismiss all pending, unadjudicated petitions, applications and issues, but does not dismiss, vacate, or set aside any final Order approving accountings or approving other actions of a person appointed pursuant to Title 14, A.R.S. previously entered in the case.

F. Dismissal Authority. The authority of the court to issue notices, dismiss cases and terminate appointments under this rule may be performed by court administration or by an appropriate electronic process under supervision of the court.

Initiative 17: Review the current judicial officer training program to ensure it appropriately addresses proper review of fiduciary accountings and professional fees, mediation techniques, identification of potential fiduciary conflicts, and priority of appointment standards.

The Probate Department conducts routine judicial rotation training and periodic supplemental trainings for all judicial officers assigned to the Probate Court. The curriculum for this training should be reviewed in detail to ensure that

every judicial officer is receiving adequate training to provide appropriate oversight of the ward's care and to preserve and protect the estates of protected persons to the extent possible.

V. Additional Probate Court Initiatives.

<u>Initiative 18</u>: Facilitate the completion of a comprehensive study by the National Center for State Courts (NCSC) of current probate practices and procedures in adult guardianship and conservatorship cases, and appropriately address all conclusions and recommendations made by the NCSC.

The Maricopa County Superior Court has commissioned the National Center for State Courts (NCSC) to conduct a comprehensive study and make recommendations to improve protective proceedings for adult guardianship and conservatorship cases in the Probate Court. The initial visit by the NCSC consultant occurred September 22-24, 2010, and their future work will be conducted in three phases over the next two years.

The first phase will gather information on best practices from other states to provide the normative basis for analysis and identify indicators that mark cases for special attention in the adjudication and monitoring phases to follow. The second phase will supplement phase one recommendations based upon intervening changes occurring in legislative and rule changes, and make additional recommendations based upon the professional experience and knowledge of best practices by NCSC personnel. The final phase will include revisiting the Probate Court to assess and report on the Court's implementation of the reform agenda.

More detailed information on the scope and nature of the comprehensive analysis by NCSC is set forth in a *Proposal to Assist the Superior Court in Maricopa County, Arizona in Improving Its Protective Probate Procedures* submitted by NCSC, as well as in the *Issues Paper* dated October 5, 2010 completed in conjunction with the first phase of the study.

The NCSC study will be conducted concurrently with the implementation of the initiatives set forth in this plan and elsewhere. This will allow the court to obtain an independent evaluation and assessment from the NCSC of each initiative while it is being implemented that will allow for dynamic correction and modification of each initiative before it is fully implemented. Conversely, the NCSC study will also be better informed in evaluation of existing processes by including the preliminary results of new initiatives designed to improve probate processes in its assessment. This collaborative approach should allow many of the NCSC recommendations to be incorporated, implemented, and tested during the process of the NCSC study or soon thereafter.

<u>Initiative 19</u>: Fully implement all requirements adopted by the Arizona Supreme Court and other appropriate recommendations of the Committee on Improving Judicial Oversight and Processing of Probate Matters from the Committee as soon as possible.

The Committee on Improving Judicial Oversight and Processing of Probate Matters authorized by Supreme Court Administrative Order No. 2010-52 is required to submit its final report to the Arizona Judicial Council at the June 2011 meeting. The initiatives in this improvement plan where appropriate will be provided to the Committee with the additional recommendation for the Committee to consider and include them in their final report.

VI. Conclusion

This plan is designed to significantly reduce the cost and complexity of guardianship and conservatorship cases and provide substantially improved oversight and accountability of these cases. The recommendations presented surely can be improved upon, but they are based upon the combined experience of knowledgeable and independent probate experts with many years of experience. With this plan, an effort has also been made to comprehensively integrate various enhancements into a complex process and concurrently simplify that process.

The Probate Department of the Superior Court in Maricopa County has already taken significant steps to reduce the cost of processing guardianship and conservatorship cases by instituting early mandatory settlement conferences in contested matters, adding a second experienced probate judge to the Probate Department to assist in the early intervention and hearing of contested probate cases, establishment of a Compliance Court to ensure compliance with court orders, and numerous other actions implemented by the Probate Presiding Judge, Honorable Rosa Mroz.

This improvement process will continue as the court continues to examine its processes, procedures, and training in cooperation with the National Center for State Courts as it conducts a detailed comprehensive study of the probate court in the coming months and makes appropriate recommendations based upon its evaluation of existing processes, initiatives implemented as identified in this plan, and knowledge of best practices in probate courts throughout the country.

Additional improvement can only be accomplished by the enactment of appropriate statutes and promulgation of court rules designed to:

1) fully inform families and parties of the expected costs of proposed fiduciary arrangements before expenditures from the estate occur to allow an informed choice for care before assets are committed or dissipated;

2) encourage appointment of the fiduciary who will best serve the interests and needs of the ward or protected person;

3) expand the available universe of fiduciary appointments to include not-for-profit enterprises and the public fiduciary where appropriate;

4) require competitive bidding when a commercial private fiduciary is proposed for appointment to allow market forces to help reduce costs;

5) limit expenditures from an estate to only those previously approved as reasonable and serving the best interests of the ward or protected person;

6) encourage early intervention and management of disputed probate matters by the court;

7) enhance and require additional alternative dispute resolution processes to reduce familial acrimony and the cost of litigation in contested matters;

8) streamline and simplify accounting requirements with standardized forms, simplified summaries to monitor compliance with authorization orders, and detailed supporting data and documents customized to the size, complexity and risk to the estate;

9) encourage development of electronic filing of accounts and electronic auditing to compensate for limited resources available to manually audit estates;

10) bring the fees of fiduciaries, attorneys and other professionals in line with the factors and duties to the estate outlined in *Sleeth* decision*;*

11) impose appropriate sanctions, including the reduction or denial of fees, for unreasonable, vexatious and harassing conduct in estate litigation;

12) limit multiple and repetitive litigation by requiring a showing of adequate cause of a valid claim before litigation proceeds and specific sums from the estate are approved to pay litigation costs;

13) establish reasonable fee schedules for fiduciaries and attorneys to prevent abusive charges to an estate;

14) avoid actual or the appearance of conflicts of interest by prohibiting investigators from receiving compensation in subsequent appointments in an estate; and

15) better manage large volumes of probate case filings by establishing an inactive calendar process designed to terminate abandoned matters or require statutory requirements are satisfied more expeditiously.

Statutes and rules designed to improve the probate process must be simple, well-integrated and make sense to the myriad of people interacting with the system. It must be remembered that more regulation is not necessarily better regulation. Adding a new process or requirement may produce marginal improvement in a few complex cases, but may unreasonably burden thousands of other cases that do not derive any benefit from the change. Requiring an additional time-consuming step be taken by the court or the parties in every case may also have the unintended consequence of burdening every estate with a new fee required to implement the new process.

The Superior Court in Maricopa County urges the Arizona legislature to adopt statutes and the Arizona Supreme Court to promulgate rules proposed by the Court. Further, the Arizona Supreme Court should authorize the Maricopa County Probate Court to conduct a pilot project with appropriate authority granted by rule or administrative order to implement the initiatives set forth in this plan on an interim basis to the extent that it currently has authority to do so within the existing statutory requirements.