

Mark W. Armstrong
Co-Chair, Advisory Committee on Rules of Evidence
Staff Attorney, Arizona Supreme Court
Superior Court Judge (Ret.)
1501 W. Washington, Suite 415
Phoenix, AZ 85007-3231
Telephone: (602) 452-3387
Facsimile: (602) 452-3482

Samuel A. Thumma
Co-Chair, Advisory Committee on Rules of Evidence
Judge, Arizona Court of Appeals
Division One
State Courts Building
1501 West Washington
Phoenix, Arizona 85007
Telephone: (602) 542-3492

**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of)
) Arizona Supreme Court No. R-15-____
)
ARIZONA RULE OF)
PROBATE PROCEDURE 3(D))
) PETITION TO AMEND ARIZONA
) RULE OF PROBATE
) PROCEDURE 3(D)
)
)
_____)

**PETITION TO AMEND ARIZONA RULE OF PROBATE
PROCEDURE 3(D)**

Pursuant to Rule 28, Rules of the Supreme Court, the Advisory Committee on Rules of Evidence, by and through its Co-Chairs, Mark W. Armstrong and Samuel

A. Thumma, petition the Court to amend Arizona Rule of Probate Procedure 3(D), as reflected in the attachment hereto, effective January 1, 2016.

I. INTRODUCTION AND BACKGROUND

Arizona Supreme Court Administrative Order No. 2012-43 established the Advisory Committee on Rules of Evidence with the following purpose:

The Committee shall periodically conduct a review and analysis of the *Arizona Rules of Evidence*, review all proposals to amend the *Arizona Rules of Evidence*, compare the rules to the *Federal Rules of Evidence*, recommend revisions and additional rules as the Committee deems appropriate, entertain comments concerning the rules, and provide reports to this Court, as appropriate.

Arizona Supreme Court Administrative Order 2012-43, dated June 11, 2012. The Advisory Committee has met regularly since September 28, 2012.

At its regular meeting of December 12, 2014, the Advisory Committee unanimously recommended that Arizona Rule of Probate Procedure 3(D) be restyled consistent with the restyling of Arizona Rule of Evidence 403. Arizona Rule of Probate Procedure 3(D) currently uses a standard that is not identical to Arizona Rule of Evidence 403. This suggested restyling would retain that difference but, where applicable, would use language adopted in the restyling of Arizona Rule of Evidence 403. This has been presented to the State Bar of Arizona Probate & Trust Executive Council, which had no objection to the proposal.

CONCLUSION

Petitioners respectfully request that the Court consider this petition and proposed rule change at its earliest convenience. Petitioners additionally request that the petition be circulated for public comment until May 20, 2015, and that the Court adopt the proposed rule as it currently appears, or as modified in light of comments received from the public, with an effective date of January 1, 2016.

DATED this 5th day of January 2015.

Mark W. Armstrong
Co-Chair, Advisory Committee on Rules of Evidence

Samuel A. Thumma
Co-Chair, Advisory Committee on Rules of Evidence

ATTACHMENT¹

Arizona Rules of Probate Procedure.

ARTICLE I. SCOPE OF RULES, DEFINITIONS, APPLICABILITY OF OTHER RULES

Rule 3. Applicability of Other Rules

D. Arizona Rules of Evidence.

1. The Arizona Rules of Evidence apply in contested probate proceedings. If all parties agree not to have those rules apply and the judicial officer concurs and enters an order to that effect, ~~all~~ relevant evidence is admissible, provided, however, that the court may exclude relevant evidence if its probative value is substantially outweighed by a the danger of one or more of the following: unfair prejudice, ~~or confusion of~~ confusing the issues, misleading the jury, ~~or by considerations of~~ undue delay, wasting waste of time, needlessly presenting or needless presentation of cumulative evidence or lack of ~~if the evidence lacks~~ reliability.

2. In uncontested probate proceedings, the Arizona Rules of Evidence shall not apply. ~~All~~ Relevant evidence is admissible, provided, however, that the court may but the judicial officer exclude relevant evidence if its probative value is substantially outweighed by a the danger of one or more of the following: unfair prejudice, ~~or confusion of~~ confusing the issues, ~~or by considerations of~~ undue delay, wasting waste of time, needlessly presenting needless presentation of cumulative evidence or lack of ~~if the evidence lacks~~ reliability.

Comment to 2016 Amendment

The language of Rule 3(D)(1) & (2) has been amended to conform to the restyling of the Arizona Rules of Evidence effective January 1, 2012 to make them more easily understood and to make style and terminology consistent throughout the rules. The phrase “misleading the jury,” as used in Arizona Rule of Evidence 403, is added for contested probate proceedings, recognizing there may be a jury trial right in such proceedings. In all other respects, these changes are intended to be stylistic only and there is no intent to change any result in any ruling on evidence admissibility.

¹ Changes or additions in rule text are indicated by underscoring and deletions from text are indicated by ~~strikeouts~~.