

REFERENCE TITLE: probate; wards; rights

State of Arizona
House of Representatives
Fiftieth Legislature
First Regular Session
2011

HB 2424

Introduced by
Representatives Smith D, Dial, Gowan, Seel, Vogt: Harper, Judd, Mesnard,
Meyer, Montenegro, Robson, Yee, Senators Barto, Landrum Taylor

AN ACT

AMENDING TITLE 14, CHAPTER 1, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 14-1101 AND 14-1104; AMENDING TITLE 14, CHAPTER 5, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 14-5109; RELATING TO THE PROTECTION OF PERSONS UNDER DISABILITY AND THEIR PROPERTY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 14, chapter 1, article 1, Arizona Revised Statutes, is
3 amended by adding sections 14-1101 and 14-1104, to read:

4 14-1101. Qualification of judge

5 IF A COUNTY IN THIS STATE ESTABLISHES A PROBATE COURT, EACH JUDGE
6 SERVING IN THAT COURT MUST FIRST DEMONSTRATE COMPETENCE IN ALL AREAS OF
7 PROBATE JURISPRUDENCE AS PRESCRIBED BY THE SUPREME COURT.

8 14-1104. Probate advocacy panel

9 A. THE PROBATE ADVOCACY PANEL IS ESTABLISHED CONSISTING OF THE
10 FOLLOWING MEMBERS APPOINTED TO STAGGERED THREE YEAR TERMS:

11 1. THREE ATTORNEYS WHO ARE RETIRED FROM THE ACTIVE PRACTICE OF LAW BUT
12 WHO PRACTICED PROBATE LAW. THE GOVERNOR, THE PRESIDENT OF THE SENATE AND THE
13 SPEAKER OF THE HOUSE OF REPRESENTATIVES SHALL EACH APPOINT ONE MEMBER.

14 2. TWO PUBLIC MEMBERS WITH AN INTEREST IN ISSUES RELATING TO PROBATE.
15 THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND THE PRESIDENT OF THE SENATE
16 SHALL EACH APPOINT ONE MEMBER.

17 B. THE ADVOCACY PANEL SHALL:

18 1. REVIEW THE ACTIVITIES OF PROBATE COURTS IN THIS STATE.

19 2. RECEIVE AND REVIEW COMPLAINTS FROM THE PUBLIC AND PROBATE ATTORNEYS
20 REGARDING THE PERFORMANCE OF PROBATE JUDGES AND PROBATE COURTS.

21 3. DEVELOP MINIMUM TRAINING STANDARDS FOR PROBATE JUDGES ON OR BEFORE
22 DECEMBER 31, 2011. THE PANEL MAY MODIFY THE STANDARDS ON OR BEFORE DECEMBER
23 31 OF EACH YEAR.

24 4. SUBMIT A REPORT OF ITS FINDINGS AND RECOMMENDATIONS, INCLUDING
25 RECOMMENDATIONS FOR JUDICIAL AND LEGISLATIVE CHANGES TO THE PROBATE COURT
26 SYSTEM TO THE GOVERNOR, THE SPEAKER OF THE HOUSE OF REPRESENTATIVES, THE
27 PRESIDENT OF THE SENATE AND THE CHIEF JUSTICE OF THE SUPREME COURT ON OR
28 BEFORE NOVEMBER 15 OF EACH YEAR. THE PANEL SHALL PROVIDE A COPY OF EACH
29 REPORT TO THE SECRETARY OF STATE.

30 C. COMMITTEE MEMBERS ARE NOT ELIGIBLE FOR COMPENSATION OR
31 REIMBURSEMENT OF EXPENSES.

32 Sec. 2. Title 14, chapter 5, article 1, Arizona Revised Statutes, is
33 amended by adding section 14-5109, to read:

34 14-5109. General provisions; rights of ward

35 A. THE COURT SHALL DISMISS A CASE BROUGHT PURSUANT TO THIS CHAPTER IF
36 THE PLAINTIFF CANNOT SHOW EVIDENCE OF ABUSE OR NEGLIGENCE BY CLEAR AND
37 CONVINCING EVIDENCE. IF THE COURT FINDS THAT THERE IS NO CLEAR AND
38 CONVINCING EVIDENCE, THE COURT SHALL SANCTION THE PETITIONER AND THE
39 PETITIONER'S ATTORNEY.

40 B. THE SUPREME COURT SHALL ESTABLISH A SCHEDULE OF PERMITTED FEES THAT
41 MAY BE CHARGED BY FIDUCIARIES, ATTORNEYS AND GUARDIANS.

42 C. THE COURT SHALL PROTECT A WARD'S CONSTITUTIONAL RIGHTS. A JUDGE
43 THAT DOES NOT DO SO IS SUBJECT TO CIVIL LIABILITY AND SANCTION BY THE SUPREME
44 COURT.

1 D. UNLESS THE COURT FINDS THAT THE PERSON APPOINTED BY THE PROPOSED
2 WARD HAS COMMITTED A CRIME, THE COURT MUST ENFORCE A PROPOSED WARD'S
3 DIRECTIVES.

4 E. UNLESS A WARD'S FAMILY MEMBER HAS BEEN CONVICTED OF A CRIME
5 COMMITTED AGAINST THE WARD, THE WARD'S GUARDIAN SHALL ALLOW THE WARD TO SEE
6 THE WARD'S FAMILY MEMBERS. IF THE WARD CHOOSES NOT TO SEE A FAMILY MEMBER,
7 THE WARD'S GUARDIAN MUST HONOR THIS WISH.

8 F. IF THE PROPOSED WARD HAS HAD A CREDIBLE PHYSICIAN FOR A PERIOD OF
9 TIME, THE COURT MAY NOT ORDER THE PROPOSED WARD TO BE EVALUATED BY ANOTHER
10 PHYSICIAN.

11 G. A PERSON WHO DOES NOT PROVIDE THE COURT WITH ACCURATE INFORMATION
12 IN A PROCEEDING BROUGHT PURSUANT TO THIS CHAPTER IS SUBJECT TO SANCTION BY
13 THE COURT AND IS SUBJECT TO CIVIL LIABILITY.

14 H. A WARD MAY REMOVE A PERSON APPOINTED BY THE COURT TO ACT IN A
15 FIDUCIARY POSITION FOR THE WARD ONE TIME EACH YEAR. THE WARD, A MEMBER OF
16 THE WARD'S FAMILY OR THE WARD'S GUARDIAN AD LITEM MAY PETITION THE COURT FOR
17 A CHANGE OF PERSON APPOINTED TO ACT IN A FIDUCIARY POSITION.

18 I. A PERSON APPOINTED BY THE COURT TO ACT IN A FIDUCIARY POSITION FOR
19 A WARD MUST:

20 1. PROVIDE A WRITTEN ACCOUNT OF ALL EXPENDITURES PAID FROM THE WARD'S
21 FUND TO THE WARD OR THE WARD'S FAMILY OR GUARDIAN AD LITEM ON A MONTHLY
22 BASIS.

23 2. RESIGN FROM THAT APPOINTMENT IF THE FIDUCIARY IS UNABLE TO MAINTAIN
24 A PROPER WORKING RELATIONSHIP WITH THE WARD, THE WARD'S FAMILY OR THE WARD'S
25 GUARDIAN AD LITEM.

26 J. IF THE SERVICES OF A GUARDIAN AD LITEM ARE PAID FROM THE ASSETS OF
27 A WARD'S ESTATE, THESE PAYMENTS MUST BE CALCULATED ON AN HOURLY BASIS AND MAY
28 NOT EXCEED FIVE THOUSAND DOLLARS EACH YEAR.

29 Sec. 3. Initial terms of members

30 A. Notwithstanding section 14-1104, Arizona Revised Statutes, as added
31 by this act, the initial terms of members of the probate advocacy panel are:

- 32 1. One term ending January 1, 2013.
33 2. Two terms ending January 1, 2014.
34 3. Two terms ending January 1, 2015.

35 B. The governor, speaker of the house of representatives and president
36 of the senate shall make all subsequent appointments as prescribed by
37 statute.