

Colorado Judicial Branch
Denver Probate Court



*The Honorable
C. Jean Stewart, Presiding*



May 2007 Issue No: 3

Quarterly Newsletter

Linda Pero Retires After Ten Years of Dedicated Service

Table of Contents

Linda Pero Retires	1
Changes to PI Settlements	2
How to Setup a Registry Account	3
DPC, Denver Dept of Human Services and Rocky Mtn Children's Law Center doing what is best for Children	4
DPC's Reporting System Regarding Involuntary Commitments of State and National Authorities	4
The Denver Probate Court Takes Seriously the Issue of Attorney Withdrawals	5

Linda Pero retired in April, 2007 with 10 years of dedicated service. Linda spent most of her career working within the court system. Linda started her career working for the Federal Government in the Naval Investigative Service Department in Virginia. She later moved to California and worked for Orange County in the Criminal Division. Linda, along with her husband Brad, decided to move to Colorado and made it their home.



Linda recalls applying for a position with the Denver Probate Court in February, 1997. She was called in for an interview in April and was offered the job later that day! She is grateful she did not have to wait long before she heard back. She stated she would never forget when she was offered the job and that is one of her fondest memories. She just knew this is where she wanted to be and it fit perfectly with her plans.

Linda worked in the front office and later assisted Magistrate Franklin as her clerk. Linda enjoyed interacting with people and loved knowing she was providing help. Linda was known as a jovial person who always went that extra step to help others.

Linda has no set plans, but intends to spend much needed quality time with her husband of 38 years. She has already started by preparing her husband healthy meals and they are enjoying their daily walks together. Linda and her husband enjoy their favorite vacation spot in Hawaii and hope to visit soon. Linda also loves to look at memorable pictures and loves to scrapbook. So, with work behind her, Linda can now add Denver Probate Court to her scrapbook and recall all the wonderful memories she has experienced and created.

Linda, as you embark on a new adventure in your life we wish you a Hau`oli la Ho`omaha loa! (Happy Retirement)

This newsletter is intended to provide general reference material in summary form and does not constitute binding authority on this or any other Court in a particular case. Moreover, this information is in no way an adequate substitute for qualified legal representation.

Changes to Personal Injury Settlements in the Denver Probate Court

In March, 2007, the Denver Probate Court implemented a change to the way the proceeds of Personal Injury Settlements are processed. In the past, an Order Approving Personal Injury Settlement would issue along with an Order for

Deposit of Funds to Restricted Account. The responsible party (generally a minor's parents) must take this order along with the settlement check to a bank, open a restricted account, deposit all of the funds, and return an acknowledgment to the Court from the bank stating the same. This leaves a lot of room for error and possible misplacement of the funds.

The Denver Probate Court can now open up restricted interest-bearing accounts within the Court's Registry. Thus, as soon as the order is signed, the check can be signed over directly to the Court and the account will be opened in the minor's name. The Court will then issue an Acknowledgment letter to the parties letting them know that the money has been deposited. Another benefit arising from this is that those parties that are not able to open bank accounts due to poor credit or other reasons now do not have to worry about it. The money is safe, and everyone knows where it is. The custodian is still able to petition to withdraw funds from the Registry just as they would from a bank account, but without needing to get a certified copy of the order to take to their bank. The Court will simply issue a check once the order is signed. The Court feels that this process eliminates most of the risk normally associated with these proceedings.

It is the Court's preference that this procedure be used for small accounts

For further technical aspects regarding the Registry, please see accompanying article by Clerk of Court Lee Cole.

Susie Jordan
Protective Proceedings Facilitator

Please see the new forms on our website (www.denverprobatecourt.org; under Court Forms, Personal Injury):

- new combined Order Approving Personal Injury Settlement and Order for Deposit of Funds with the Clerk of Court into a Special Account in the Probate Court Registry (DPC Form 4);
- new Petition to Withdraw Funds from Special Account in Registry (DPC Form 5).

The detailed Instruction Packet for Attorneys has also been updated to reflect these changes.

What we do in life echoes in eternity.
- said by Maximus in [Gladiator](#)

Donkey, you HAVE the right to remain silent. What you lack, is the capacity.
- said by Shrek in [Shrek 2](#)

HOW TO SET UP A REGISTRY ACCOUNT

As Susie Jordan mentioned in her article (see previous page 3), the Denver Probate Court implemented a change to the way Personal Injury Settlements are processed effective May, 2007. A procedure is now in place whereby these funds may be deposited into the Registry of the Court.

What is the Registry of the Court?

The Court Registry contains funds that are held in trust by the Court. With the approval of the judicial officer, these funds are placed in an interest bearing account. The Clerk of Court, pursuant to a court order, receives these funds and deposits them to an interest-bearing account. (The court refers to this type of account as a "special account".) The account lists the Clerk of Court as the owner of the account and includes the case number within the account caption. There is no cost to establish the fund and all of the earned interest is distributed to the beneficiary of the account. A court order is required to distribute these funds.

How do I get the funds into a Special Account?

Once the court order has been approved allowing the Clerk of Court to receive the funds, the paying party tenders payment in cash or check (preferably a cashier's check) in the full amount ordered by the court to the Clerk of Court. (If you pay by check, the Clerk is required to hold the funds for eight business days to ensure that the check has cleared the bank. You will also need to provide the Clerk of Court the beneficiary's tax identification number at the time the funds are given to the court.

The Clerk of Court will provide you with a receipt for the deposited funds. Generally within two business days, the new account has been opened and the money has been moved into the new interest bearing account. The Clerk of Court obtains a Public Deposit Protection Act number (P.D.P.A.) for each account. The good news is that the P.D.P.A. number acts to protect the funds in the account pursuant to legislation. The bad news is that P.D.P.A. accounts usually garner less interest because it is necessary for the banks to pledge more capital to ensure the liquidity of the accounts.

What is the interest rate paid on the Special Account?

The interest rate is set by the bank and depends on several factors. The rate fluctuates depending on those factors. The current interest is competitive and is available upon request from the Clerk of Court.

How is earned interest on the account reported?

Currently, when the earned interest statement is filed with the court, a copy is sent to the parties of record via LexisNexis File & Serve. The parties are responsible for any taxes due. However, the State Court Administrator's Office is currently reviewing the reporting process. You will be advised via our website if and when any reporting changes are made.

Into what type of account are the funds deposited?

Funds received for this purpose at the Denver Probate Court are placed into a money market account.

How are funds withdrawn from the Special Accounts?

The requesting party must petition the court to withdraw funds from these accounts. Once a court order approving the withdrawal has been granted, the Clerk of Court is able to write the check and disburse the funds pursuant to the court order.



Conclusion

The Court Registry contains funds that are held in trust by the Court.

It is our hope that this process will streamline the procedures for depositing and withdrawing funds, reduce the costs and hassle associated with the depositing and withdrawing funds and provide the opportunity for a secure place to deposit the funds for the beneficiary.

If you have questions, please email me at lee.cole@denverprobatecourt.org

Denver Probate Court working closely with Denver Department of Human Services and Rocky Mountain Children's Law Center to do what is best for Children

About a year ago the Denver Probate Court was contacted by Margaret Booker, Administrator of the Child Services division of the Denver Department of Human Services (DDHS). A meeting was set up at which a new project was outlined called the Denver Prevention Partnership Project (DPP). DPP (through the Rocky Mountain Children's Law Center - RMCLC) promotes collaborative teamwork between the family, DDHS, the community and legal advocates to help families resolve their problems without the courts. Frequently, this teamwork results in a family member seeking guardianship of a child. Since guardianship is a probate matter, it was decided to streamline the lines of communication between DDHS, RMCLC, and the Denver Probate Court.

As a result, when it is decided that a guardianship is needed, both DDHS and RMCLC contact the Probate Court through protective proceedings facilitator, Susie Jordan, with pertinent information regarding the family, and a volunteer attorney assists the family in filing their Probate Court paperwork. These cases now flow through the Court with extreme efficiency.

In early March a follow-up meeting was held to review the past year and to make any suggestions for improvement to one another. Everyone in attendance (including Judge Stewart, Magistrate

Gallegos, Margaret Booker, Shirley Hall – DDHS, Nathifa Lewis – DPP Program Manager, Susie Jordan, and Sarah Solano) agreed that the past year has seen this program implemented smoothly and effectively.

Another method of obtaining information in other (non-DDHS) minor guardianship cases was also created. If either the Judge or Magistrate decides that they need more information about a particular family before being able to make a completely informed decision, the Court can contact DDHS to seek further information and report to the Court. A letter is sent to the family ensuring them that this does not involve DDHS in their case, rather it is a tool for the Court to gather information.

Everyone at Denver Probate is excited about this program and is glad it is in place. The RMCLC is always looking for volunteer attorneys to assist in the project. If you are an interested attorney please contact Nathifa Lewis at nlewis@law.du.edu or call 303-692-1165.

Susie Jordan
Protective Proceedings Facilitator

Denver Probate Court's Reporting System Regarding Involuntary Commitments to State and National Authorities

In the wake of the Virginia Tech shootings, the Denver Probate Court has received numerous inquiries regarding the reporting of involuntary commitments to state and national authorities. This article is intended to briefly describe the reporting system and the Denver Probate Court's role in providing information to the national authorities.

The Brady Handgun Violence Prevention Act establishes controls on the purchase of handguns and requires background checks on persons attempting to

purchase handguns. Among other things, the Brady Act prohibits persons adjudicated as mentally incapacitated or committed to a mental institution from purchasing handguns. Federal Firearms Licensees must request background checks on individuals attempting to purchase a firearm to determine whether receipt of a firearm by a prospective gun buyer would violate the Brady Act or state law.

Continued on page 6

The Denver Probate Court Takes Seriously the Issue of Attorney Withdrawals

An attorney, as counselor of law, provides invaluable guidance to clients in probate proceedings. An attorney, as officer of the court, can be relied upon to conduct him or herself in a truthful and ethical manner. Thus, it should come as no surprise that the Denver Probate Court takes seriously the issue of attorney withdrawals.

An attorney enters a case either by filing the initial pleading or by subsequently entering her appearance. Occasionally, the Court might permit an attorney to enter a limited appearance, but for the most part, the Court takes an in-or-out position with respect to attorney participation in a case.

In probate proceedings, once an attorney is in the case, she is subject to the jurisdiction of the court and may only withdraw by filing a motion. See Colo. R. Prob. Proc. 14(a). See also Colo. R. Prof. Cond. 1.16 (c) ("When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation"). Notably, Chief Justice Directive 03-02 and C.R.C.P. Form 36 do not apply to cases that are not completed, so unless a final order has been issued, do not attempt to withdraw in such a fashion.

Colo. R. Civ. Proc. 121 § 1-1(b) sets forth the procedural requirements for filing a motion to withdraw. I won't go into detail with respect to Rule 121 because, generally speaking, an attorney who appears to have carefully read subsection 1-1(b) generally complies with it, but there is one exception – attorneys seem to frequently fail with respect the notice requirements.

Notice to the client alone is generally insufficient. Rule 121 requires that notice be provided to the client and other parties or their attorneys. In probate proceedings, the attorney must give notice to heirs, devisees, beneficiaries, and personal representatives (appointed and nominated); trustees, guardians, conservators, and other fiduciaries; and parties who have filed a demand for notice.

¹Motions to Withdraw may but need not be set on the non-appearance docket.

²See In the Matter of Estate of Larson, 103 Wash.2d 517, 521 (1985) ("The personal representative stands in a fiduciary relationship to those beneficially interested in the estate. He is obligated to exercise the utmost good faith and diligence in administering the estate in the best interests of the heirs ... The personal representative employs an attorney to assist him in the proper administration of the estate. Thus, the fiduciary duties of the attorney run not only to the personal representative but also to the heirs")

Sometimes, context governs to whom the Court will require notice. For example, estate creditors need not be provided notice unless they file a claim, but in petitions for settlement of personal injury claims, the Court requires notice to all creditors and lien holders. As a general rule, give notice to anyone with standing to object to your withdrawal. Otherwise, the Court will deny the motion.

The Court will review the case file for each motion for withdrawal. Since the duties of an attorney for the PR extend beyond the client, an attorney for a bad-acting or nonfeasant personal representative (or other fiduciary) may be ethically required to advise the court of the circumstances prompting her desire to withdraw..

Regardless, the Court will inspect the case file for signs of trouble. By way of example, if the estate appears to be languishing in inactivity, the Court may issue a Delay Reduction Order, which requires the filing of a status report and an appearance by the PR and her attorney at a delay reduction hearing. Not surprisingly, several attorneys have told me that they appreciate the Delay Reduction Order because it serves as an incentive for the client and the attorney to work together to close an aging estate.

In my experience, about seven out of ten motions to withdraw will be granted without a hitch. Of the three that are not, two will be denied because of a simple mistake in notice, misplaced reliance on C.J.D. 03-02, or other needless procedural deficiencies. The other one will necessitate a Delay Reduction Order for one reason or another.

Please help to reduce needless inefficiency by carefully following all procedural requirements concerning attorney withdrawals, and if you have any questions about withdrawing properly, please feel free to contact the law clerk at 720.865.8347.

Matthew Trinidad, Law Clerk

Continued from page 4

In response to the Brady Act, the Colorado legislature enacted statutory provisions requiring reporting of mental health commitments and guardianship proceedings to the National Instant Criminal Background Check System (NICBCS). (See Colo. Rev. Stat. §§ 13-5-142 which applies to district courts and 13-9-123 which applies to the probate court). NICBCS is a national clearing house for information relating to the controls on the purchase of firearms.

Colorado law requires probate courts to report the names of individuals found to be incapacitated in guardianship proceedings, individuals for whom a court has entered an order for involuntary commitment for drug and alcohol abuse, and individuals for whom a court has entered an order for short or long term certification for mental illness. This statute does not apply to report individuals who have been under a 72-hour hold, a precursor to involuntary commitment.

In Colorado, the State Courts Administrator's Office (SCAO) generates the report to NICBCS on a monthly basis. The report synthesizes information entered by individual judicial districts on the In-

grated Colorado Online Network (ICON) and formats the report in compliance with the Brady Act, 18 U.S.C. § 922.

A person who has been previously reported to NICBCS may request that the court take him or her off the list, but only if three years have passed since [1] entry of a court order terminating a guardianship based on a finding that the individual is no longer under an incapacity, [2] expiration of the individual's commitment to a mental institution, or [3] the sealing of their case file following release from the institution.



In Colorado, the State Courts Administrator's Office (SCAO) generates the report to NICBCS on a monthly basis.

Recently, the FBI audited Colorado regarding its compliance with the reporting system. Generally speaking, the audit results reflect favorably on the Colorado court system and the SCAO. The Denver Probate

Court appreciates the concern over this issue and looks forward to continuing its work with the SCAO and NICBCS.

C. Jean Stewart
Presiding Judge, Denver Probate Court

Welcome aboard to the newest members of Denver Probate Court

Susanna Baker
James Skay

Published quarterly
1437 Bannock St. Rm 230 Denver, CO 80202
Phone: 720-865-8310

Sarah Solano (Judge's Division) x8311
Susie Jordan (Magistrate's Division) x8313
Lee Cole x8389
Linda Riggle x8312
Micki Harris x8339

Calendar

May 13th Mother's Day
May 28th Memorial Day (office closed)
June 14th Flag Day
June 17th Father's Day
July 4th Independence Day (office closed)

www.denverprobatecourt.org