



*The Honorable
 C. Jean Stewart, Presiding*



Expert Witness Testimony

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Some attorneys get confused about the use of experts and are surprised to find that testimony they anticipated would "make the case" doesn't get admitted. Remember the difference between a legal brief and expert testimony. A legal brief that might be submitted in support of a motion or in connection with trial on a petition for relief contains your legal authority and your argument to the court about why that particular legal authority, together with the facts in your case, lead (or should lead) the court to find in your favor. In a legal brief you can and should tell the judge what the law of the case is or what you want it to be.

Rule 702 of the Colorado Rules of Evidence allows a trial court to admit the testimony of an expert if "scientific, technical, or other specialized knowledge" will assist the trier of fact in determining "a fact in issue..." Without getting into detail over issues about fields of recognized expertise and related areas of ambiguity, suffice it to say that there are many instances where the Denver Probate Court and all judges rely on the testimony of experts to lead the court through technical evidence that sheds light on the facts in dispute. Juries often need expert testimony to understand complex scientific and technical concepts. You might want to look at cases on our web site at <http://www.denverprobatecourt.org/selectedopinions.htm>, for examples of cases where expert testimony was admitted and used by this Court. See, e.g., Breeden, 96PR562.

While Rule 704 of the Colorado rules of Evidence does not prohibit an expert from providing testimony that "embraces an ultimate issue to be decided by the trier of fact," nevertheless the expert testimony that is offered must first meet the initial threshold questions: (1) is this scientific, technical or other specialized knowledge? And (2) will this testimony be likely to assist the trier of fact to understand the evidence or to determine a fact in issue? If the answer to either or both of these questions is "No," then the trier of fact is expected to reject the testimony. A sound case based on well-presented factual evidence and well-reasoned legal briefs is always superior to a case based on opinion testimony.

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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.

Employee Spotlight

Linda Riggle



Linda Riggle is the Denver Probate Court Registrar and has been here since 1991. Her main role is handling all the informal decedent's estates. She also works with non-appearance docket on formal appointments, formal closings, terminations of conservatorships, issuing decrees of discharge, approval of bonds and transfer of wills and venue. She currently is a member of the Task Force Forms committee and Best Business Practices committee. Linda is a graduate of the University of Colorado at Denver with two degrees, communications and fine arts.

Here is a more personal side of Linda:



Family: brother David, twin Jim (not identical!), mother LuNelle, Siamese brat...I mean cat, Tamu.
Spouse (accepting resumes)

What is your idea of happiness: good health, good friends and the

first time I smell a fresh cut lawn each spring.

When I'm not working, I'm...Golfing! Going to movies, reading, hiking, spending time with family and friends and whittling away at my endless "to do" list.

What are the qualities you most like in a person: selflessness, passion, humor and a sense of play.

Best gifts you ever received: Tamu, golf bag and clubs

Not many people know that I: kissed the Blarney Stone, am a Certified Diamondologist, and have a 2nd degree (1st is communications) in Fine Arts with an emphasis on painting.

Toughest thing about your job: Signing my name over and over and over and over...while trying to keep my pinky from turning blue from the ink (left-handed).

Best memory at Denver Probate: Just outside the window, The CART Grand Prix of Denver in Civic Center. Also seeing the Avalanche Stanley Cup and Bronco Super Bowl celebrations up close.

What would you do if you won the lottery: I think the answer is *what wouldn't I do!!*

What did you want to be when you grew up: A travel

journalist and photographer

What three individuals of historic or present would you like to have over for dinner: Tiger Woods, Quentin Tarantino and Steve Irwin (The Crocodile Hunter).

What is your greatest luxury: SPA days

Describe your perfect day: Waking up rested without an alarm clock, 1/2 hour on the elliptical machine followed by an hour lazily sipping a Starbucks Chai Tea Latte while completing the daily crossword...in ink. Then joining friends for a great round of golf (getting my first hole in one on the 18th!) followed by lunch and margaritas on a sunny patio. Off to the spa for a one hour massage then in the evening head downtown to catch a live concert or just-opened play or musical with the perfect date. Finally complete the evening with a nightcap on a cozy rooftop patio with a great view of the sunset.

What two objects would you rescue from a burning house: Assuming Tamu would run out on her own, I would rescue photos and my jewelry box.

What do you like most about Denver Probate: The friendships I have made with great co-workers and attorneys over the years and my unbelievably nice office with the sunny window for my many plants.

What do you like least about Denver Probate: The hour commute to and from here and having to pay \$90.00 a month for parking.

The Role of Colorado Courts in Addressing Mental Illness Issues

The Denver Probate Court is pleased to host a series of panel discussions entitled “The Role of Colorado Courts in Addressing Mental Illness Issues” featuring an extraordinary group of panelists addressing a range of timely and interesting topics. Here is the what, when, where, how, why, and WIIFM.

WHAT: This series is a six-class discussion of the intersection of the Court, persons with mental illness, mental health care providers, and attorneys. The initial course syllabus follows this letter. The series is offered free of charge, with the Court’s thanks to its presenters for the generous gift of their time.

Course materials: All course materials will be available on our website. To contain costs, and to stay green, printed materials will not be provided. Visit the website at <http://dpmhr.fjoomla.com/index.php> or go to www.DenverProbateCourt.org/MH.htm.

WHEN:

Friday, May 16, 2008 from 1:30 – 3:30 p.m.
Friday, June 6, 2008 from 1:30 – 3:30 p.m.
Friday, June 27 from 1:30 – 3:30 p.m.
Friday, July 11 from 1:30 – 3:30 p.m.
Friday, July 25 from 1:30 – 3:30 p.m.
Friday, August 1 from 1:30 – 3:30 p.m.



QUESTIONS:

Please contact Samantha Credle at Samantha.credle@judicial.state.co.us or Judge Stewart’s law clerk Jennifer Shaler at Jennifer.Shaler@DenverProbateCourt.org.

Although no course content is presently scheduled, the Courtroom will also be available for continuing conversations on Friday, August 15.

WHERE: Denver Probate Court, Room 224
The City & County Building at Bannock & Colfax
1437 Bannock Street, Denver, Colorado 80202

HOW to Register: Space is limited, so we’d like to get an accurate count of attendees for each session – before each session we will send an E-vite to everyone on our list. The E-vite will come from “Denver Probate Court - Room #224.” Be on the lookout for this, and please reply to the E-vite!

If you would like us to extend an invitation to another, you may either contact us or simply forward the E-vite to that person. If you would like to be removed from our address list, please e-mail Samantha.Credle@judicial.state.co.us.

WIIFM: What’s in it for me? This educational series is presented free of charge by an outstanding group of mental health providers, judges, and attorneys. The State of Colorado’s Supreme Court Board of Continuing Legal & Judicial Education has accredited the first session for (2) general CLE credits. Accreditation for the remaining sessions is pending. Plus, light refreshments will be served!

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Determining the facts belongs to the judge or to the jury alone based on the evidence presented. The determination of the applicable law of the case is the responsibility of the judge with assistance from the legal briefs and whatever research and analysis the judge provides. It differs from fact finding in that the law rarely can be “found” from the evidence presented. In exceptional cases, the judge may allow an expert to testify about the law of the case. See [Klink](#), 96PR1979, on our web site for an example of a case where the law of another state was the applicable authority and the Court allowed the testimony of lawyer/experts on the “law of the case.”

-- C. Jean Stewart, Presiding Judge

Child Support in the Denver Probate Court

Child support issues arise in both decedents' estate cases and in protective proceedings. Although domestic relations divisions of the District Court assign child support obligation and accept child support stipulations, the Denver Probate Court may address payment of child support in certain situations.

A parent's child support obligation is not necessarily terminated by death. Rather, death is seen as a change in circumstance that may result in

The starting point in determining child support payment from a decedent's estate or a conservatorship estate is the child support order.

modification, revocation or commutation of the support obligation to a lump sum

payment from the estate of the parent obliged to provide support. (See C.R.S. §14-10-122(3) and § 13-9-103(3).) The possibility of modification, revocation or commutation applies to both past due support obligations and future or continuing child support.

The starting point in determining child support payment from a decedent's estate or a conservatorship estate is the child support order¹. However, once a child reaches nineteen years of age or becomes emancipated, a child support order is no longer effective for that child. (See C.R.S. §14-10-115.)

Certainly, it's appropriate for the child support obligee to petition the Probate Court for modified or continuing payment of child support from the decedent's (obligor's) estate and/or the obligee may accept a lump sum payment of the support obligation from the decedent's estate to discharge the child support obligation. For example, an obligee may accept a lump sum payment to discharge past due child support *and* petition the court for modified or continuing payment of future child support from the decedent's estate.

On the other hand, it seems inappropriate for the child support obligee to request child support payment from, for example, life insurance benefits payable to the child-as-beneficiary because such benefits were intended for the child, not the obligee. Even where the obligee paid the life insurance premiums on obligor's life, whether by choice or by court order, it appears inappropriate. Rather, life

insurance benefits payable to the child-as-beneficiary are subject to protective proceedings.

When a minor is scheduled to receive assets from a decedent's estate, a parent may petition the court to act as conservator in order to receive and manage such assets. In the Denver Probate Court, if the minor is the beneficiary of a life insurance policy or scheduled to receive other assets, the Court will not authorize distribution of such assets until a Conservator is appointed and restrictions are in place for the protection of the minor's assets.

Especially in the case of liquid assets, following the appointment of a Conservator for the child, restrictions are imposed appropriate to the child's circumstances. The Conservator, usually a parent, may request and disburse funds for the benefit of the child for certain limited purposes but, again, it appears inappropriate for the remaining parent/child support obligee to request payment of child support from funds intended for the child.

When one parent dies, his or her death or failure to make child support payments does not discharge the remaining parent from an on-going responsibility to provide the basic necessities for a child. In Colorado, with or without the assistance of child support payments, a parent has an ongoing responsibility to provide basic necessities for a child. Basic necessities include food, clothing, shelter, education and routine medical care.

The surviving parent may request reimbursement from the (other parent's) decedent's estate or the conservatorship estate for extraordinary costs such as extraordinary transportation, education, or medical costs. However, the remaining parent is not entitled to child support payments from the Conservatorship estate or, for example, life insurance benefits where the child is the beneficiary. Payment of either past-due or future child support is more appropriately sought from the other parent's (obligor's) decedent's estate, if any.

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¹ Or stipulation of the parties and *may* include voluntary child support in certain circumstances.

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One should note that, unlike child support, a conservatorship generally continues until the child reaches age twenty-one. Therefore, the Conservator may request specific disbursements for the benefit of a child from the conservatorship estate until the child reaches age twenty-one. Additionally, any Petition to Withdraw Funds from a conservatorship estate for a child 19 years of age (or otherwise emancipated) may include costs of basic necessities including rent. However, if the child is 18 years or younger and living with a parent, the parent is responsible for the basic necessities. For example, a 16 year old should not be required to contribute to rent, food, or ordinary school and clothing costs.

When in doubt, look to the child support order to determine under what circumstances child support is owed and to whom and, perhaps, to determine if the child is beneficiary for life insurance benefits or other assets of a parent's decedent's estate. Generally, the Court will place restrictions on conservatorship assets that protect the assets for the child and will not consider payment of child support, past or future, from a minor's conservatorship assets.

-- Michael Gallegos, Magistrate

Pro Bono Program

During a recent visit to the Denver Probate Court I was approached by Judge Stewart. She asked whether I needed any CLE credits. She explained that the court was starting a pro bono program to help people in situations where the court believed such help would be appropriate and that attorneys participating in the program could earn CLE credit under C.R.C.P. 260.8. She went on to tell me about a man who had come to the court that morning and wanted to open a probate estate for his daughter, who had died more than three years before. She owned a small bank account to which her two young children were entitled as her heirs. The gentleman had not dealt with the matter for years because he did not know what to do. Then someone told him that he needed to open a probate estate in order to have the account transferred to his grandchildren.

Judge Stewart thought that the transfer could be effected more efficiently and without the need to use any of the court's limited resources if it were made

utilizing the Colorado Uniform Transfers to Minors Act. She showed me the section of that Act which she thought would apply.

I agreed to help the grandfather effect the transfer. First I re-familiarized myself with the Act and realized how much I had forgotten in the many years since I had last referred to it. Utilizing the statutory section which the judge had shown me, other sections of the UTMA and the small estate affidavit procedure, the three year old problem was solved with just a few hours work. The grandfather was very grateful, court resources were conserved, I learned something new and felt good for having been able to help - and should get CLE credit to boot! The Probate Court's new program comes up roses for all involved. I would encourage everyone to participate in it.

-- Jim Black, Esq.

If interested in volunteering, send an e-mail to Sarah Solano, Judge Stewart's clerk, at sarah.solano@denverprobatecourt.org. To obtain CLE credit for the pro bono work, complete and submit a Form 8 to the court. This form is available at www.coloradosupremecourt.com/pdfs/CLE/Form8.pdf. One hour of CLE will be awarded for each five hours of representation of the client. An attorney may be awarded a maximum of nine CLE credits during each three year compliance period. If the representation spans more than one such period, separate Forms 8 must be submitted for each period.

You can also refer to our February 2008 Newsletter (page 6) for additional details:
<http://www.denverprobatecourt.org/newsletters/Feb2008.pdf>

What is Denver Probate Court up to During the Democratic National Convention Week?



The City and County of Denver will host the Democratic National Convention (“DNC”) during the week of August 25 through 29th, 2008. The City is expecting 50,000 visitors during this week. Many of the activities are scheduled in the downtown area. This presents parking and access challenges for the City and County of Denver Building.

The Denver Probate Court serves a number of elderly and / or disabled citizens. The large number of visitors in the downtown area will make access to our operations difficult, at best. Therefore, during the week of the DNC, the Denver Probate court will operate as normal with some modifications:

Dockets: No hearings will be pre-scheduled for the week of the DNC. However, judicial officers and court staff will be working during the week on other duties.

Temporary Alternate Location: The Clerk’s Office operations will move to Tower Executive Suites, 1660 S. Albion St. #800, Denver, CO 80222 for this week only.

Mailing address: In the event that is necessary for you to send something to the Denver Probate Court via U.S. mail, please use our regular mailing address: Clerk of Court, Denver Probate Court, 1437 Bannock St., Room 230, Denver, CO 80202-5390.

Telephone contact: As the time for the DNC draws closer, the Denver Probate Court will release

telephone numbers for the Clerk’s Office alternate location during the week of the DNC. Please refer to our website located at www.DenverProbateCourt.org

Email contact: Remember, you can always reach us through email at info@DenverProbateCourt.org .

Hours of Operation: There will be no reduction in our hours of operation. The Clerk’s Office will be from 8:00 a.m. to 4:30 p.m. at the alternate location listed above. Most of our records exist in electronic format. However, paper records may not be available for inspection during this week only.

Efiling: All electronic filing functions will proceed as usual.

Emergencies: Emergencies can be handled by contacting Lee Cole, the Probate Court Administrator via email at lee.cole@denverprobatecourt.org . An emergency telephone number will be listed on our website as the DNC draws closer.

This is our plan at this time. Any changes to this plan will be announced on our web site located at www.DenverProbateCourt.org or through press releases issued by Robert McCallum, Public Information Officer for the Colorado Judicial Branch, robert.mccallum@judicial.state.co.us .

-- Lee Cole

Appointments as Guardian Ad Litem (GAL)

Denver Probate Court is seeking Personal Injury Attorneys to handle Court appointments as Guardian Ad Litem in cases where personal injury settlements for minors are presented to the Court for consideration and the minor is not represented independently of the insurance company or his/her parents.

Those who are interested should contact sarah.solano@judicial.state.co.us

Conservatorship Training

The Denver Probate Court offers free training classes for conservators. All conservators are welcome. Conservators who attend the training will receive a certificate of attendance, a copy of which will be kept in their case file.

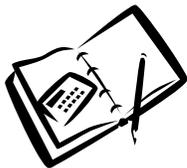
Lucy Murray, a Certified Public Accountant and Court Volunteer, conducts the training and other Denver Probate Court staff are available after the training to answer questions. The Court anticipates offering future training classes in July, September and November 2008.

The goal of the training is to help conservators set up a system to manage the finances of a protected person and perform the required annual reporting in an efficient and effective manner. Not only will the training be informative and helpful to conservators, it will also offer conservators a unique opportunity to meet other conservators and exchange ideas.

The last training session held in May included an interesting discussion of the following key points:

- The advisability to pay for all expenses for the conservatorship through a central checking account
- The need to maintain all records for the duration of the conservatorship because the Court and Interested Persons can request documentation at any time
- How to prepare the Conservator's Inventory and Financial Plan (JDF 882), and when an amended Financial Plan should be filed with the Court
- How to determine if the remaining assets in the estate are sufficient to provide for the present and future care of the Protected Person
- Common questions and issues when completing the annual Conservator's Report (JDF 885)
- When a conservator must file the IRS Form 1099-MISC to report payments made for services provided to the estate
- How to determine if the amounts paid for professional services are reasonable

We strongly encourage new conservators to attend, as well as conservators who have an upcoming report due.



The next training class will be held:

**Monday, July 14 2008
1437 Bannock St., Room 224,
Denver, CO 80202**

**8:30am to 9:30am,
followed by an optional question and answer session from 9:30am to 10:00am.**

If you plan to attend, please notify Lucy Murray at lucy.murray@judicial.state.co.us or 720-865-8338.

"Diggin' Up Bones"

Last night I dug your picture out from our old dresser drawer
I set it on the table and I talked to it till four
I read some old love letters right up till the break of dawn
Yeah, I've been sittin' alone diggin' up bones

Then I went through the jewelry and I found our wedding rings
I put mine on my finger and I gave yours a fling
Across this lonely bedroom of our recent broken home
Yeah, tonight I'm sittin' alone diggin' up bones

Chorus:

I'm diggin' up bones
I'm diggin' up bones
Exhuming things that's better left alone
I'm resurrecting mem'ries of a love that's dead and gone
Yeah, tonight I'm sittin' alone
Diggin' up bones



"Diggin' Up Bones"

In 1986, Randy Travis dug up some old memories of a love lost. Recently, the Probate Court was faced with a rare question: what action should one take if she literally seeks to exhume the remains of a loved one?

In this instance, a surviving family member wished to have the remains of a family member disinterred, cremated, and transported to the family resting spot in a neighboring state.

First, the cemetery operates under the assumption that the family always intended to do what they did in deciding where to bury the decedent. The cemetery will require proof that the family's wishes have changed. If there is only one surviving family member, or if there is consensus among the family to proceed with the exhumation, the Court does not need to be involved.

The person requesting the disinterment must provide to the cemetery an affidavit explaining why she wishes to take this action, where she intends to move the remains, the name of the deceased, and the relationship of the requestor to the deceased. The cemetery will also require proof that the requestor is the only living relative, or proof that all interested persons are aware of this pending action and that no other family member objects. The Court's involvement would be required if there are relatives who object to the action.

Aside from the obvious emotional costs, there are monetary expenses involved with this process. The cemetery charges fees for the disinterment, the cremation, and the administrative requirements associated with an exhumation (obtaining the necessary permits from the State of Colorado, coordinating with the other cemetery, making transportation arrangements, etc.).

-- Jennifer Shaler, Esq., Law Clerk



A conversation overheard at the City & County Building:

"That reminds me of the MasterCard commercials:

Attorney filing Notice, getting paid \$250.00 an hour

Clerk reviewing attorney's work, getting paid \$20.00 an hour

Clerk reminding attorney how to do their work -- PRICELESS"

Volunteer Opportunity with DHS

Position: Volunteer Adult Supervision Visit Coordinator

Definition of Work: The Denver Department of Human Services, Adult Protective Services Unit is seeking a volunteer to supervise visits between family members and the Ward. The purpose of this position is to provide a safe opportunity for the Ward to have contact with family members that they would not otherwise be able to do without supervision. The visits would likely be one to two hours in length, taking place in the community; involving activities such as bingo and going out to eat with family members. The visits could be weekly depending on the volunteer's schedule.

Qualifications: The volunteer should be someone who enjoys working with the elderly and can supervise visits based on written requirements. The volunteer would need to have a valid driver's license and be willing to transport the client to and from visits. The volunteer would need to consent to a criminal background and a driving history check.

If interested, please contact:

Jeffrey L. Lamb Esq., Ongoing Caseworker
 Denver County Adult Protective Services
 720-944-3107
Jeffrey.Lamb@denvergov.org



Did you know?

The two flagpoles in front of the City and County building are seventy feet, three inches tall, including the nine foot bases and weigh one ton each.

Denver Probate Court Contact Information

Judge's Division	x8311
Magistrate's Division	x8313
General Information	x8310
Clerk of Court	x8389
Registrar	x8312



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Lee Cole		Carolyn Cammack	CJA
	District Administrator/Clerk of Court	Micki Harris	Info System Specialist
Jennifer Shaler	Law Clerk	Susanna Baker	CJA
Linda Riggle	Registrar	Lucy Murray	Court Friend
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