

**Probate Advisory Workgroup Meeting
Friday, December 15, 2017**

Meeting Minutes

Members

In Person: Sandra Casselberry, Rebecca (Becky) Gray, Judge Elizabeth Leith, Chief Judge James Hartmann, Amber Roth, and Melissa Schwartz.

Phone: Kathy Cavinder, Judy Cross, Danene Etz, Suzanne (Soozy) Fredrickson, and Magistrate Frances Johnson.

State Court Administrator's Office (SCAO) Staff

In Person: Bret Cogdill, Bill DeLisio, Tracy Griffith, Rachael Hohf, Connie Lind, Kamiar Saedian, Chris Ryan, and Steven Vasconcellos.

Public

No attendees

Non-Members

Rolanda Clayton via phone.

Business

1. Call to Order

2. October 26, 2017 – Meeting Minutes

Judge Hartmann moves to approve the minutes. No objections received, minutes approved.

3. Updates

A. Chris Ryan provided an update regarding the Legislative Audit Committee (LAC) Hearing held Dec. 5, 2017.

- Chris updated the LAC regarding the work being done by the Workgroup, including the proposed statutory revisions being discussed.
- No questions or follow up.
- The LAC raised one concern regarding conflict of interest, providing Chris with a 2010 Denver Post Article regarding real estate sales in Denver involving the public administrator. They wanted to ensure that there is language regarding conflicts of interest. Conflict of interest is already addressed in the Guidelines for the Operation of the Public Administrator's Office.
- LAC appears to be happy with the progress of the Workgroup.

Action Items:

Chris will submit to the LAC all proposed statutory revisions agreed upon today by the Workgroup. LAC will institute getting sponsors for moving proposed legislation forward.

B. Judge Leith provided an update regarding the work of the Probate Advisory Workgroup Subcommittee.

- Melissa advised no concerns from the public administrators group regarding the:
 - PA Statement of Account

- PA Guidelines
- Statutory Revisions
- However, needing additional time for discussing the PA Annual Report. Should have information by the February Workgroup meeting, including information from Casey Williams who is not able to attend today due to family emergencies.

4. Discussion Items – Materials Posted Ready To Be Voted On

A. JDF XXX – Public Administrator’s Statement of Accounts (updated draft)

- Currently no standard form.
- Change since last meeting is the ‘Note’ section – two bullet points at the bottom of the form.
 - Must attach detailed fees and costs account statement to the form; and
 - Form must be filed at the close of decedent’s estate.
- No concerns or comments received by the public administrators groups or the Trust & Estate Section at the CBA.
- Proposed statutory revision C.R.S. 15-12-621(6) – line added regarding attaching copy of fee statements to the PA Statement of Accounts.
- Do we need to wait until statutory revision passes before including the ‘Note’ section?
- Courts can order that now (prior to the vetting, approval and passing of the statutory revision).
- Melissa was asked if she had received any comments from her colleagues regarding the two bullet points.
- No, no comments other than one PA is already filing them and Melissa’s office has begun doing so as well.
- Support moving forward with vote, noting, PAs may question court’s authority to require the filing of fees/costs statements. Courts may need to issue a local administrative order if necessary.
- Administrative Order would be helpful.
- Judge Hartmann moves to approve. Melissa seconds. All approved.
- **Approved as posted.**

Action Item:

Connie will submit the form to the Supreme Court Rules Committee for review and approval at their Jan. 5, 2018 meeting. If approved, Connie will ask that the form be sent to the Supreme Court as soon as possible. (Form # will be JDF 898)

B. Guidelines for the Operation of the Public Administrator’s Office (updated draft)

- Outstanding issue being #2 – PA Standard Annual Report.
- Vetted several times through the public administrator group, as well as the Statutory Revisions Committee (SRC) at the CBA. No concerns by either group.
- Preliminary approval. Yes.
- Adoption of the Guidelines will take place after March 2018.

C. Proposed Statutory Revisions

- **§15-12-619(4)**
 - Increase public administrators general bond from \$25k to \$100k.
- Approved as posted**

- **§15-12-619(6)**
 - Deputy Public Administrators shall be subject to all requirements of Public Administrators as set forth in this Section.
Approved as posted
- **§15-12-621(6)**
 - Copies of all fee statements reflecting such fees and costs shall be filed with the statement of accounts (small estate cases).
Approved as posted
- **§15-12-623(2)**
 - Language added requiring a 'standard annual public administrator report'.
Approved as posted

Action Items:

Chris will submit these proposed statutory revisions to the Legislative Audit Committee, which they in turn will get it to a bill drafter.

5. Proposed Standard Public Administrator Annual Report – Format

Updated draft presented. The Probate Advisory Workgroup Subcommittee carefully considering the time involved, how labor intensive it would be, and the additional costs associated with separating out public administrator fees from that of their staff/investigators.

It was decided that Melissa and Casey would go back to their offices and reach out to all PAs regarding the ability to separate their fees & costs, as well as consider the offices that outsource their billing? Concerns that the probate code doesn't require this, and providing details on each distinct service provided was also discussed.

Discussion:

- Proposed report is a compilation of information that many of the PAs already put in their reports with the exception of the additional columns:
 - Hourly rate range;
 - Effective hourly rate; and
 - Cumulative fees
- Melissa has reached out to the PAs to find out how much time it takes each of their offices to complete their annual reports.
- Melissa's office is one of the largest, with El Paso County probably being the second largest within the state. Melissa's office reported handling 480 cases for last year.
- Her office estimates spending 2-3 minutes on each particular case when compiling their annual report. Considering the three additional columns, they estimate an additional 2 minutes per case. This is significant for an office of her size and that of Catherine Seal's office (El Paso County).
- Melissa's office has their own billing software; however, others outsource their billing.
- Will PAs bear the costs, or will they be passed on to the estate/families?
- Concerns about breaking out the fees and costs by separate biller.
- Significant burden for the public administrator's offices that have a larger case load (e.g., Denver, El Paso, etc.).
- Already providing this level of detail in conservatorship cases by filing the Conservator's Report in each case.

- Possibly remove the hourly rate range and cumulative fees.
- The annual report is meant to be a snapshot.
- Could you easily include the hourly rate for each person working on the cases (e.g., PA, assistant, etc.), not broken out for each case, would that be easily accomplished?
- Yes, most PAs have a fee schedule that could easily be attached to the report.
- Before removing the cumulative fees column, the Office of the State Auditors really wanted us to consider the cumulative fees. Cumulative fees were in the audit report and one of their recommendations. Cumulative fees for a given year, and for each case.
- PAW Subcommittee wanted to see if there is a way to collect data from Melissa, Casey and their colleagues as to how much time it would take to break-out specific tasks, how many hours worked, and who worked on the task for that case so that when it is presented back to the legislature, they can look at how much time this takes, which ends up being cost to the estate. Or if this is information collected by the PA that the court can request on a case by case basis, more cost and time effective, juris can decide which case to look at, or the auditor's office (internal audit team) can look at. The PA can then submit rather than submitting it on each case.
- Probate code does not require such level of detail.
- There's a balance in what the audit is recommending and what the staff (Workgroup) is recommending to adopt. If the recommendation is different from the audit report, the Workgroup needs to note the reasons why it may not be advisable; if the Workgroup goes with the audit recommendations, they should note the inherent costs and fees to the estates; asking, is this getting the right kind of public policy return based on that investment of work?
- The Table provided in the audit report was misleading (PA fees).
- One public administrator's office is losing money every year.
- Courts can request/require additional information at any time on any case.
- Interested Persons/Parties can request detailed information from fiduciaries.

Action Items:

The Probate Advisory Workgroup Subcommittee will meet again to consider today's discussion and come back to the Workgroup with a revised proposed draft at the Feb. 9th meeting.

6. Judicial Resource Manual (JRM) Section - ESTV – Estate Value Code

- A JRM section was created to replace the current training materials posted.
- Change in process:
 - The reporting period would no longer be a requirement; and
 - If a Restricted Account Report and/or bank statements were ordered in lieu of a Conservator's Report, the value would be entered.

Approved as posted

Action Items:

Connie will have the JRM Section posted, replacing the current training materials. She will also inform court staff of the changes. Note: The JRM Section will need to be revised in the future to include adding estate values reported in the Public Administrator's Statement of Accounts (small estates).

7. Judicial Resource Manual (JRM) Sections to Consider in February

- Special Administration – Formal & Informal
- Intestate – Formal & Informal
- Testate – Formal & Informal
- ESTV – Estate Value Code
 - Need to add the PAD – Public Administrator party type code as we've done in protective proceedings case.
- Public Administration Statement
 - Filing separate cases.
 - PA's are requesting the \$6 CCE fee be waived on the PA Statements that are under \$500

Action Items:

Connie will draft the above JRM Sections accordingly. Steven and Connie will look into what is entailed for waiving the \$6 CCE.

8. Next Meeting

Thursday, March 8, 2018 at 1:00 p.m. – 4:00 p.m. at the Ralph L. Carr Judicial Center.