

**Probate Advisory Workgroup Meeting  
Friday, February 9, 2018**

**Meeting Minutes**

**Members**

In Person: Sandra Casselberry, Judge Elizabeth Leith, Chief Judge James Hartmann, Amber Roth, Melissa Schwartz, and Chief Judge Singer

Phone: Kathy Cavinder, Danene Etz, Rebecca (Becky) Gray, Magistrate Frances Johnson, and Casey Williams.

**State Court Administrator's Office (SCAO) Staff**

In Person: Marty Galvin, Tracy Griffith, Rachael Hohf, Connie Lind, and Steven Vasconcellos.

**Public**

No attendees

**Business**

**1. Call to Order**

**2. December 15, 2017 – Meeting Minutes**

No correction or objections received, minutes approved.

**3. Legislative Audit Committee (LAC) Hearing Updates**

Steven Vasconcellos provided an update regarding the Legislative Audit Committee (LAC) Hearings held Jan. 16<sup>th</sup> & Jan. 30<sup>th</sup>, 2018.

- Statutory revision changes presented to the LAC are now in Bill form and have been received by the State Court Administrator's Office (SCAO) for fiscal notes.
- No substantive changes were made.
- The LAC discussed the matter of raising the bond as proposed. Some committee members argued against it. Final vote was 4-4, passes due to tie.
- Chris to provide an update to the LAC in June, which should include the final Public Administrator/Deputy Public Administrator Annual Report.
- Marty advised the LAC will be looking to implement recommendations, so meeting the deadlines as scheduled is important.
- Steven advises the Workgroup has been responsive but if there was a need to ask for a continuance on the timeline, he believes it would be acceptable.

**4. Action Item Updates**

**A. Judicial Resource Manual (JRM) section – ESTV – Estate Value.**

- Courts were notified of the changes made for entering the ESTV code and made aware of the new section.
- Connie reviewed a few cases from several districts and found that staff is complying with the new changes.

**B. Communication with the Colorado Department of the Treasury**

- Connie has spoken with Ryan Parsell, Deputy Treasurer several times and sent him three escheats – transfers from Melissa Schwartz’s office.
- His department’s search found that all three escheats were processed correctly.
- Connie contacted Derek Johnson, State Auditor who worked on the 2017 PA Audit to confirm the three escheats were not a part of their audit test work, for which Derek confirmed they were not.
- Steven advised our efforts to comply with Audit Recommendation #5.B. have been sufficiently explored. Nothing further is needed.

## **5. Ongoing Business – Public Administrator Performance Audit – August 2017**

Judge Leith provided an update regarding the work of the Probate Advisory Workgroup Subcommittee. Melissa has drafted a memo that once completed, will be sent out to the Subcommittee for review. Chief Judge Hartmann thanked Melissa and Casey for their hard work and efforts, and for reaching out to their colleagues.

**A.** The Subcommittee’s final draft of the PA Annual Report is complete and has been divided into three separate documents. 1) PA Caption Page (summary information); 2) PA Annual Report Spreadsheet (report details); and 3) Judicial Review Document

- PA Caption Page includes:
  - Part A: Issues (i.e., bond information, attached fee schedule, etc.)
  - Part B: Case/Load Court Cases (total number of cases per case type)
  - Part C: Total Hours Worked & Cumulative Fees

### **Form approved as drafted**

- PA Annual Report Spreadsheet
  - This page of the report will be attached to the Caption Page
  - Some columns are in addition to what PAs currently report on and some columns/information PAs currently provide were removed
  - PAs can work with their courts to continue to include such information
  - The extra time and work involved is still a concern of the PAs
  - Melissa believes there needs to be instructions on computing the ‘effective rate’ for PAs whose software will not auto calculate this for them
  - Use the same formula as our internal auditors use
  - Tracy advised they would divide Column G – PA Fees by Column E – Total Number of Hours Worked to reach the total for Column F – Effective Hourly Rate
  - Recommendation to switch Columns F&G
  - Columns F&G have been switched
  - No further recommendations for change

### **Form approved with changes**

#### **Action Item:**

Melissa and Connie will work on instructions for PAs to use when completing their report.

- Judicial Review Document

- This document is for Judicial Officers to indicate that they have reviewed the PA Annual Report and have met with the PA/Deputy PA
- A section is included for Judicial Officers to add additional comments, if any
- Space needed between the words 'BY' and 'THE' in the document title
- A period is needed after the statutory reference

### Form approved with changes

**B.** Connie sent out a Judicial Resource Manual (JRM) Section Review document, seeking direction from the Workgroup prior to updating the required sections.

- **OTH** – Other is currently listed for: Heirs/Devisee, Nominee, and Interested Persons/Party

Recommendation:

- **HER** – Heirs/Devisee
- **NOM** – Nominee
- **OTH** – Interested Persons/Party

### Party Type codes approved

#### Action Item:

Connie will update the JRM sections accordingly.

- **HFPR** – Formal Probate of Will Hearing is currently the scheduled event code for all formal estate hearings

Recommendation:

- Change the description of the code to: Formal Probate Hearing and use it for all formal estate hearings

### Description change approved

#### Action Item:

Connie will update the JRM sections accordingly.

- **COURT PROCEDURE**

Guidance Need:

**(1)** When a new estate case is filed, should court staff *only* check the name index for their location **OR** check Statewide Index (SWI) to see if an existing estate and/or guardianship/conservatorship exist elsewhere.

### Approved - Check SWI as well

- (2)** If an estate case exists *within your court*, should the recommendation be:
- a. Accept the new filing – Application/Petition and relate it to the existing case.

b. Do **NOT** issue Letters in the new case, but consult with the judicial officer assigned to the case on how to proceed.

OR

c. Application/Petition should be filed/uploaded into the existing case when filed by a pro-se party. If filed via CCE, reject the pleading with a note to the attorney and inform them of the existing case.

d. Do **NOT** issue Letters on the new filing, but consult with the judicial officer assigned to the case on how to proceed.

**Approved #c.&d. with additions**

**Add: Follow your local policy/procedures for rejecting the new filing and adding the attorney to the existing case.**

- Inform the attorney via CCE as to why you are rejecting the new filing. Provide them with the existing case number. **NOTE:** You will need to add the attorney to the existing case for them to file the pleading into the existing case. Follow your local policy for doing so.
- Call the attorney prior to rejecting the pleading **if** that is your policy.

**Issue Identified:** Rejecting the pleading due to an existing case isn't included in Chief Justice Directive (CJD) 11-01.

**Action Items:**

Chief Judge Hartmann will raise the issue with the Chief Judges Counsel at their upcoming meeting. Amber will raise the issue with the clerks of court at their upcoming Clerk's Advisory Committee meeting.

(3) If a guardianship/conservatorship case exists *within your court*, should the recommendation be:

a. Relate the new estate case to the existing guardianship/conservatorship case.

**Approved**

(4) If an estate case exists *in another court*, should the recommendation be:

a. Accept the new filing – Application/Petition but do **NOT** issue Letters.

b. Consult with the judicial officer assigned to the case on how to proceed.

OR

c. Should the case be rejected and the applicant/petitioner be made aware of the existing case in the other court location? OR

d. Check with the clerk of court and refer to local policy?

**Approved #a.&b.**

(5) If a guardianship/conservatorship case exists *in another court*, should the recommendation be:

a. Note the other court's case number? And

b. If so, should a comment be added to the application/petition event or by adding a MINO, whichever is consistent with your local policy?

**Approved with additions**  
**Add: The name of the other county/court location**

#### **Intestate Formal JRM sections**

**(1)** General Information shows C.R.S. §15-12-401. Is this correct or should it be §15-12-402?

**Statute should be C.R.S. §15-14-402**

**(2)** Persons with priority. Is current order correct or should it be pursuant to statute: (1) The surviving spouse, (2) The surviving party to a civil union entered into in accordance with article 15 of title 14, C.R.S., (3) other heirs of the decedent, (4) 45 days after the death of decedent, any creditor.

**Correct the language to follow current statutory language.**

#### **ESTV – Estate Value Code**

**(1)** Should the ESTV code be entered in estate cases (excluding PA Statement of Accounts – Small Estates)?

**No.**

#### **Uncontested Formal Testate & Intestate Cases**

**(1)** Can these cases be set on the non-appearance docket?

**Yes.**

#### **JRM Section – Monitoring of Plans & Reports Conservatorship & Guardianship**

**(1)** Should it be a requirement for the Conservator's Financial Plan to be set for a hearing or non-appearance hearing as currently stated in this JRM section?

**No. Not pursuant to statute, therefore, remove this language.**  
**Recommendation: Ensure all interested parties have been served.**  
**It is up to the conservator to set it for a non-appearance or appearance hearing should they choose.**

#### **Action Item:**

Connie will update the JRM sections accordingly.

#### **6. New Business – Guardianship/Conservatorship CBI Background Check as Required by C.R.S. §15-14-110**

Judge Hartmann discussed, pursuant to statute, a name-based criminal background check is required. CBI searches for the name and DOB as submitted in the request and that is all they look for. It is different from a fingerprint based check. The rap sheet – generated by a fingerprint check will sometimes show multiple names, variation of names, different dates of

birth and social security numbers, but it all ties into that same person (one who was fingerprinted).

He is not looking at the legislature going that far; however, he has had a few cases where the guardianship was contested, and the petitioner provided the CBI background check which didn't show anything, yet an interested person brought up a child abuse incident. Again, the background check doesn't show anything, so he inquires of the petitioner if they've ever gone by another name. When the petitioner provides him with other name(s) used, he searches the name(s) in the computer/case management system and finds them under that name.

He wanted to seek guidance from the Workgroup before approaching Steven Vasconcellos and Terry Scanlon about possible legislative changes. Would it be worth looking at: Parties shall provide a CBI check for every name that they have used? This way, the court can capture the name(s) used. The court already has the authority to order additional background checks.

- As long as the court has the discretion to waive the requirement.
- Change 'a name' to 'any name' that you have used.
- Question: When parties are new to Colorado and petitioning for guardianship/conservatorship (say from CA) do the judicial officers require an out of state background check? YES.
- Workgroup is fine with Judge Hartmann reaching out to Steven and Terry to discuss this with them.
- If a change in statute isn't considered, could we seek changes to the petition, requiring parties to list all names? Would that fall within current statutory authority?
- We could explore that.
- If we required the names on the petition, the court would have to look the names up (case management system), but if the statute was changed, it puts the responsibility on the petitioner.

**Action Item:**

Judge Hartmann will speak with Steven Vasconcellos and Terry Scanlon.

**7. Next Meeting**

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

*It should be noted, this meeting was cancelled. Next meeting is scheduled for May 16, 2018 @ 1:30 p.m. at the Ralph L. Carr Judicial Center, Room 2B.*