

**Probate Advisory Workgroup Meeting  
Thursday, October 26, 2017**

**Meeting Minutes**

**Members**

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

Phone: Mandy Allen, Kathy Cavinder, Judge Mary Deganhart, Danene Etz, Suzanne (Soozy) Fredrickson, Chief Judge James Hartmann, and Casey Williams.

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

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

**Public**

In Person: Michael Stegman, Jennifer Oviatt, and Jeremy Schupbach

**Business**

**1. Call to Order**

**2. April 28, 2017 – Meeting Minutes**

Sandra Casselberry moves to approve the minutes. No objections received, minutes approved.

**3. Action Item Updates**

Three Action Items from the April 28, 2017 meeting and listed on today's agenda were read. No comments or questions.

**4. Announcements**

Judge Leith announced the Supplemental Charge for this Workgroup has been signed, along with the Order of Appointment, appointing Melissa Schwartz, Public Administrator for the 2<sup>nd</sup> Judicial District to the Workgroup. Both will be posted.

**5. Judicial Branch Public Administrators (PA) Performance Audit**

**A. Audit Recommendation #1 and Branch's Response**

Protected Person's – Conservatorship Cases

**Discussion**

- Systems for collecting data.
- Currently, no data fields within Eclipse (case management system) for collecting this type of data.
- Will it be possible with the Online Conservator's Report System?
- Yes. Specific data entry fields will allow for pulling data, and certain flags identified.
- At this time, the Conservator's Reports are being reviewed by the Protective Proceedings Monitors (PPM) and Judicial Officers.
- Waiting on authority to move the online system forward.
- Pilot for the online system will be for professional conservators only.

- Concerns with moving to a set percentage (ratio - estates values/fees charged).
- There could be a very large estate that won't take much time, easy issues, but then a small estate with active litigation, difficult issues that will be much more expensive due to the time involved.
- Case law from the 70's that essentially outlawed attorneys charging a percentage fees for estate administration. Concern about revisiting that. *In the Matter of Painter's Estate*, 39 Colo.App. 506, 507-08, 567 P.2d 820, 822 (1977).
- Current JDF 885 – Conservator's Report has a section for reporting professional fees, including a box for providing a brief description of services provided and benefit to the estate.
- This can be problematic when the conservator changes that field and/or simply notes 'conservator work' without providing details.
- Should PAs submit fee/billing statements with the annual report?

### Small Estates Cases

#### Discussion

- JDF XXX – Public Administrator's Statement of Accounts Pursuant to Small Estate Procedure introduced.
- Draft form was created by combining several current forms used by PAs.
- The draft has been reviewed by the PA Guidelines Subcommittee which consists of several PAs. No concerns, already complies with what most of them are currently doing/reporting.
- There is a text box for 'Items of Receipt' that requires a detail listing and/or an attached ledger.
- There is another text box for 'Public Administrator/Deputy Public Administrator Fees & Costs (Including Public Administrator Staff/Investigator Fees), and Estate Expenses/Claims Paid' that requires the attachment of all fees/cost statements.
- The PA Guidelines Subcommittee has no objections to the draft form or recommended changes.
- If this Workgroup has any concerns or recommendations for change, they should email Judge Leith or Connie.

### Decedent's Estate Cases – Appointment of a Personal Representative

#### Discussion

- Unsupervised versus supervised.
- Rule 31 Accountings and Reports.
- Others may not have a clear understanding of what supervised administration entails.
- PAs are required by statute to close estate cases formally, unlike other personal representatives unless ordered by the court.
- Probate Code is structured so that interested persons have the obligation to pursue their interest in the estate, not general oversight by judicial.
- We need to be mindful of changing practices in a profound way to manage perception, however, important to keep in mind that decedent's estate and constituents concerns may have been a large driver to the request for the audit.
- PAs don't typically get appointed to these cases unless they are contested or unless there is significant difficulty or no family members or known heirs.
- Should PAs submit fee/billing statements? No other appointee is required to submit fee/billing statements on estate cases without a specific request being made.
- Is legislation a topic for discussion here?

- Two things, 1) the intent of the subcommittee is to discuss best practices and make recommendations; 2) if it becomes apparent that it is a legislative issue, it can be part of the recommendations.

#### General Discussion

- General parameters for fees.
- Fees vary statewide.
- Guidelines for fees charged.
- Subject to sanctions.
- Appropriate to set percentage PAs can charge?
- Case Law.
- Best Practices.
- Submissions of PA fee/billing statements.
- Current statutes and rules.
- National Probate Standards.
- Uniform Probate Code.
- Sufficient details in PA billing statements.
- What does 'oversight' and judicial review mean/look like?
- Overall approach to this work and reporting back to the State Auditors:
  - Consider audit recommendations to the Department;
  - Put the issues through a process of review and analysis;
  - Try to determine if what the Department is doing is most appropriate and most reasonable;
  - Consider if there is a need for making substantial and wide ranging changes;
  - Demonstrate that the group has gone through the process; and
  - Whatever the Workgroup comes up with as a result of the process, it must support the outcome.

**Action Item:** A Subcommittee was formed to consider the above issues, legislation, guidance, etc., and report back to the Workgroup at the Dec. 15<sup>th</sup> meeting with recommendations (being mindful of the need to support the outcome). Judge Leith, Chief Judge Hartmann, Casey Williams, Melissa Schwartz, and Connie Lind have agreed to be on the subcommittee.

Connie will consult with Jenny Moore, Rules Research Attorney with the Supreme Court regarding the new JDF form and whether or not it must go through the SC Probate Rules Committee.

#### **B. Audit Recommendation #2 and Branch's Response**

Standard format and content of the PA's Annual Report

##### Discussion

- Draft PA Annual Report introduced.
- Draft form was created by combining several current forms used by PAs.
- Summary page, 2<sup>nd</sup> page is an Excel spreadsheet with multiple columns.
- Attempt is to keep the form to a legal size document.
- The annual report is a snapshot of the cases handled during the year/reporting period.
- Providing additional detail in this report can be challenging.

- Description of services performed as a column within the annual report can be extremely problematic because of the level of detail it would require.
- More detail could be found by going to the individual court case. Correct.
- PA's informal group meets quarterly to discuss matters, some of which are: concerns over the level of court review, courts meeting with PAs to go over the annual report, discuss practices, etc. This draft annual report has not been presented to that group.
- Courts do not receive the same level of detail with regards to estate cases, as they do with conservatorship cases (Conservator's Reports). The audit raises concerns that the PA Annual Report did not contain a detailed accounting of the work performed and the rate of fees that were charged for that particular work.
- In estate cases, it's just a summary.
- Estate cases are unsupervised, done informally unless ordered otherwise. Why would the PAs be treated any differently?
- Auditors could say everyone would be required to do this. Risk of mismanagement. Our group needs to take a look at.
- Again, discussion on unsupervised versus supervised, present and history of unsupervised. Budget increase, increase to estates.
- Uniform Probate Code limits court oversight in decedent's estates.
- An entire change would be needed to the Probate Code, including PAs, professionals, and individuals acting as personal representative.
- No actual abuses were identified in the audit.
- Decedent estates, family members have recourse they can take.
- Maybe it is being put back on us to determine what oversight means.
- Statute, National Probate Standards, etc. has moved away from supervised estates.
- Education piece to this. Not a wide understanding of these matters.
- Having a standardized PA Annual Report for all cases, used by all PAs may help.
- Suggestion to add cumulative fees as it was an audit recommendation.
- The report needs to be informative.
- Consider, what are the recommendations/requirements for judicial regarding monitoring, review, collection of information, and use of data.

**Action Item:** The above mentioned subcommittee will consider the draft PA Annual Report and report back to the Workgroup at the Dec. 15<sup>th</sup> meeting with recommendations (being mindful of the need to support the outcome).

#### Revisions to the Judicial Resource Manual (JRM)

##### Discussion

- Enter PAD – Public Administrator/Deputy Public Administrator party type code when a PA is the petitioner, nominee, etc. in a case.
- Requirements for the PA Statement section of the JRM: Each PA Statement filed is to be filed separately/opened separately – one case per decedent; the PAD party type code; and the ESTV – Estate Value event code.
- No objections.
- PAs are requesting the CCE service fee be waived when filing PA Statements for estates valued at \$0.00 - \$500. There is no filing fee required by statute.

**Action Item:** Connie will forward the request for waiving CCE service fees.

### **C. Audit Recommendation #3 and Branch's Response**

Policies and Procedures regarding PA/Deputy PA required bonds

#### Discussion

- Draft Guidelines for the Operations of the Offices of the Public Administrators introduced.
- Section 2.a.7. – is this meant to be blended PA/PA staff, or separate.
- Recommendation would be to separate them out.
- Add to Section 2.a. – Cumulative fees as recommended in the audit.
- Section 2.c. – Possibly remove this item. Judicial will consider statutes, rules, CJD, etc. for determining whether these reports should be made public.
- Along with that discussion, protective proceedings cases are suppressed – not available to the public without court order.
- Consideration was given to the varying sizes of PA's offices and the number of cases they handle when drafting the Guidelines.
- Additional bonds can be secured when necessary. Should they be added to Section 7? Reference statutes.
- Section 7 – bonds and other insurance can be looked at as a web of protection.

Accessing the Level of Bond

#### Discussion

- Recommendation to increase the PAs bond to \$100,000. The PA Guidelines Subcommittee and the informal PA group both agree to this.
- Inflation numbers show that the \$25k put in place early 1990's would be worth \$45k today.
- Draft statutory revision covering bonds submitted.

### **D. Audit Recommendation #4 was directed at the Department of the Treasury**

### **E. Audit Recommendation #5 and Branch's Response**

#### Discussion

- Is Marty working on this issue?
- Dept. of the Treasury has updated their website regarding escheat process.

**Action Item:** SCAO staff should follow up with the Department of the Treasury if there are any other efforts needed.

### **6. Next Two Meetings**

Friday, Dec. 15<sup>th</sup> and Feb. 9<sup>th</sup>, both from 9am-12pm at the Ralph L. Carr Judicial Center.