

**Colorado Supreme Court Advisory Committee on the Rules of Probate Procedure
January 5, 2018 Minutes**

A quorum being present, the Colorado Supreme Court Advisory Committee on Rules of Probate Procedure was called to order by Judge Diana Terry at 9:30 a.m., in the Court of Appeals Full Court Conference Room on the third floor of the Ralph L. Carr Colorado Judicial Center. Members present or excused from the meeting were:

| Name | Present | Excused |
|----------------------------------|----------------|----------------|
| Judge Diana Terry, Chair | X | |
| Shari Caton | | X |
| Judge Mary Deganhart | X | |
| Emily Gregory | X | |
| Michael Holder | X | |
| Magistrate Frances Johnson | X | |
| Michael Kirtland | | X |
| Judge Elizabeth Leith | X | |
| Connie Lind | X | |
| Judge Mark MacDonnell | X | |
| Marcie McMinimee | X | |
| Judge Devin Odell | | X |
| Amber Roth | X | |
| Charles Spence | X | |
| Casey Williams | X | |
| Non-voting Participants | | |
| Justice Richard Gabriel, Liaison | X | |
| Veronique Van Gheem | X | |

I. Attachments & Handouts

January 5, 2018 agenda packet

II. Announcements from the Chair

Judge Terry welcomed all members to the meeting. She reminded the committee that its first meeting was two years ago, and since then the committee has accomplished a lot. She thanked everyone for their dedication and hard work.

III. Old Business

A. Public Comment

The probate rules and forms were posted for public comment, and comments were due November 17, 2017. After the comment period closed, comments were posted on the court's website and circulated to committee members. The comments were circulated again with the

committee's meeting materials and were generally discussed. The following rules and forms were considered and additional amendments are noted:

1. **Rule 24** – There was a suggestion to change the name of the rule to “Determination of Matters by Court Docketing.” If the word “hearing” was removed, it may alleviate confusion and misunderstanding surrounding the rule. However, there was concern that certain statutory matters that require a hearing are put on the non-appearance docket. There was a motion to not make any additional amendment to the title of the rule that passed unanimously;

The committee discussed adding a procedure similar to C.R.C.P. 121 § 1-6, to section (c)(4) of Rule 24. The concern was that “contact the court” was too vague. Through discussion it became clear that different districts have different procedures for setting appearance hearings after an objection is filed. There was a motion to leave Rule 24(c)(4), as is, that passed 4/2.

2. **Rule 62** – the committee discussed amending the rule in response to a comment. After discussion, there was a motion to make no additional amendment that passed unanimously;
3. **JDF 785** – there was a suggestion to add a requirement that an inventory with financial plan be filed within 90 days from the date of the order. The committee unanimously adopted the amendment;
4. **JDF 866** – there were three suggested amendments to this form: 1) add “or federally insured brokerage account” to the first paragraph; 2) add that the fiduciary must file a Motion to Withdraw Funds from Restricted Account (JDF 868), before any disbursement; and, 3) at the table near the end of the form, change “if 12 years or older” to “when 12 years or older”. The committee adopted all changes unanimously. A member stated that the same changes made here, in total, should be made to JDF 865, Order for Deposit of Funds to Restricted Account – Conservatorship; currently, this form is amended by Court Services, but moving forward this should be considered a supreme court form. There was a motion to adopt all changes to JDF 865, so it tracks JDF 866, and to consider JDF 865 a supreme court form moving forward, which the committee unanimously adopted;
5. **JDF 916 & 920** – there was a suggestion to amend #12 stating that the form must be completed only if bond is required. The committee discussed the proposed change, but unanimously decided to make no additional amendment to the forms;
6. **Local Forms** – It came to the committee's attention that certain districts have local forms. The committee was asked its stance on local forms and if local forms have to be approved or otherwise vetted by the committee. Many members did not know that some judicial districts had local forms. Denver has a few local forms, and the specific reasons for why they use them were discussed. The committee was interested in discussing this, but decided they needed to find out more information about local forms and their use across the state. The issue is tabled until the next meeting.

7. **E-Service** – The certificate of service boxes on all forms list ways in which service can be accomplished, to include “e-service.” The committee received a comment asking if this could be explained or defined, so parties know that emailing pleadings is not court sanctioned e-service. There was discussion about different language that could be used in the service boxes on the forms. A suggestion was made to address this in the probate instructions located on the court’s website. Also, the committee discussed how this relates to C.R.C.P. 5(b)(2)(D). There was a motion that passed 4-0-1, to make no change to the e-service language now, but to take this up at a future meeting.

B. Forms Subcommittee

1. **Non-substantive amendments** – Subcommittee chair Connie Lind stated that some non-substantive revisions had been made to the forms:
 - a. Duplicate date and signature lines were deleted (i.e., JDF 722, 732, etc.);
 - b. Verification statements were removed from forms where they should not have been added (JDF 711, 712, etc.);
 - c. Verification statements were moved to be placed before the Certificate of Service boxes; and
 - d. Language inadvertently struck was added back in (JDF 834).

All non-substantive amendments were adopted unanimously.

2. Substantive amendments

- a. **JDF 882 & 885** – These forms received the following amendments: additional categories were added to track the online conservator system, such as, “Reverse Mortgage Payment”; “Automobile” was replaced with “Motor Vehicle”; and, “Debt Repayment (Credit Card)” was added as a new category. In JDF 882, the following additional changes were made: inventory values as of date “of appointment” was added throughout the form; and “Annuities” was moved up into a more appropriate category. All additional amendments to JDF 882 & 885 passed unanimously.
- b. **JDF 850** – an amendment to “Section VI. Financial Matters” was proposed, where the guardian would complete this section regardless of the appointment of a conservator. There was concern that this would cause confusion, as the guardian may not have control of funds. The committee decided to amend the introductory heading to require the guardian to fill out this section only if the guardian has custody of funds. The amendment was adopted 4:1.

At this point, a motion was made to adopt all probate rules and forms as amended that passed unanimously. The proposal will be resubmitted to the supreme court.

IV. New Business

A. New Forms

1. **JDF 897** –When parties need to supplement the Conservator’s Report, submitted via the online system, they will use the new form as a cover sheet for their supplemental material;
2. **JDF 898** – the new form will be used by public administrators pursuant to section 15-12-621(6), C.R.S. The new form was created in response to results the judicial branch received from a recent audit.

The committee adopted both forms unanimously.

B. Other – Judge Terry asked if the committee had any new business. Hearing none, the committee moved on to some final business related to the submission of the rules and forms package to the supreme court. The committee discussed effective date and recommended that the rules could be effective as soon as the first day of the month following adoption; also, the committee is not recommending the supreme court hold a public hearing. As for the two new forms, the recommendation is that they be effective as soon as possible, so they are available for use. With no other business, the committee adjourned.

V. Future Meetings

TBD

The Committee adjourned at 12:20 p.m.

*Respectfully submitted,
Jenny A. Moore*