

**CBA TRUST AND ESTATE SECTION  
STATUTORY REVISIONS COMMITTEE  
AGENDA**

**May 4, 2022**

**1. Introductions**

**2. Approval of April 6, 2022 Minutes**

**3. Announcements**

a. *Email List.* If you did not receive the SRC materials in an email from Emma then you are not on the SRC email list. Email Jonathan (JHaskell@wadeash.com.) and he'll add you to the email list.

**4. Legislative Report**

**5. SRC Proposals**

a. **Active Matters Pending SRC Approval**

i. **Amendment to Personal Representative Priority Statute, C.R.S. § 15-12-203(4) to include Agent under power of attorney who is granted “hot power” to remove and appoint fiduciaries. (Gordon Williams)**

1. *Presentation, discussion and possible vote.*

ii. **Lodged Wills- Investigate issues with lodging wills and the return of lodged wills. (Bette Heller)**

1. *Presentation of Subcommittee's recommendations*

iii. **Beneficiary Deeds Statute Update re Named Insureds for Casualty Coverage. (Carl Stevens)**

iv. **Uniform Cohabitants Economic Remedies Act. (Connie Eyster)**

v. **Uniform Community Property Disposition at Death Act. (Connie Eyster)**

**b. Inactive Matters Approved by SRC and Status**

**i. Disclosure of Fiduciary Fees §§ 15-10-602 and 15-12-705, C.R.S. (approved in 2015-2016). (Gordon Williams);**

*1. SRC is coordinating with Probate Trial and Procedure to determine/address whether the information of appointment form needs to be updated. Goal is to have this resolved by the end 2022.*

**c. Inactive Matters Approved by SRC but Not Moving Forward for Various Reasons**

**i. Colorado Electronic Preservation of Abandoned Estate Planning Documents Act Subcommittee. (Pete Bullard, Chair)**

1.The language that SRC approved was much broader (7 categories of estate planning documents) than the State Court Administrator was able to achieve (one category-Wills). Essentially the State Court Administrator created a pilot program which will be implemented on January 1, 2023 (when funding comes in) and the pilot program will only deal with Will.

2.This matter will remain on Inactive Matters until the pilot program is complete so that SRC can readdress whether to attempt to reincorporate the broader definition and whether the 6 other categories should be restored to the Act by amendment.

**d. Inactive Matters Pending SRC Approval - Reports from Subcommittees.**

**i.Child Support in Probate Subcommittee. (Pat Mellen, Chair)**

**6. Report from Other Sections of the Bar**

- a. Elder Law
- b. Other Sections of the Bar

**7. New Matters**

- a. Possible formation of Subcommittee to review CRS § 15-5-103 (10) and (16) [Definition of “interested person” and “qualified beneficiary”] (Spencer Crona)

**8. Passed Proposals for Inclusion in Omnibus Bill or Stand Alone Legislation**

**CBA TRUST AND ESTATE SECTION  
STATUTORY REVISIONS COMMITTEE  
MINUTES**

**April 6, 2022**

**1. Introductions**

Chair, Dylan Metzner, called the meeting to order at 1:34 pm.

We are still meeting via Zoom, there is an option to meet in person or virtual for 2022. Please participate however you feel most comfortable. Dylan and Jonathan will plan to be here in person.

**2. Approval of March 2, 2022 Minutes**

Motion to approve. Minutes approved.

**3. Announcements**

Estate Planning Retreat is June 16 through June 18, 2022 in Beaver Creek, CO.

**4. Legislative Report**

Tyler Mounsey provided the Legislative Report.

The Probate Code bill was signed by the Governor on March 30, 2022.

HB 22 – 1271 – Rights of Protected Persons – Members from the Elder Law Section provided testimony on this Bill. There is no senate sponsor. Mr. Mounsey will inform SRC if there are any updates.

2<sup>nd</sup> half of session is ramping up. This year’s Budget Bill is anticipated to be a big deal because if a recession occurs, this may be the last budget year with money. Recycling program, safer streets (\$55M price tag), education, and others will come out in the second half. There will be a judicial discipline bill. Mr. Hill asked about how the Budget Bill would affect the Status of Colorado Electronic Preservation of Abandoned Estate Planning Documents Act Subcommittee. Mr. Mounsey will report back.

**5. SRC Approved Proposals**

**a. Active Matters**

- (i) **Amendment to Personal Representative Priority Statute, C.R.S. § 15-12-203(4)** to include Agent under power of attorney who is granted “hot power” to remove and appoint fiduciaries (Gordon Williams). Gordon had

submitted some options for revising this statute, which he wants to revisit over the next month and bring back to the committee in April. Another issue is whether the personal representative of an heir shares the same priority as if the heir had survived.

No report from Mr. Williams. Mr. Williams will provide specific language to be distributed to SRC members. SRC Chair hopes to have a vote on this during the May meeting.

**b. Inactive Matters Pending SRC Approval - Reports from Subcommittees.**

- (i) **Lodged Wills- Investigate issues with lodging wills and the return of lodged wills. (Bette Heller).** Meeting is on Thursday, April 14, 2022, and the subcommittee has been working diligently on this and will likely be done and ready send out their thoughts to Connie Lynn of State Court Administrator's office before it is finalized.
- (ii) **Beneficiary Deeds Statute Update re Named Insureds for Casualty Coverage (Carl Stevens).** No report.
- (iii) **UCERA.** Ms. Eyster reported that Subcommittee is committed to having something for the Uniform Law Commissions Meeting by the Fall of 2022. Hope is to have a report for SRC in September 2022.
- (iv) **UCPDDA.** Ms. Eyster reported there are 14 sections and half have been approved by the subcommittee. Anticipate having something for SRC to review in Fall 2022.

**c. Inactive Matters Approved by SRC and Status.**

- (i) **Disclosure of Fiduciary Fees §§ 15-10-602 and 15-12-705, C.R.S. (approved in 2015-2016) (Gordon Williams).**

SRC to coordinate with Probate Trial and Procedure to determine/address whether the Information of Appointment form needs to be updated before the proposed language gets sent to Legislature.

**d. Inactive Matters Approved by SRC but Not Moving Forward for Various Reasons**

- (i) **Colorado Electronic Preservation of Abandoned Estate Planning Documents Act Subcommittee (Pete Bullard, Chair)**
  - a. The language that SRC approved was much broader (7 categories of estate planning documents) than the State Court Administrator was able

to achieve (one category-Wills). Essentially the State Court Administrator created a pilot program which will be implemented on January 1, 2023 (when funding comes in) and the pilot program will only deal with Wills.

- b. This matter will remain on Inactive Matters until the pilot program is complete so that SRC can readdress whether to attempt to reincorporate the broader definition and whether the 6 other categories should be restored to the Act by amendment.

e. **Inactive Matters Approved by SRC and Moving Forward**

- (i) **Child Support Committee** – No update

6. **Inactive Matters**

7. **Report from Elder Law Section**

None

8. **Report from Other Sections of the Bar**

None.

9. **New Matters**

a. Mr. Crona proposed a new matter. Recent court case where beneficiaries of a trust asked for disclosure of a trust amendment. The court granted trustees motion to dismiss. The court ruling based on 15-5-103(16) [ definition of “qualified beneficiary”] and 15-5-103(10) [definition of “interested person”.] Mr. Corona will decide whether to establish a Subcommittee to explore whether the statutes should be amended to afford disclosure under such circumstances.

c. Pete Bullard – a Uniform Law Commission Committee was formed to draft a Uniform Act on Electronic Estate Planning Documents that will be used to allow estate planning documents beyond Wills to be electronically created. This Committee, headed by Suzy Walsh of Connecticut, has created a draft of the act. It is available on the uniform law commissions website. Mr. Bullard will continue to update SRC and SRC may want to establish a Subcommittee during the 2022/2023 year to address the Uniform Act, if the draft is approved in the Fall.

10. **Passed Proposals for Inclusion in Omnibus Bill or Stand Alone Legislation**

## MEMORANDUM TO SRC RE LODGED WILL SUBCOMMITTEE

The original objectives of this subcommittee are:

Given that the Courts no longer want to keep Lodged Wills in paper form, we need to:

1. Ensure that a proper electronic version be made of such Wills;
2. Standardize when and how the Court can return or destroy the original paper Wills; and
3. Clarify when attorneys and personal representatives may destroy returned original paper Wills.

The operative Statute is C.R.S. §15-10-305.

### **§ 15-10-305. Records and certified copies**

(1) The clerk of each court shall keep for each decedent, ward, protected person, or trust under the court's jurisdiction a record of any document which may be filed with the court under this code, including petitions and applications, demands for notices or bonds, trust registrations, and of any orders or responses relating thereto by the registrar or court, and establish and maintain a system for indexing, filing, or recording which is sufficient to enable users of the records to obtain adequate information. Upon payment of the fees required by law the clerk must issue certified copies of any probated wills, letters issued to personal representatives, or any other record or paper filed or recorded. Certificates relating to probated wills must indicate whether the decedent was domiciled in this state and whether the probate was formal or informal. Certificates relating to letters must show the date of appointment.

(2) All instruments purporting to be the original wills, upon presentation for probate thereof, shall be recorded by the clerk of the court, in a well-bound book, to be provided by him for that purpose, or photographed, microphotographed, or reproduced on film as a permanent record, and shall remain and be preserved in the office of the clerk of the court. Upon admission of such will to probate, such record shall be sufficient, without again recording the same in the records of the clerk of the court.

In revising this Statute, we looked at and tried to track the provisions in the following documents:

- a. CHD 17-02 (Chief Judge Directive) of the 11<sup>th</sup> Judicial District (includes Park County);
- b. Rules of Civil Procedures = CRCP 121, Section 1-26 Electronic Filing and Service System;
- c. BBP (Better Business Practices) sent by The State Court Administrator's Office to all Courts giving "recommendations" regarding retaining and returning Lodged Wills.

These materials are cited at the beginning of our "Amended Statute."

C.R.S. §15-10-305(1) is not being changed.

However, we felt that §15-10-305(2) is outdated, and therefore, we decided to replace it with a new §15-10-305.5.

Everything in 15-10-305.5 is new.

(1) DEFINITIONS –

First, this section defines what documents are considered Wills to include not only a will pursuant to §15-10-201(59), but also a Memorandum for Tangible Personal Property pursuant to §15-11-513, an Electronic Will pursuant to §15-12-1509, and an Abandoned Will pursuant to CEPAEPDA §15-12-120(2)(B).

Second, it defines what is an electronic record of such documents.

(2) ACCEPTING A WILL FOR LODGING –

States that the Court Clerk must accept a Will for lodging.

(3) PRESERVATION OF LODGED WILL –

(A) States that not only does the Court Clerk need to preserve a Lodged Will, but must also create an electronic record of it, whether or not there is a probate (which is what they are already doing).

(B) Tracks the last sentence of paragraph (2) of the original statute by stating that if a Lodged Will is entered for probate, the Will is to be transferred to the probate case, but it does not have to be re-recorded.

(4) RETAINING ORIGINAL WILLS –

States HOW LONG the Court must keep the original Will:

(A) If there is no probate is filed, then for three years after the date the Will is Lodged.

(B) If there is a probate filed, then two years after the date that the estate is closed.

This tracks the CRCP 121 and the recommendations of the State Court Administrator's Office in its BBP.

(5) RETURNING OR DESTROYING ORIGINAL WILLS –

States HOW the Court can get rid of the Will. It states that after the time period in (4), if the Court does wish to get rid of the Will, the Court must give written notice to the person specified in (A) and then the Will can be destroyed as described in (B) :

(A)(i) If no probate is filed, the Court can return the Will to the person who lodged it.

(A)(ii) If there is a probate filed, the Court can return the will to either the attorney of record of the Estate or the Personal Representative of the Estate.

(B)(i) States that the person specified in (A) can destroy the Will (see our NOTE below regarding this provision); and

(B)(ii) States that as to (A), if that person does not collect the will within 30 days, the Court can destroy the Will. So, the Court can only destroy a will if it has attempted to return it and it is not collected.

**NOTE:** This subcommittee feels that because the electronic record of a lodged will is deemed to be an original for all purposes under this section, and because the testator is deceased, the will is no longer property of a client pursuant to Ethical Rules, and it is permissible for an attorney to destroy the original.

Further, this section is consistent with the BBP of the State Court Administrator's Office which allows the Court to destroy a lodged will after making an electronic record of the will (see Paragraph (D) of this subsection.)

(6) NOTICE METHOD OF TIME AND GIVING –

States the methods that the court may employ in giving notice to the person under subsection (5) and that the notice is deemed given on the date of mailing or sending.

(7) AUTHENTICITY OF ELECTRONIC RECORD OF LODGED WILL –

States that an electronic copy of the Will which is certified by the clerk of the court is deemed to be the original. therefore, if the Will is destroyed either by the person to whom it is returned or by the court, there is still an electronic copy that can be certified and deemed the original.

FINALLY, as to other statutes that were revised under CEPAEPDA (Abandoned Will Statute):

There were two other statutes revised by CEPAEPDA (Abandoned Wills) which stated (1) that an electronic copy of an abandoned will under CEPAEPDA cannot be admitted to informal probate, but must go through formal probate; and (2) what must be stated in the petition for formal probate.

The question is whether or not we should make similar provisions for FORMALLY probating an electronic record of a Lodged Will when the original Will has been destroyed.

See BELOW AND the subcommittee notes located within the draft statute for a discussion of the pros and cons of this issue, and suggested additional language to add to those two statutes if SRC determines that the electronic record of a Lodged Wil certified by the clerk of the court must go through formal probate.

[NOTE: Do we need these changes?

Argument AGAINST adding this provision: With CEPAEPDA, there cannot be an informal probate of a will that is uploaded as an electronic record of a will because it is uploaded by the person who is sending in that will – not the clerk of the court. However, under 15-10-305.5, the original will is lodged with the court and it is the clerk of the court that is making the electronic record.

Electronic wills are not required to be probated formally.

Argument FOR adding this provision: The court should be careful in admitting ANY electronic record of a will. Many litigators are concerned that they cannot compare the electronic record to the original paper will to determine if there are legitimate reasons to contest the will.]

## Suggested changes to 15-10-503 – (as of 4/28/22)

### Reference materials

1. CJD 17-02 (Chief Judge Directive) of 11<sup>th</sup> Judicial District (includes Park County) regarding maintaining and returning Lodged Wills.

Relevant paragraph:

5. CRCP 121 1-26(7) further provides, “...*For probate of a will, the original must be lodged with the court.*” So as to provide for a totally electronic file, the 11<sup>th</sup> JD implements the procedures below to comply with CRCP 121 1-26(7).

A. Once the original will is filed with the court, the Clerk of Court will scan and mark the document as follows: ORIGINAL (file date: \_\_\_\_\_). The Clerk of Court or Deputy Clerk shall scan and upload the documents to the proper electronic PR case. The original will shall be returned to the filing party with the notation that the filing party should maintain the document in the same manner prescribed in CRCP 121 1-26(7), noted above.

2. Rules of Civil Procedure = CRCP 121, Section 1-26 Electronic Filing and Service System, (7) Filing Party to maintain signed copy..... which provides that:  
“...the filer is required to maintain the document for a period of two years after the final resolution of the action, including the final resolution of all appeals...or probate of a will, the original must be lodged with the court.”
3. BBP (Best Business Practices) sent by The State Court Administrator’s Office to all Courts giving “recommendations” regarding maintaining and returning Lodged Wills, and states that:  
Once the original Will is put into the Court’s system (scanned = electronic record), the Court can get rid of the original. It goes on to recommend (not require) the following:
  - i. If no probate is opened, then the Court should keep the original for 3 years after the date of death.
  - ii. If there is a probate opened, then the Court should keep the original until the probate is closed.

Connie Lind provided the following language from the BBP – I have highlighted in yellow those portions that I have used in the draft:

**Below is a portion of the BBP:**

#### ***Lodged Will - Probate Case Not Opened at the Time the Will is Lodged***

*A lodged will might never be probated, meaning a probate case might never be opened, leaving the will in lodged status.*

- *Enter the will being lodged into Eclipse through the Probate Miscellaneous Index (PMI).*

- *Should the court elect to record and preserve the original will electronically pursuant to C.R.S. § 15-10-305(2), it shall:*
  - *Comply with the Records Retention Manual regarding the microfilming and imaging programs approved by the Office of the State Court Administrator (e.g., Archive Document System (ADS), and RMMI's PaperVision/Image Silo); and*
  - *Quality control check the electronic version prior to destroying it or returning it to the filing party.*

*Note: It is recommended that the court retain the original will for 3 years after testator's death.*

### ***Probated Will – Probate Case Opened***

*An original will is to be scanned and uploaded into a probate case within our Case Management System. The originals of these wills do not need to be kept as a copy of the original will is a sufficient record of the "original" under C.R.S. § 15-10-305(2).*

- *The will scanned and uploaded into the probate case must be thoroughly quality control checked (e.g., all pages are included, all pages are clear and legible, all pages are upright leaving no portion cut-off, etc.) before the court proceeds with one of the following options:*
  - *Files/stores the original will in an appropriate location within the court;*
  - *Destroys the original will; or*
  - *Returns the original will to the filing party.*

*Note: It is recommended that the court retain the original will until the administration of the estate is complete and the estate is closed informally, formally, or by order of the court.*

### ***Recommendation for Returning Original Wills to Filing Party***

*Should the court return the original will to the filing party rather than retaining or destroying it, it is recommended that the court have an Administrative Order in place. This is to ensure the parties are advised of issues that include, but are not limited to, their responsibility to retain the original will in accordance with Colorado Rules of Civil Procedure (C.R.C.P. 121 1-26 (7)).*

4. it was discussed in our first meeting that we should use whatever language from CEPAPHTA (regarding abandoned documents) that may apply to these statutory revisions.

Attached is a document containing CEPAPHTA provisions which I felt would be helpful in drafting the below. The language that I actually including in my draft is highlighted in yellow.

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§ 15-10-305. Records and certified copies.

**Colorado Statutes**

**Title 15. PROBATE, TRUSTS, AND FIDUCIARIES**

**COLORADO PROBATE CODE**

**Article 10. General Provisions, Definitions, Jurisdiction**

**Part 3. SCOPE, JURISDICTION, AND COURTS**

*Current through 2021 Legislative Session*

**§ 15-10-305. Records and certified copies**

(4) The clerk of each court shall keep for each decedent, ward, protected person, or trust under the court's jurisdiction a record of any document which may be filed with the court under this code, including petitions and applications, demands for notices or bonds, trust registrations, and of any orders or responses relating thereto by the registrar or court, and **establish and maintain a system for indexing, filing, or recording which is sufficient to enable users of the records to obtain adequate information. Upon payment of the fees required by law the clerk must issue certified copies of any probated wills, letters issued to personal representatives, or any other record or paper filed or recorded.** Certificates relating to probated wills must indicate whether the decedent was domiciled in this state and whether the probate was formal or informal. Certificates relating to letters must show the date of appointment.

[NOTE: we feel that the highlighted language above refers to certified copies in general and does not address the specific issue of whether it is considered an "original" will, and thus decided not to change it.]

~~(2)~~ **§ 15-10-305.5 LODGED WILLS:**

**(1) DEFINITIONS:**

AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(A) "ELECTRONIC" MEANS RELATING TO TECHNOLOGY HAVING ELECTRICAL, DIGITAL, MAGNETIC, WIRELESS, OPTICAL, ELECTROMAGNETIC, OR SIMILAR CAPABILITIES.

(B) “ELECTRONIC ESTATE PLANNING DOCUMENT THAT IS A WILL” HAS THE MEANING SET FORTH IN SECTION 15-23-102 (8) AND (13). [CEPAEPDA – Abandoned Will Statute]

(C) “ELECTRONIC WILL” HAS THE MEANING SET FORTH IN SECTION 15-12-1502 (3).

(D) “RECORD” MEANS INFORMATION THAT IS INSCRIBED ON A TANGIBLE MEDIUM OR THAT IS STORED IN AN ELECTRONIC OR OTHER MEDIUM AND IS RETRIEVABLE IN PERCEIVABLE FORM.

(E) “WILL” MEANS:

(I) AN INSTRUMENT IDENTIFIED IN SECTION 15-10-201 (59);

(II) A COPY OF AN ELECTRONIC ESTATE PLANNING DOCUMENT THAT IS A WILL PREPARED BY THE STATE COURT ADMINISTRATOR AS REQUIRED BY SECTION 15-23-120 (2)(B); [CEPAEPDA – Abandoned Will Statute]

(III) A PAPER COPY OF AN ELECTRONIC WILL THAT IS CERTIFIED BY AN INDIVIDUAL PURSUANT TO SECTION 15-12-1509; AND [Electronic Wills Statute]

(IV) A SEPARATE WRITING OR MEMORANDUM THAT IS CREATED BY THE TESTATOR OF A WILL PURSUANT TO SECTION 15-11-513. [Memorandum for Tangible Personal Property]

**(2) ACCEPTING A WILL FOR LODGING:** THE CLERK OF A COURT SHALL ACCEPT A WILL THAT IS DELIVERED FOR LODGING PURSUANT TO §15-11-516.

**(3) PRESERVATION OF LODGED WILL:**

(A) THE CLERK OF THE COURT SHALL:

(i) PRESERVE A LODGED WILL IN THE CLERK’S RECORDS; AND

(ii) MAKE AND RETAIN AN ELECTRONIC RECORD OF THE LODGED WILL IN ACCORDANCE WITH RULES ADOPTED BY THE STATE COURT ADMINISTRATOR’S OFFICE.

**[NOTE]** – We considered referring to the CEPAEPDA – Abandoned will statute provisions for what the electronic record needs to look like (see highlighted language at the end of this NOTE), but were concerned that it would conflict with

Judicial's Rules and Procedures, and thus create push- back from Judicial and a large fiscal note. Judicial's Records Management Manual is not helpful because it did not deal with what we needed. The portion of the Abandoned will statute reads:

"CREATE AN ELECTRONIC ESTATE PLANNING DOCUMENT, WHICH MUST BE IN COLOR AND IN A FORMAT AND USING THE TECHNOLOGY PRESCRIBED BY THE STATE COURT ADMINISTRATOR"]

(B) Upon admission of the Will to probate, such record shall be sufficient, without again recording the same in the records of the clerk of the court.

[NOTE – the above paragraph is the original statute. The below paragraph is our suggested change – this new language is based on the fact that a lodged will is given a case number "LW" and a probated will is given a case number "PR", and we believe that the intention of the original language was so that a Lodged Will does not have to be re-submitted into a probate case].

(B) UPON THE APPLICATION OR PETITION FOR ADMISSION TO PROBATE OF A WILL THAT HAS BEEN LODGED PURSUANT TO THIS SECTION, THE WILL SHALL BE TRANSFERRED TO THE PROBATE CASE WITHOUT FURTHER REQUIREMENTS.

**(4) RETAINING ORIGINAL WILLS:** THE CLERK OF THE COURT SHALL RETAIN AN ORIGINAL LODGED WILL AS FOLLOWS:

(A) IF NO PROCEEDING IS FILED WITH THE COURT TO PROBATE THE WILL, THE CLERK OF THE COURT SHALL RETAIN THE ORIGINAL WILL FOR THREE (3) YEARS AFTER THE DATE THE WILL IS ACCEPTED FOR LODGING PURSUANT TO SUBSECTION (2) OF THIS SECTION.

(B) IF A PROCEEDING IS FILED WITH THE COURT TO PROBATE THE WILL, THE COURT SHALL RETAIN THE ORIGINAL WILL FOR TWO (2) YEARS AFTER THE DATE THAT THE ESTATE IS CLOSED INFORMALLY, FORMALLY, OR BY ORDER OF THE COURT.

**[NOTE:** The above language tracks the intent of the BBP Memo (Best Business Practices) sent to the Courts by the State Court Administrator's Office, as given to us by Connie Lind]

**(5) RETURNING OR DESTROYING ORIGINAL WILL:**

UPON EXPIRATION OF THE TIME THAT THE CLERK OF THE COURT MUST RETAIN AN ORIGINAL WILL PURSUANT TO SUBSECTION (4) OF THIS SECTION, IF THE CLERK NO LONGER WISHES TO RETAIN THE ORIGINAL WILL:

(A) THE CLERK SHALL SEND NOTICE IN ACCORDANCE WITH SUBSECTION (6) OF THIS SECTION TO THE PERSON SPECIFIED BELOW THAT IT WILL NO LONGER RETAIN THE ORIGINAL WILL, AS FOLLOWS:

(i) IF NO PROCEEDING IS FILED WITH THE COURT TO PROBATE THE WILL, RETURN THE ORIGINAL WILL TO THE PARTY WHO DELIVERED THE WILL TO THE COURT.

(ii) IF A PROCEEDING WAS FILED WITH THE COURT TO PROBATE THE WILL, RETURN THE ORIGINAL WILL TO EITHER THE ATTORNEY OF RECORD FOR THE LAST-APPOINTED PERSONAL REPRESENTATIVE OR THE LAST-APPOINTED PERSONAL REPRESENTATIVE OF THE ESTATE; AND

(B) AFTER THE CLERK HAS SENT THE NOTICE,

(i) IF THE PERSON SPECIFIED IN PARAGRAPH (A) OF THIS SUBSECTION TAKES POSSESSION OF THE ORIGINAL WILL, THEN THE PERSON MAY DESTROY THE ORIGINAL WILL.

(ii) IF A PERSON SPECIFIED IN PARAGRAPH (A) OF THIS SUBSECTION DOES NOT TAKE POSSESSION OF THE ORIGINAL WILL WITHIN THIRTY (30) DAYS OF THE NOTIFICATION, THEN THE CLERK MAY DESTROY THE ORIGINAL WILL.

**[NOTE:** In the opinion of this subcommittee, because the electronic record of a lodged will is deemed to be an original for all purposes under this section and because the

testator is deceased, the will is no longer property of a client pursuant to Ethical Rules, and it is permissible for an attorney to destroy the original. Further, this section is consistent with the BBP of the State Court Administrator's Office which allows the Court to destroy a lodged will after making an electronic record of the will (See Paragraph (D) of this subsection).]

**(6) NOTICE – METHOD AND TIME OF GIVING.**

(A) THE CLERK OF THE COURT SHALL GIVE NOTICE TO THE PERSON ENTITLED TO NOTICE UNDER SUBSECTION (5) BY SENDING A RECORD IN A MANNER REASONABLY SUITABLE UNDER THE CIRCUMSTANCES AND LIKELY TO RESULT IN RECEIPT. PERMISSIBLE METHODS OF SENDING THE RECORD INCLUDE:

- (I) MAILING A LETTER BY CERTIFIED, REGISTERED, OR ORDINARY FIRST-CLASS MAIL ADDRESSED TO THE PERSON'S LAST ADDRESS OF RECORD; AND
  - (II) A PROPERLY DIRECTED ELECTRONIC MESSAGE.
- (B) NOTICE IS DEEMED GIVEN ON THE DATE OF MAILING OR SENDING.

**[NOTE:** The language in Section 6(A) tracks language in the CUTC, 15-5-109 Methods and Waiver of Notice in Matters Other Than Judicial Proceedings.]

**(7) AUTHENTICITY OF ELECTRONIC RECORD OF A LODGED WILL:** AN ELECTRONIC RECORD OF A LODGED WILL THAT IS CERTIFIED BY THE CLERK OF THE COURT WHERE THE WILL IS LODGED IS DEEMED TO BE THE ORIGINAL OF THE WILL FOR ALL PURPOSES UNDER COLORADO LAW.

**[NOTE:** this language tracks the language in the CEPAPDA –Abandoned Will statute:

**15-23-116. Authenticity of electronic estate planning document.**  
AN ELECTRONIC ESTATE PLANNING DOCUMENT CERTIFIED BY THE STATE COURT ADMINISTRATOR THAT IS MADE FROM AN ORIGINAL ESTATE PLANNING DOCUMENT IS DEEMED TO BE THE ORIGINAL OF THE DOCUMENT FOR ALL PURPOSES UNDER COLORADO LAW.]

**(8) PRESERVATION OF ELECTRONIC RECORD OF A LODGED WILL:** THE ELECTRONIC RECORD OF A LODGED WILL SHALL BE RETAINED IN THE RECORDS OF THE COURT FOR ONE HUNDRED (100) YEARS FROM THE DATE THAT IT IS LODGED.

**[NOTE:** This tracks with CEPAEPDA –The Abandoned Will statute which requires a will be kept for 100 years]

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Other statutes that may need to be revised (same as in CEPAEPDA – Abandoned Will Statute) – CEPAEPDA changes are in capitals, Changes for Lodged Wills are highlighted in green.

**SECTION 3.** In Colorado Revised Statutes, **repeal and reenact, with amendments**, 15-12-304 as follows:

**15-12-304. Informal probate - unavailable in certain cases.**

**(1)** Applications for informal probate that relate to any of the following must be declined:

- (a) one or more of a known series of testamentary instruments, other than a will and one or more codicils thereto, the latest of which does not expressly revoke the earlier; ~~or~~
- (b) a copy of the decedent’s original will certified by the state court administrator pursuant to Article 23 of this Title 15; OR
- (c) AN ELECTRONIC RECORD OF THE DECEDENT’S ORIGINAL WILL CERTIFIED BY THE CLERK OF THE COURT PURSUANT TO CRS 15-10-305.5.

**SECTION 4.** In Colorado Revised Statutes, 15-12-402, **amend** (1) introductory portion, (1)(c), and (2) as follows:

**15-12-402. Formal testacy or appointment proceedings - petition - contents.**

(1) Petitions for formal probate of a will, or for adjudication of intestacy with or without request for appointment of a personal representative, must be directed to the court, request a judicial order after notice and hearing, and contain further statements as indicated in this section. A petition for formal probate of a will must:

(c) State whether the original of the last will of the decedent, or a copy of the decedent's original will certified by the state court administrator pursuant to article 23 of this title 15, OR AN ELECTRONIC RECORD OF THE DECEDENT'S ORIGINAL WILL CERTIFIED BY THE CLERK OF THE COURT PURSUANT TO CRS 15-10-305.5, is in the possession of the court or accompanies the petition.

(2) If the original will, or a copy of the decedent's original will certified by the state court administrator pursuant to Article 23 of this Title 15, OR AN ELECTRONIC RECORD OF THE DECEDENT'S ORIGINAL WILL CERTIFIED BY THE CLERK OF THE COURT PURSUANT TO CRS 15-10-305.5, is neither in the possession of the court nor accompanies the petition and no authenticated copy of a will probated in another jurisdiction accompanies the petition, the petition also must state the contents of the will and indicate that it is lost, destroyed, or otherwise unavailable.

**[NOTE: Do we need these changes?**

**Argument AGAINST adding this provision:** With CEPAEPDA, there cannot be an informal probate of a will that is uploaded as an electronic record of a will because it is uploaded by the person who is sending in that will – not the clerk of the court. However, under 15-10-305.5, the original will is lodged with the court and it is the clerk of the court that is making the electronic record in accordance with BBP quality control standards (see above).

Note that electronic wills are not required to be probated formally.

**Argument FOR adding this provision:** The court should be careful in admitting ANY electronic record of a will. Many litigators are concerned that they cannot compare the electronic record to the original paper will to determine if there are legitimate reasons to contest the will.]