Probate Trial and Procedure Committee

Minutes of the March 4, 2020 Meeting

The Probate Trial and Procedure Committee met on February 5, 2020 at the Colorado Bar Association Offices, 1290 Broadway Suite1700. The meeting was called to order at approximately 10:00am.

The following members were present or participated by phone:

Lindsay Andrew – [Landrew@steenrodlaw.com](mailto:Landrew@steenrodlaw.com)

Lisa Blattner – [lisa.blattnerlawfirm@gmail.com](mailto:lisa.blattnerlawfirm@gmail.com)

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# Approval of Minutes of Prior Meeting

The minutes of the February 5, 2020 meeting were approved.

# Chair’s Report

1. Probate Bench Book – Project is moving forward. Several broad topic areas are complete or almost complete. Judge Leith has been very responsive with edits and feedback. Looking into possibility of CLE credit for authors and editors.

# New Business or Requests

1. In the Matter of the Estate of Trevino. The Colorado Court of Appeals served an Invitation for Amicus Brief to the Colorado Bar Association and specifically the Trust and Estate Section in the Trevino case. At this time, the process is unknown as to who will write and review. The case involves banking as well as probate issues and the Business Law Section (financial institutions subcommittee) has indicated it wants to weigh in. The effort will involve John Dunn (Amicus Brief Committee), the Bar Association Executive Committee, T&E SRC and T&E Council. Any one interested in volunteering should notify either Norv Brasch, Spencer Crona, Josie Faix or Kathy Seidel.

# Updates/Reports

1. Litigation Updates – In the Matter of Estate of Trevino – Issue presented for appeal is one of first impression in Colorado. Did the trial court err in finding that the PR’s direction to the bank to use a POD account to pay off a loan was proper and reasonable? It appears that the trial court may have analyzed the case without reference to probate statutes and instead relied solely on the language of the pledge agreement for the loan.
2. Conservator’s Annual Report – Tabled
3. CRPP Rule 40(d) – Approved by Elder Law Section, SRC and T&E Council. Will be forwarded to Marcie McMinimee for submission to CO Supreme Court for approval.
4. Due process concerns re “exploitation list’ maintained by Departments of Human Services – Marcie McMinimee reported that she had talked to Dave Bernhardt but there is not much progress. Norv Brasch opined that perhaps the only way to address this going forward is to file a pro bono lawsuit, FOIA request or demand letter. Otherwise, no changes to report.
5. C.R.S. §15-14-714(8) re Powers of Attorney and Agent’s duty to report. No Update.
6. Elective share of incapacitated surviving spouse. Zach Schlicting and Jody Pilmer discussed issue that had arisen in case where surviving spouse was determined to be incapacitated, so proceeds from elective share were placed in trust. Apparently, this raised many procedural issues. After discussion, it was agreed to table the issue for a month.
7. Cost Recovery and Compensation Act. Marc Darling reported on the subcommittee’s first meeting. After discussion with many members, it was determined that proceeding on a legislative track might be met with much resistance. The subcommittee will pursue putting procedural aspects into rule form and obtaining approval first before attempting to change the statute. The subcommittee is still in information gathering mode but welcomes any and all participants and input from courts as well.

**5 Adjournment**

The meeting adjourned at approximately 11:00am.