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# Streamlining the Public Administrators' Operations

Changes Resulting  
from the 2017 OSA Audit

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*This article discusses the recent audit of public administrators and the resulting changes to legal requirements governing their practice.*

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Over the last three years the role of Colorado public administrators (PAs) has been examined and some of the rules and procedures governing their practice revised. The recent changes include implementation of the “Guidelines for the Operations of the Offices of Colorado Public Administrators”<sup>1</sup> (the Guidelines), which standardize PA office procedures and reporting requirements. These changes will improve the courts’ oversight of PAs and help PAs manage and report information on the cases they administer.

This article discusses the role of PAs, reviews the recent audit examining their practice, and explains the changes to their practice implemented by the Colorado Judicial Branch.

#### What Public Administrators Do

A PA<sup>2</sup> is a private individual appointed by a county district court sitting in probate (in Denver, the Probate Court)<sup>3</sup> to collect, protect, and manage the assets of certain living individuals and to administer the estates of certain decedents where the decedent left no one willing or able to administer the estate.<sup>4</sup> The appointee must be (1) a qualified elector over 21 years old and (2) a resident of or maintain a principal place of business in the judicial district in which he or she is to act as a PA.<sup>5</sup> Not all counties or judicial districts have a PA, and some judicial districts share one. The number of cases handled by PAs on an annual basis also varies widely depending on the size and population of the district.

PAs are not public employees and are paid from the estates they administer.<sup>6</sup> In some cases, assets are insufficient to pay PA fees, and in such cases PAs do not receive compensation for their services. PAs are required to be bonded<sup>7</sup> and

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to fully account to the court and the parties in each case in which they are appointed by the court or in which they manage assets pursuant to the small estate provisions of the Colorado Probate Code.<sup>8</sup> They must file annual reports of their administration of all PA cases with their supervising court. PAs serve at the pleasure of the appointing court until they are discharged by the court or resign.<sup>9</sup>

PAs handle a wide variety of both run-of-the-mill and more unusual probate matters. They often act as a resource for courts, individuals, and organizations, including county coroner’s offices, hospitals, and apartment complexes, by providing general assistance in answering questions about how to address estates of deceased persons when the lines of responsibility are unclear. PA offices bear the costs of providing these general assistance services.

Many cases that PAs handle involve significant conflict, including disputes among heirs/devisees and questions relating to the validity of testamentary instruments, misappropriation of estate funds or assets by various persons, litigation over ownership of estate assets, and contested claims. The cases often involve unusual circumstances, such as extreme hoarding; biohazardous conditions in real estate (including homes in which a person died without being found for a significant amount of time, or in which people lived without plumbing, water, and/or electricity for a number of years); interested parties with mental illness or substance abuse problems; and cases involving unknown or unascertained heirs.

Cases where a non-family member is appointed as a fiduciary can often involve significant hostility. The highly contested,

hostile, or unusual nature of many of these cases can create significant administration expenses, including fiduciary fees. Thus, the PA environment is prone to complaints about the cost of the PA's involvement, which is usually a direct result of the highly contested nature of the cases. Such complaints led, in part, to the recent efforts to improve the oversight of PAs.<sup>10</sup>

### 2016 Legislative Proposal

SB 16-108, which would have changed the structure of PA appointments and compensation, was introduced in the 2016 legislative session.<sup>11</sup> The bill was initiated at least in part due to complaints made to various legislators about the actions of some PAs and their management of some cases. One of the main complaints appears to have been related to PA fees and the payment of their fees from the estates they administered. SB 16-108 would have made PAs employees of the State of Colorado and paid them from state funds rather than from the estates they administer.<sup>12</sup> The bill would also have enabled courts to name individual attorneys as "public administrators" in individual cases; in those cases, the PA would be paid directly from the estate.<sup>13</sup> Thus, the bill would have created two different classes of PAs.

There was disagreement about the legitimacy of some of the complaints and the motivations of the complainants, and SB 16-108 ultimately did not pass. However, there was general agreement among trust and estate practitioners that some of the concerns raised were well-founded and needed to be addressed. In addition, the time was ripe to streamline PA procedures and to standardize the reports that PAs are required to file. Accordingly, in 2016 the Statutory Revisions Committee of the CBA's Trust and Estate Section created a subcommittee, the PA Guidelines Committee (the Committee), to establish guidelines to identify and streamline PA office procedures and to address some of the concerns that led to the introduction of SB 16-108. The Committee prepared proposed guidelines and recommended a statutory change to increase the general bond required to be maintained by all PAs, which was \$25,000 at the time.

In February 2017, the Committee presented the Guidelines to the State Court Administrator's

Office for approval of their substance as well as consideration of the best way to implement them. However, at that time the Office of the State Auditor (OSA) was conducting an audit of the Judicial Branch's oversight of PAs, so

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consideration of the Guidelines was tabled to await the OSA's recommendations. The OSA's audit objectives were to assess the Judicial Branch's:

- controls over the PA appointment process, both as to the position generally and to specific cases, and whether the courts

complied with statutory requirements and applicable court policies;

- oversight of PAs and whether courts ensure that PAs fulfill their duties and comply with statutes, court policies, and best practices; and
- controls over the courts' review of fees charged by PAs and whether those controls provide the courts with the means to determine whether these amounts are reasonable.<sup>14</sup>

The OSA completed its audit in August 2017.<sup>15</sup>

### OSA Findings and Recommendations

The OSA's Audit Report made recommendations to the Judicial Branch regarding (1) reviewing the reasonableness of PA fees, (2) collecting and maintaining data, (3) the maintenance of PA bonds, and (4) handling undistributed funds. The OSA also made one recommendation to the Colorado Department of the Treasury (the Treasury). The recommendations stated that the Judicial Branch should:

1. implement procedures to collect sufficient information from PAs for courts to assess the reasonableness of their fees and costs collected from decedents' estates and protected persons' accounts. "This should include collecting information on the hourly rate, number of hours charged, and description of each distinct service provided, and providing guidance on the information that should be included in the small estate statement of accounts."<sup>16</sup>
2. ensure that it collects and maintains fundamental data to oversee PA functions and performance by:
  - standardizing PA annual reports and ensuring that they include key elements for assessing PA performance, such as "total number of hours worked as a Public Administrator and total hours worked per case, tally of total caseload, cumulative fees for a given year and for each case, value of the estates, etc."<sup>17</sup> The Judicial Branch should also provide PAs guidance on the information required in the annual reports.

- revising the Judicial Resource Manual to specify that court staff must enter the code designating when a PA is appointed to an estate case and assign case numbers and record details on small estates reported by PAs, including those reported in a bundle.
  - implementing mechanisms to collect and track key information related to PA performance.
  - using the information obtained above to assess PA and deputy PA performance in the judicial districts to determine if the PA function is achieving its purpose.<sup>18</sup>
3. ensure that PAs maintain bonds of sufficient value to adequately protect the estates and conservatorships they oversee by:
- implementing written policies and procedures to clarify that (1) those appointed to act as PAs, including deputy PAs, must comply with statutory bond requirements, and (2) judicial districts should obtain proof from PAs and deputy PAs that a bond has been procured, appropriately filed with the Secretary of State’s office, and updated as needed.
  - assessing the level of bond that would sufficiently cover the PA’s activities and pursuing necessary changes to the statutory bond amount based on this assessment, and providing guidance to the judicial districts and courts on bond amounts for PAs.<sup>19</sup>
4. ensure that undistributed funds from decedents’ estates are handled in accordance with statutes by
- working with the Treasury to provide guidance and training to PAs on the distinction between decedents’ funds and other unclaimed property, and the methods for transferring undistributed funds from decedents’ estates to the Treasury and reporting these transfers to the Attorney General’s Office.
  - working with PAs and the Treasury to determine if additional decedents’ funds have been improperly deposited

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It is noteworthy that the Audit Report did not find incidents of wrongdoing or mismanagement of any estates by PAs or deputy PAs, and did not recommend any changes to how PAs and deputy PAs are appointed or bill for their services.

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into the Unclaimed Property Fund and correcting any errors identified.<sup>20</sup> As discussed below, the Judicial Branch agreed with the Audit Report’s recommendations and accepted responsibility for their implementation.

The fifth recommendation was that the Treasury (1) provide guidance on its website for personal representatives, including PAs, on information they should provide when transferring funds from decedents’ estates; and (2) develop standardized documentation requirements for these transfers that clearly indicate the transferred funds are intended for inclusion on the “Estates of Deceased Owners List.”<sup>21</sup>

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**Implementing the Recommendations**

The State Court Administrator’s Office Probate Advisory Workgroup (PAW) was charged by the Chief Justice to develop policies and procedures in response to the audit recommendations.<sup>22</sup> PAW recommended various changes to court operations, statutes, and rules. It also created standardized reporting forms and recommended adoption of the Guidelines originally prepared by the Committee, with some revisions. PAW then prepared a report and recommendations that was submitted to the Chief Justice and the State Court Administrator, which was adopted.<sup>23</sup> The implementation of the recommendations is summarized below.

*Review of Reasonableness of Fees*

All PAs are now required to file detailed fee statements with all reports in small estates that are administered pursuant to CRS §§ 15-12-1201 to -1205 and that do not require appointment of the PA as personal representative, and in conservatorships in which the PA is the fiduciary. CRS § 15-12-621(6) was amended to reflect this new requirement. The requirement to file fee statements in small estate cases was thought to be important because many of these cases lack interested persons who could be relied on to review the PA’s actions and fees. The requirement for filing fee statements in conservatorships addresses the need for heightened scrutiny in cases involving living persons in need of protection who are unable to protect their own interests. PAW specifically recommended no changes to the reporting of fees in large estates (i.e., cases in which the PA has been appointed as a fiduciary, either as a personal representative or special administrator) due to existing sufficient protections in the Colorado Probate Code that are applicable to all fiduciaries, including PAs, and the existing requirement that all PA cases be closed formally, which requires full written accountings and notice to all interested parties. In these cases, PAW concluded that interested parties can already protect their interests by seeking information from the PA, including

copies of billing statements, and seeking court review of PA actions and fees.

Despite the concerns raised about PA fees, the Audit Report did not recommend any changes to PA fee schedules or how PAs bill for their time. This was despite the fact that the hourly rates of PAs and deputy PAs are inconsistent and vary by judicial district for a number of reasons, including the size and demographics of the district (e.g., urban or rural) and the fact that some districts impose a specific fee schedule on PAs and some do not. In addition, some PAs use separate rate schedules based on the size of the estate being administered. Further, PAs' actions and fees, like those of other fiduciaries, are subject to review pursuant to the Colorado Probate Code. PAs may charge only those fees that are reasonable and appropriate based on the factors set out in CRS § 15-10-603 and CRS § 15-12-623(3), which specifically requires that

PAs charge only those "fees and costs that are reasonable and proper for similar services in the community."

PAs (again, like other fiduciaries) are also required to disclose "the basis upon which any compensation is to be charged to the estate by the fiduciary and his or her or its counsel or shall state that the basis has not yet been determined" when filing the original pleadings to be appointed as a fiduciary in a particular matter.<sup>24</sup> "This disclosure obligation shall be continuing in nature so as to require supplemental disclosures if material changes to the basis for charging fees take place."<sup>25</sup> Thus, interested parties have the opportunity to question the basis for the fees in all cases PAs handle.

#### *Data Collection and Maintenance*

A new form, "Public Administrator's Statement of Accounts Pursuant to Small Estate Procedures,

JDF 898," was approved and must be filed in all small estates managed by any PA or deputy PA.

A standard form PA annual report was also approved and must be filed by all PAs and deputy PAs. CRS § 15-12-623(2) was amended to reflect the requirement that the current PA fee schedule must be filed with the annual report. The annual report must include:

- names of decedents/protected persons and court case numbers;
- most recent inventory values;
- total number of hours billed on each case;
- total PA, staff, and investigator fees billed;
- effective hourly rate on each case;
- total fees collected in each case in the current year;
- total fees collected in each case since the PA's appointment;
- costs collected in the current year;
- PA advances made in each case;

## CBA ETHICS HOTLINE

### *A Service for Attorneys*

The CBA Ethics Hotline is a free resource for attorneys who need immediate assistance with an ethical dilemma or question. Inquiries are handled by individual members of the CBA Ethics Committee. Attorneys can expect to briefly discuss an ethical issue with a hotline volunteer and are asked to do their own research before calling the hotline.

**To contact a hotline volunteer, please call the CBA offices at 303-860-1115.**



- fees lost or written off;
- costs lost or written off;
- case statuses; and
- dates cases were closed.

It has been further stressed that appointing courts *must* meet annually with PAs to review the annual report, the PA's policies and procedures, and any other issues impacting the PA as recommended in the Audit Report and the Guidelines to assess the performance of PAs and deputy PAs.

The Judicial Resource Manual was changed to direct court staff to assign a separate case number and record on each small estate reported by a PA or deputy PA.

The proposed Guidelines were adopted in late 2018 and should now be implemented by all PAs and deputy PAs.

The courts will use all of this information to ensure that the PA system functions to achieve its purpose.

### Maintenance of PA Bonds

The amount of the general bond required by all PAs has been increased from \$25,000 to \$100,000. Evidence of the bond must be filed with the Office of the Secretary of State and submitted to the court with the annual report. CRS § 15-12-619(4) and (6) were amended to clarify that all deputy PAs are subject to the same requirements as PAs generally, including the bond requirement.

### Handling Undistributed Funds

The PAW worked with the Treasury and PAs to implement the recommendations on undistributed funds. The State Court Administrator's Office created instructions for reporting escheats to the Treasury and further required that annual PA reports identify cases in which funds were paid to the State. This should enable escheats to be tracked and handled more efficiently.

### Looking Forward

PAs and deputy PAs are charged with implementing the Guidelines and using the new forms. PAs and deputy PAs submitted the 2018 annual reports that were due on March 1 on the new forms. While most of the requirements were easily implemented, the process of preparing

the annual report forms revealed several issues that will require some form and instruction revisions during the next year.<sup>26</sup>

### Conclusion

PAs play a crucial role in managing assets and estates when the heirs or devisees are unknown or unavailable. Recent statutory changes, along with improvements to PA reporting requirements and judicial oversight, should enhance efficiencies in the administration of cases with PAs. **CL**



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### NOTES

1. Guidelines for the Operations of the Offices of the Public Administrators of the State of Colorado, [www.courts.state.co.us/userfiles/file/Administration/Planning\\_and\\_Analysis/Family%20Law%20Programs/Probate/05\\_16\\_18/GUIDELINES\\_FOR\\_THE\\_OPERATIONS\\_OF\\_THE\\_%20PA\\_final\\_draft.pdf](http://www.courts.state.co.us/userfiles/file/Administration/Planning_and_Analysis/Family%20Law%20Programs/Probate/05_16_18/GUIDELINES_FOR_THE_OPERATIONS_OF_THE_%20PA_final_draft.pdf).
2. For a more comprehensive explanation of the function of the PA, see Schwartz and Steenrod, Jr., "The Public Administrator: A User's Guide," 40 *Colorado Lawyer* 81 (Jan. 2011).
3. CRS § 15-12-619(1).
4. CRS § 15-12-620.
5. CRS § 15-12-619(1).
6. CRS § 15-12-623(3).
7. CRS § 15-12-619(4).
8. CRS § 15-12-623.
9. CRS §§ 15-12-619 to -623.
10. However, fees in such cases for most if not all of the professionals involved will be high anyway due to the nature of the cases themselves. But PAs generally manage cases cost effectively, often with an effective rate for the entire administration within the range of the cost of a competent paralegal rather than an attorney's average rate. The effective rate for the administration of all PA cases is now an element reported on the PA's annual reports.
11. SB 16-108.
12. SB 16-108 § 2.
13. SB 16-108 §§ 3 and 4.
14. Colorado Office of the State Auditor, Judicial Branch Public Administrators Performance Audit (Aug. 2017) (hereinafter Audit Report), [https://leg.colorado.gov/sites/default/files/documents/audits/1678p\\_public\\_administrators.pdf](https://leg.colorado.gov/sites/default/files/documents/audits/1678p_public_administrators.pdf).
15. *Id.* at 10.
16. *Id.* at 26.
17. *Id.* at 37.
18. *Id.*
19. *Id.* at 46.
20. *Id.* at 54.
21. *Id.* at 53.
22. The Probate Advisory Workgroup already existed at the time of the audit and its charge was expanded to include the task of implementing the recommendations.
23. Probate Advisory Workgroup Report and Recommendations for Addressing the August 2017 Judicial Branch Audit Regarding Public Administrators (May 2018), [www.courts.state.co.us/userfiles/file/Administration/Planning\\_and\\_Analysis/Family%20Law%20Programs/Probate/Probate\\_Advisory\\_Workgroup\\_Report\\_and\\_Recommendations\\_Re\\_2017\\_Audit.pdf](http://www.courts.state.co.us/userfiles/file/Administration/Planning_and_Analysis/Family%20Law%20Programs/Probate/Probate_Advisory_Workgroup_Report_and_Recommendations_Re_2017_Audit.pdf).
24. CRS § 15-10-602(9).
25. *Id.*
26. PA reports are available to anyone interested in reviewing them (subject to redaction of certain information for protected proceedings), upon request to the district court or the probate court in the City and County of Denver.