

Overview of the Revised and Reenacted Colorado Rules of Probate Procedure

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This article discusses the revised and reenacted Colorado Rules of Probate Procedure, which became effective September 1, 2018.

The Colorado Supreme Court promulgated revised and reenacted Colorado Rules of Probate Procedure (CRPP) and accompanying Judicial Department Forms (JDF) effective September 1, 2018. These rules and forms are applicable to all matters determined under the Colorado Probate Code. The rules and accompanying forms have been reviewed and updated to adapt to changes in the Colorado Probate Code and practice.

Creation of the Colorado Supreme Court Advisory Committee on Rules of Probate Procedure

The Colorado Supreme Court Advisory Committee on Rules of Probate Procedure (the Committee) was formed by Chief Justice Nancy Rice in 2015 to move the probate rules under the formal rulemaking structure of the Colorado Supreme Court.

Previously, the CBA's Trust and Estate Section Rules and Forms Committee had worked for a number of years to update the CRPP, and it provided its proposals to the Supreme Court for review and promulgation. The Supreme Court sent these proposed revisions to the Probate Advisory Workgroup (the Workgroup) (formerly the Probate Advisory Committee) at the State Court Administrator's Office for the Workgroup's review. Upon completion of that review, the revisions were returned to the Supreme Court for its review and adoption. When the Supreme Court received the proposed CRPP revisions, Chief Justice Rice determined it was necessary and appropriate for the probate rules to be reviewed through a formal committee, as currently established for the civil, criminal, juvenile, and appellate rules, and she directed the establishment of the Committee. Chief Justice Rice directed that the

Committee's responsibilities include probate forms in addition to the probate rules.

Following its formation, the Committee was also charged with reviewing the Workgroup's proposed amendments and recommending any proposed changes to the Colorado Supreme Court for consideration. Justice Allison Eid was the Committee's initial liaison to the Supreme Court, and currently Justice Richard Gabriel serves in this role. The Committee is chaired by Colorado Court of Appeals Judge Diana Terry. Committee members are drawn from the judiciary, practicing attorneys, probate court staff, and supervising court executives.

The Committee's Review Process

The Committee's first formal meeting was held on January 15, 2016. During this meeting, the Committee began its review of the proposed repeal and reenactment of the probate rules received from the CBA's Trust and Estate Section and the Workgroup. These proposed rule changes represented five years of dedicated work from CBA section members supplemented by additional review and revisions by the Workgroup. The proposed rules changes were posted on the Colorado Supreme Court's website for public comment. Following the Committee's review of all the comments, two subcommittees were formed: an Editing Subcommittee, to review the comments and revise the draft of the rules, and a Forms Subcommittee, to review all JDF forms related to probate and protective proceedings under the Uniform Probate Code.

Following months of review in each subcommittee, certain rules and forms were flagged for discussion by the full Committee.¹ The finalized probate rules and forms were posted for public comments, which were due November 17, 2017. After the comment period closed, the comments were posted on the Supreme Court's website

and circulated to Committee members. The Committee made additional modifications to the proposed rules and forms following the comment period. Following its January 5, 2018 meeting, the Committee turned over its final recommendations for the proposed rules and forms to the Supreme Court for consideration. The Supreme Court posted the final draft of the proposed rules and forms on its website and held a public hearing on June 27, 2018, and it approved and promulgated the final version of the recommended rules and forms effective September 1, 2018.² Upon publication by the Supreme Court, the revised rules and forms became applicable to all probate matters.

Highlights of Rule Changes

The CRPP amendments substantially change the rules, including renumbering the format for the rules so that new rules can be added in a logical fashion. The probate rules have also been reorganized into sections to make it easier to locate rules related to specific areas, such as decedent's estates or protective proceedings. The organizational structure for these rules now resembles that of the Colorado Rules of Civil Procedure.

The Rules Subcommittee reviewed every probate rule of procedure. Most changes to the rules relate to ensuring that the rules conform to current law and practice, and use consistent terminology and grammar. The primary change was made to CRPP 8.8—Nonappearance Hearings, which changed under the new numbering system to CRPP 24—Determination of Matters by Hearing Without Appearance.

Similar to the process for all rules, each aspect of new Rule 24 was discussed and debated within the Editing Subcommittee. The Editing Subcommittee recommended a change of title that more appropriately describes the actual

practice and intent of the nonappearance proceeding, to provide clarity to practitioners and individuals proceeding without representation. Changes to new Rule 24 address concerns raised within the Editing Subcommittee that the rule continue to provide for expediting many matters before the probate court while specifying that any appropriate matter may be determined by the probate court without a hearing. This recognizes the rule's utility for matters required by statute to be determined by a hearing when a party's appearance is not required or mandated. Concerns raised within the Editing Subcommittee regarding the impact of the proposed revisions on practitioners and litigants were referred to the full Committee for discussion and resolution. This resulted in a proposed comment that was provided to the Supreme Court for consideration along with the rule, to provide clarity for practitioners and litigants regarding the rule's use.

Revised Rule 24 and its comments clarify the rule by definition and purpose, and expand the rule's procedural directions. The revisions also provide the court with authority to direct a matter to alternative dispute resolution or require further proceedings as determined to be necessary or appropriate to the matter before the court, which authority was not specified in the former rule. The revised rule and its comments direct practitioners and litigants regarding the expanded use of the rule, yet do not modify the statutory direction in CRS § 15-14-109(1) or the direction in CRPP 5(b) (formerly CRPP 35) and CRPP 20 (formerly CRPP 8) that the Colorado Rules of Civil Procedure apply to probate matters where there is no applicable rule of probate procedure.

Matters filed under revised Rule 24 are no longer limited to matters that are routine and unopposed, and may now include any appropriate matter. The comments specify that matters such as motions for summary judgment and motions to dismiss are not appropriate for scheduling under the shortened time frames provided for by the revised rule, and remind practitioners of their ethical obligations to opposing parties and counsel when choosing to schedule a motion or petition that may be opposed on the docket for hearing without appearance.

Revised Rule 24 also clarifies time frames for responses and the procedure for scheduling objections, and specifies when a court may enter a ruling. Comment [5] explains that scheduling a motion on the docket for hearing without an

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appearance for determination on the merits where no responsive pleading has been filed with the court increases judicial economy by placing an opposing party or counsel on notice that a ruling may be entered unless a responsive pleading is filed with the court.

Revised Rule 31 governing accounts and reports has been modified to delete the general reference to Uniform Fiduciary Accounting Standards. The rule now specifies that a fiduciary accounting or report must contain sufficient information to put interested persons on notice as to all significant transactions affecting administration during the accounting period.

Revised Rule 54 governs supervised administration of decedents' estates. The rule has been revised to provide clearer direction to personal representatives regarding what is required when supervised administration is ordered by the court.

The Forms Changes

This article addresses only JDF forms that the Committee reviewed and not any changes to mental health forms. Each JDF probate form was reviewed by the Forms Subcommittee to identify changes needed to conform to the probate rules amendments and substantive law, remove information that was obsolete or unnecessary, and apply consistency across all forms. The amendments fall into three categories: new, revised, and deleted.

New Forms

The Committee recommended three new forms. JDF 705 is a case information sheet to be used upon the appointment of a guardian or conservator in protective proceedings. This new form provides a procedure for capturing important information (e.g., the last four digits of social security number for the respondent and prospective guardian) so this information does not need to be provided in future filings. Such critical information is necessary to assist with monitoring the whereabouts of wards and protected persons, locating financial information, and locating fiduciaries if conservators or guardians fail to file reports or respond to court requests for information. The form will be sealed upon filing and not available to the public. Only nonprofessional fiduciary personal information will be collected on the form, as professional fiduciaries are required to file their information and updated credit and Colorado Bureau of Investigation reports with their appointing court on an annual basis.

JDF 897 is a conservator report attachment sheet to be used by professional conservators once the electronic system for filing conservator reports is implemented. The online conservator's report is expected to be released and available for use by professional conservators later in 2018 or in early 2019.

JDF 898 is a form for public administrators to report their statement of accounts for small estates. It is being implemented to improve the procedures for monitoring public administrator actions.

Revised Forms

Before the Forms Subcommittee's review, there were 126 probate forms available for use. The subcommittee reviewed each form and recommended revisions to dozens of forms. Because the revisions were extensive, review of each individual form is beyond the

scope of this article. Generally, many of the revisions involved removing duplicate date and signature lines, and ensuring consistent punctuation, capitalization, grammar, and terms across the forms. Updates were made to conform citations to the modified probate rules. Verification statements were removed from forms where they were not statutorily required. Substantive revisions and modifications to existing forms after the public comment period are noted below.

JDF 712, Notice of Hearing Without Appearance; JDF 722, Objection to a Hearing Without Appearance; and JDF 963, Notice of Hearing Without Appearance on Petition for Final Settlement were updated to reflect the substantive changes to the former non-appearance hearing probate rule, which is discussed above.

JDF 785, addressing the court's order to accept protective proceeding appointments

from other states, was updated to include important reporting information necessary to comply with Colorado probate law.

Several modifications were made to JDF 865, a conservatorship order to deposit funds to a restricted account. The revisions make it clear that a judicial officer can order funds deposited either to a bank or to a brokerage account and include additional information on the only permissible manner for withdrawing funds from a restricted account. JDF 866 applies similar changes for restricted accounts when a conservator is not appointed.

JDFs 882 and 885 were updated to reflect modifications that are necessary when the online conservator report system is implemented. Several categories for reporting income, expenses, assets, and liabilities are significantly expanded and harmonized across the financial plan, annual report, and online system.

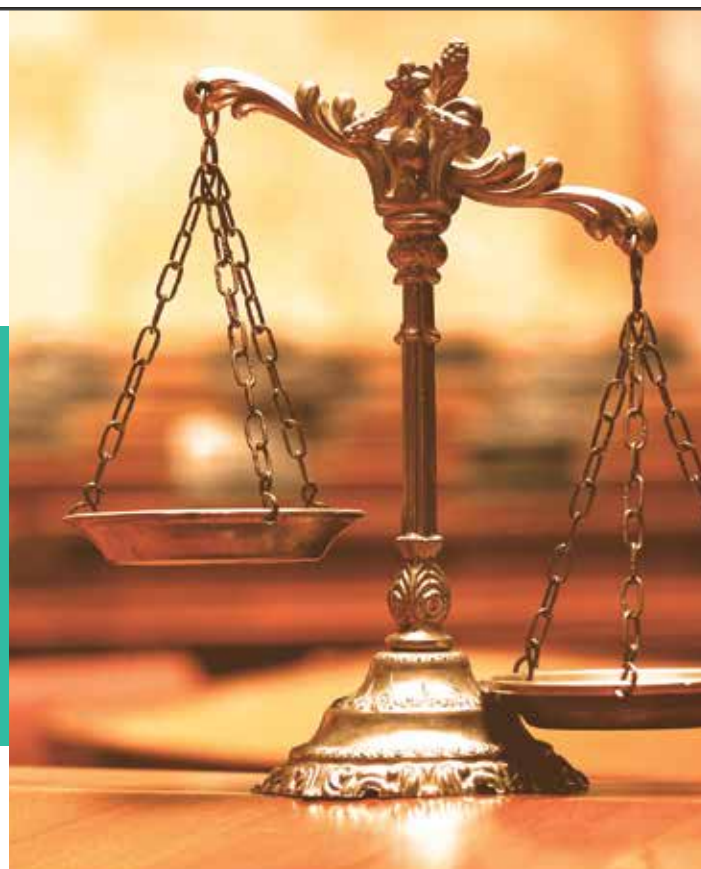


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Deleted Forms

Two forms were removed due to their very rare use: Form 713, Notice to Unborn, Unascertained, Minor or Incapacitated Persons; and Form 962, Notice of Hearing on Petition for Final Settlement. Most practitioners create their own such notices.

Conclusion

The Committee unanimously recommended changes to the CRPP, comments, and accompanying forms to clarify probate litigation procedures and streamline probate practice in Colorado. The Supreme Court, under its authority as the rulemaking body for the State of Colorado, adopted them with an effective date of September 1, 2018.

The Committee is now a permanent standing committee of the Colorado Supreme Court and will continue to convene periodically to review

proposed modifications to the probate rules and forms as submissions are made by stakeholder groups such as practitioners, CBA sections and committees, and court personnel. 



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NOTES

1. Minutes for each of the Committee's meetings with the decisions reached are available on the Supreme Court's website, www.courts.state.co.us/Courts/Supreme_Court/Committees/Committee.cfm?Committee_ID=43.
2. [www.courts.state.co.us/userfiles/file/Court_Probation/Supreme_Court/Rule_Changes/2018/Rule%20Change%202018\(11\).pdf](http://www.courts.state.co.us/userfiles/file/Court_Probation/Supreme_Court/Rule_Changes/2018/Rule%20Change%202018(11).pdf).



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The deadline for nominations is Jan. 31, 2019

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