

NOTICE OF MEETING
COMMITTEE ON RULES AND FORMS
TRUST AND ESTATE SECTION OF THE COLORADO BAR ASSOCIATION
To: Members of the Rules and Forms Committee

**THE NEXT MEETING WILL BE APRIL 20, 2017
11:15 A.M. TO 12:15 P.M.**

LUNCH WILL BE PROVIDED TO THOSE WHO ATTEND

Location:
COLORADO BAR ASSOCIATION
9th Floor, Executive Conference Room (please check schedule board on arrival)
1900 Grant Street, Suite 900
Denver, CO 80203-4309
(303) 860-1112

If you are unable to attend the meeting in person but would like to participate by phone, please
dial **(855) 392-2520; ACCESS CODE: 2627690#**

AGENDA FOR MARCH 16, 2017 MEETING

- 1) **Introductions**
- 2) **Review of Minutes from February 16, 2017 Meeting**
- 3) **Chair's Report (Casey Williams)**
 - A) **General**
 - i) Chief Judge Eid and Judge Terry visit date pending
 - B) **Supreme Court Probate Rules and Forms Committee (Casey Williams)**
 - i) **Full Committee**
 - a) Meeting on March 24, 2017—full Rule revision project being considered
 - ii) **Editing Subcommittee**
 - a) Meeting March 17, 2017 to review submission of JDF edits to Full Committee for consideration at the March 24, 2017 Full Committee Meeting
 - iii) **Forms Subcommittee**
 - a) Originally only tasked with Forms; now reviewing Instructions as well
 - b) Meeting February 3, 2017
 - c) Next meeting March 17, 2017
 - C) **Probate Advisory Workgroup ("PAW"); formerly the Probate Advisory Committee/"PAC") (Casey Williams)**
 - i) Updated charge issued by Chief Justice Rice on November 2, 2016
 - ii) Last meeting January 27, 2017

- a) Melissa Schwartz presented on proposed Public Administrator Guidelines
- b) Reviewed online Conservatorship Report with PAW
- iii) Next meeting April 28, 2017

D) SCAO JDF/PDF Issue

- i) Judge Terry consulted with probate judges; awaiting official policy statement

E) Online Conservator Report Work Group

- i) System in testing now; mandatory rollout for PROFESSIONAL CONSERVATORS will be announced well in advance—**NO DATE SET YET**
- ii) Connie Lind is working on a User’s Manual; Casey is working to coordinate with SCAO on a training/CLE
- iii) PROFESSIONAL
 - a) Two or more cases
 - b) An attorney/CPA/professional fiduciary is appointed as the conservator in a case, he/she would file the Conservator’s Report via the online system; if the attorney/firm represents the conservator, the Conservator’s Report will be filed as it is today, via CCE (formerly ICCES)

4) Subcommittee Reports

A) Deed Subcommittee (Peggy Gardner)—ON HOLD—RE SECTION LIAISON AND COLLABORATION PROCESS PENDING****

- i) Reminder of key Committee decisions related to this Subcommittee
 - a) Seeking a Real Estate Section “Liaison” to work with the Subcommittee (*CLW ask about “CBA Real Estate Council Deed Task Force”)
 - b) After Rules and Forms Committee approval, documents directly to Green Book as PFs (no further submission to Real Estate Section)

B) Trial and Procedure Committee (Theresa Moore/Aaron Evans)

C) Practitioner’s Forms (Peggy Gardner and John Estes)—ONGOING—PART OF REVIEW TODAY

- i) List of possible/requested forms
- ii) Identify all forms/statutes with formulas

5) Current Issues

A) Certificates of Service (Theresa Moore; *please note Natalie Perry’s contributions; she had to resign from the Committee and this project)

- i) Issue(s)—consistency, modes of service, legality/sufficiency
 - a) JDFs/we use “*Insert one of the following: hand delivery, First-Class mail, Certified mail, e-served through ICCES, or fax
- ii) Subcommittee to use this information for two formats—1) for JDF use; and 2) as a PF with notes on use
- iii) Updated draft for review today

B) Supplemental Fee Disclosures Pursuant to §15-10-602(9) (PF 00*)

- i) Issue(s)—no form
- ii) Applies to:
 - a) § 15-12-301—Informal Probate or Appointment Proceedings
 - b) § 15-12-402—Formal Testacy or Appointment Proceedings
 - c) § 15-12-614—Special Administrator
 - d) § 15-12-621—Public Administrator (Decedent’s Estates)
 - e) § 15-12-622—Public Administrator (Conservator or Trustee)
 - f) § 15-14-202—Testamentary Appointment of Guardian by Written Instrument
 - g) § 15-14-204—Judicial Appointment of Guardian (Minor)
 - h) § 15-14-304—Judicial Appointment of Guardian (Adult)
 - i) §15-14-403—Original Petition for Appointment or Protective Order
- iii) Updated draft for review today

C) Style Manual Review

D) Pending Projects Chart Review

UPCOMING PROJECTS...

E) Trust Challenge Notice Pursuant to § 15-16-704(1)(a) (Kevin Millard/Barbara VanVliet)

- i) Issue(s)—no form; relatively new statute
- ii) Updated draft for review today

F) Changes to the determination of heirship statutes—JDF updates (Leia Ursery)

- i) Issue(s)—

G) Waiver—JDF 889 (Casey Williams)

- i) Issue(s)—AUTHORITY?!?!?
- ii) Applicable Statutes—§ 15-14-312(2), 15-10-402, 15-10-503, 15-14-112, 15-14-114; Applicable CRPP—30.1, 8.2

H) Petition to Terminate Conservatorship—JDF 888 (Gordon Williams)

- i) Issue(s)—“meaningless if the protected person dies, because the conservatorship terminates upon death of the protected person” pursuant to § 15-14-431(1); “a petition to discharge the conservator, rather than a petition to terminate is what is required by statute” pursuant to § 15-14-431(2)
- ii) Form Petition to Discharge?
- iii) Note—also maybe to SRC to consider giving conservator clearer authority regarding conservator’s continuing authority to administer assets after the death of the protected person

I) Provisional Letters for Transfer (Gordon Williams)

- i) Issue(s)—???

J) Application for Informal Appointment of Personal Representative JDF 916 (Gene Zuspahn)

- i) Issue(s)—Item #8 refers to JDF 907 (Instructions for Intestate) but JDF 907 and 906 (Instructions for Testate) are not included on the Court website list and not in Greenbook—at least clarification that 907 are instructions, not another form
From #8, JDF 916: “The names and addresses of the Decedent’s spouse, partner in a civil union, children and other heirs are as follows:
 - ◆ If a guardian or conservator has been appointed for one of the persons listed below, also provide the name and address of the guardian or conservator.
 - ◆ If a minor child is listed, list the child’s parent(s), guardian or conservator.
 - ◆ If a spouse, partner in a civil union, or child has predeceased the Decedent, include the date of death.
 - ◆ A sample of this section is included in the Instructions - JDF 907.”

MINUTES OF FEBRUARY 16, 2017 MEETING

RULES AND FORMS COMMITTEE
TRUST AND ESTATE SECTION
THE COLORADO BAR ASSOCIATION

<u>Present</u>	Hill, Frank	Raemdonck, Kim
Balson, Jarrod	Holder, Michael	Scott, Ryan
Callwell, Jonathan	Hoyt, Susan	Toomey-Hale, Ellen
Copple, Keenan	Kent, Stan	Williams, Casey
Eitel, Richard	Landry, Myka	
Evans, Aaron	Lauce, John	
Gardner, Peggy	Leary, Alison	Phone: NONE
Gendelman, Laurence	Meck, Elizabeth	
Hauber, Cyndi	Miller, Carl	

The meeting of the Rules and Forms Committee was called to order at 11:15 a.m., on February 16, 2017, by Casey Williams. Casey Williams kept the minutes of the meeting.

Minutes

- 1) Minutes from January 19, 2017 meeting were unanimously approved
- 2) **Chair's Report (Casey Williams)**
 - A) General
 - i) Meeting start time Motion—meeting start time at 11:15 a.m. instead of 11:00 a.m.; members are asked to take the extra fifteen minutes to get your lunch and be ready to start the meeting at 11:15; unanimously approved
 - ii) Still need a Co-Chair/Chair Elect—please e-mail Casey if interested or to nominate someone
 - iii) Invitation to Judge Terry and Justice Eid to attend a R&F Committee meeting pending
- 3) **Supreme Court Probate Rules and Forms Committee (Casey Williams)**
 - A) **Full Committee**
 - i) Meeting March 24, 2017
 - ii) Public comment period expected; this will likely be the time that R&Fs will have to submit comments (no separate review for R&Fs)
 - B) **Editing Subcommittee**
 - i) Full Rule revision project considered; primary issue/disagreement on Non-Appearance Hearings—issue of “routine and unopposed language” and whether included, issue of dismissal with or without prejudice; Judge Leith working on proposed Comment to the NA Hearing Rule

- C) **Forms Subcommittee**
 - i) Preliminary review of all JDFs complete and starting final review
 - ii) Anticipate full review of all Instructions—waiting for Chair’s approval/direction on this

- 4) **SCAO JDFs/PDF Issue**
 - A) A letter from Casey Williams has been sent to Steven Vasconcellos who provided a great response; issue now with Chief Justice Rice and Judge Terry

- 5) **Online Conservator Report Working Group (through SCAO)**
 - A) System in testing now; mandatory rollout for PROFESSIONAL CONSERVATORS will be announced well in advance—**NO DATE SET YET**
 - B) Connie Lind is working on a User’s Manual; Casey is working to coordinate with SCAO on a training/CLE
 - C) PROFESSIONAL
 - i) Two or more cases
 - ii) An attorney/CPA/professional fiduciary is appointed as the conservator in a case, he/she would file the Conservator’s Report via the online system; if the attorney/firm represents the conservator, the Conservator’s Report will be filed as it is today, via CCE (formerly ICCES)

- 6) **Probate Advisory Report (Casey Williams)**
 - A) Updated charge issued by Chief Justice Rice on November 2, 2016
 - B) Last meeting January 27, 2017
 - i) Melissa Schwartz presented on proposed Public Administrator Guidelines
 - ii) Reviewed online Conservatorship Report with PAW

- 7) **Subcommittee Reports**
 - A) **Deed Project (Peggy Gardner, Sal Quintana, Laurence Gendelman, Heidi Gassman)**
 - i) ON HOLD—**RE SECTION LIAISON AND COLLABORATION PROCESS PENDING**

 - B) **Trial and Procedure Committee (Aaron Evans)**
 - i) Discussing mediation procedures

 - C) **Practitioner’s Forms (Peggy Gardner and John Estes)**
 - i) List of possible/requested forms
 - ii) Identify all forms/statutes with formulas

 - D) **Disclaimers (Peggy Gardner)**
 - i) Peggy has been working on a disclaimer section for the Orange Book—per the suggestion of Committee Member, useful and natural progression to PF(s)

- ii) Newly formed Subcommittee—Heidi Gassman will work with Peggy

8) Current Issues

A) Supplemental Affidavit (§ 38-31-102) (Laurence Gendelman/David Kirch)

- i) Issue(s)—recent revision to C.R.S. § 38-31-102 (broader use of an Affidavit; no “disinterested affiant” requirement anymore)
- ii) TWO drafts presented for review:

- a) *****CONSIDERATION OF NEW DRAFT FROM DAVID KIRCH*****
SPECIFIC ISSUES:

“Particularly, I would greatly appreciate your committee reconsidering its deletion of the portion of the form where the affiant indicates the nature of the interest held by the successor at the death of the decedent.

This is helpful in alerting parties using the form (lay persons and attorney's who do not have the notes on use) to the multiple situations in which the affidavit can be used, and eliminates uncertainty on the proper use of the form which has existed in the past. It also provides better "linkage" which I know is something that the real estate bar was concerned with in connection with the passage of the statutory changes through the real estate and trusts and estates sections' joint efforts.”

*****KEY CHANGE FROM R&F WORKING DRAFT—Mr. Kirch’s proposed drafts includes check boxes to indicate the ownership interest type (joint tenant, life tenant, owner under a beneficiary deed, a person whose record interest in real property terminates upon the death of such person to the same extent as a joint tenant)*****

(1) The Committee’s key discussion points were as follows:

- (A) Must make practical considerations—real estate agents, friends, title companies will use**
- (B) Commercial reasonableness**
- (C) Practitioner Form (“PF”)—audience/focus is practitioners, pro se perspective not given as much consideration as when reviewing JDFs**

- (D) What if the wrong box is checked?
- (E) Title company perspective—checkboxes not a determining factor; would likely note via an advisory comment to the title commitment

(F) Purpose of document—only “referred to in the deed” not the ownership interest type, required by the statute

(G) Purpose of document—to report a death of an ownership interest holder or to represent/establish ownership

(2) The Committee voted on the specific issue of whether or not the Supplementary Affidavit should include checkboxes and/or otherwise state the ownership interest type

(A) The Committee unanimously agreed to NOT include any reference to ownership interest type in the Affidavit

b) Rules and Forms Committee Working Draft of Supplemental Affidavit (Laurence Gendelman)

(1) The Committee previously approved the use of numbered footnotes, note on deleting inapplicable language/option and to follow Orange Book format/policy, follow Orange Book format on “Warnings”

(2) The Committee unanimously approved the draft as presented with the following changes:

(A) Note #5—break out into two paragraphs/thoughts

*****FINAL DRAFT TO BE SUBMITTED BY CASEY WILLIAMS TO SUSAN HOYT FOR AS A NEW PF*****

B) OUT OF ORDER AT CHAIRPERSON’S REQUEST—NEW BUSINESS—ISSUES RAISED DURING CONSIDERATION OF RULES AND FORMS COMMITTEE’S CHARGE AND REVIEW PROCESS

i) Issues:

a) Confirm project scope with Committee—review of existing Probate Rules, existing JDFs, and primarily “Practitioner Forms,” or “PFs,” for publication in CLE’s *The Green Book*

b) Confirm Committee’s policy regarding review/collaboration processes with other Sections—want a “Liaison” but do not want to commit to a formal “submission” for the related Section’s approval but do want to

consider their input and ideally have the Liaison with the authority to at least approve in concept and identify any major concerns—C. Williams to consult with Executive Council

ii) A majority of the Committee Members voted to confirm the above issues and policies as stated

C) Certificate of Service (for Style Manual, PFs, and JDFs) (Theresa Moore and Natalie Perry)

i) TABLED

ii) Issues:

- a) Certificates of Service: consistency, modes of service, legality/sufficiency**
- b) For use in JDFs and PFs**
- c) Need/want Notes on Use**
- d) Some discussion related to the Supplementary Affidavit issue above; tabled otherwise**

D) Supplemental Fee Disclosures Pursuant to §15-10-602(9) (PF 00*)—TABLED

i) Updated draft from last meeting for review today

ii) Applies to:

- a) § 15-12-301—Informal Probate or Appointment Proceedings**
- b) § 15-12-402—Formal Testacy or Appointment Proceedings**
- c) § 15-12-614—Special Administrator**
- d) § 15-12-621—Public Administrator (Decedent’s Estates)**
- e) § 15-12-622—Public Administrator (Conservator or Trustee)**
- f) § 15-14-202—Testamentary Appointment of Guardian by Written Instrument**
- g) § 15-14-204—Judicial Appointment of Guardian (Minor)**
- h) § 15-14-304—Judicial Appointment of Guardian (Adult)**
- i) §15-14-403—Original Petition for Appointment or Protective Order**

iii) Committee Discussion Points

- a) Possible Rate Alternatives (to representing fiduciary with Estate as only payor)—client may agree to pay attorney more privately than client agrees to as fiduciary**
- b) Want to include an “effective date” statement—“will be effective as of (date)”**

E) Trust Challenge Notice Pursuant to § 15-16-704(1)(a) (Kevin Millard/Barbara VanVliet)

i) TABLED

- F) Changes to the determination of heirship statutes—statutory updates necessitate JDF updates (Leia Ursery)**
 - i) TABLED**

- G) Elective Share Worksheets (PF004)—TABLED**
 - i) TABLED**

- H) Petition to Terminate Conservatorship (and Information of Appointment possibly)—JDF 888 (Gordon Williams)**
 - i) TABLED**

- I) Waiver—JDF 889 (Casey)—TABLED**
 - i) TABLED**

- J) Application for Informal Appointment of Personal Representative JDF 916 (Gene Zuspann)**
 - i) TABLED**

- K) Provisional Letters (Gordon Williams)**
 - i) TABLED**

DRAFT Form of Certificate of Service

CERTIFICATE OF SERVICE

I certify that on _____ (date), a true and correct copy of _____ (the foregoing name of pleading/filing) was served as follows: I certify that a true and correct copy of _____ (name of pleading/filing) was (e-filed with the Court) and served on the following: _____

Name and Address	Relationship to [Decedent/Protected Person/Ward]	Manner of Service*	Date of Service**
Mr. Joe Doe 123 Main St. Anytown, CO 80200	Adult Son	U.S. Mail	August 18, 2016
Mr. Tom Creditor Address 1 Address 2	Attorney for USA Credit	E-Service	August 17, 2016
Ms. Jenny Attorney Address 1 Address 2	Attorney for Jill Jewel, Surviving Spouse	E-Service	August 18, 2016
Ms. Jane Aunty Address 1 Address 2	Court appointed guardian for minor children of Decedent	E-mail to jane@aol.com	August 18, 2016
Mr. Jim Fiduciary, Trustee Address 1 Address 2	Trustee of Testamentary Trust of Decedent	Hand-Delivery	August 13, 2016
Ms. Susie Sample Address 1 Address 2	Adult Daughter	Overnight Delivery	August 16, 2016
Mr. Sam Sample Address 1 Address 2	Adult Son	Via Facsimile to (303) 555-1234	August 17, 2016

Name of Person Certifying Service

*Manners of Service include:

- U.S. Mail, 1st Class postage pre-paid
- ICCES (e-Service under CRCP 121, §1-26)
- Overnight Delivery (must identify courier; by prior written consent)
- Hand Delivery (handing to party or leaving at home/work place)
- Court Service (leaving with the clerk of court when no known address)
- E-mail or Facsimile (by prior written consent or email/fax number included in filing)

Comment [CW1]: Do we also need to certify that the documents were e-filed with the Court???

NEED TO RESOLVE THIS

Comment [CW2]:

From G. Williams—On the 16th day of September, 2016, a true copy of the foregoing [or title of document(s)] was[were] e-served as indicated, placed in the U.S. Mail, postage prepaid, addressed as follows, or emailed, with permission, as indicated:

Comment [CW3]:

Trying to avoid having multiple Certificates of Service if interested persons are served on different dates and/or via different manners

NEED TO RESOLVE THIS

**Interested Persons may be served on different dates

Comment [CW4]:

Per some prior notes, Committee agreed that Notes on Use should include the citation(s) if applicable (e.g., e-mail consent)

NEED TO RESOLVE THIS

Notes (3) for Certificate of Service

CRPP - Rule 8. Process and Notice

The issuance, service, and proof of service of any process, notice, or order of court under the code shall be governed by the provisions of the code and these rules. When no provision of the code or these rules is applicable, the Colorado Rules of Civil Procedure shall govern. Except when otherwise ordered by the court in any specific case or when service is by publication, if notice of a hearing on any petition or other pleading is required, the petition or other pleading shall be served with the notice. When served by publication, the notice shall briefly state the nature of the relief requested. The petition or other pleading need not be attached to or filed with the proof of service, waiver of notice, or waiver of service.

CRPP - Rule 8.8 - Non-Appearance Hearings

8.8 (b) – The notice of a Non-Appearance Hearing, together with copies of the motion or petition and proposed order *must be served* [see CRPP 8] on all interested persons no less than 14 days prior to the setting of the hearing and shall include a clear statement of the rules governing such hearings. Form JDF 712 or JDF 963 in the Appendix to these Probate Rules may be used and shall be sufficient. The authorization of this Form shall not prevent use of another Form consistent with this rule.

CRCP - Rule 5 - Service and Filing of Pleadings and Other Papers

What: [CRCP Rule 5(a)]

- orders (required by its terms to be served)
- pleadings subsequent to original complaint/petition
- paper relating to discovery
- written motions (but for ex parte)
- written notices
- appearance
- demand
- offer of judgment
- designation of record (appeal)
- similar papers

Who:

- Each of the parties (unless in default-exception: new/additional claims - serve under Rule 4)[Rule 5(a)]
- Attorney (for represented party) [Rule 5(b)(1)]

How: [Rule 5(b)(2)]

- Hand delivery [Rule 5(b)(2)(A)]
 - to the person
 - with the person’s office/clerk/other person in charge
 - leaving in conspicuous place in the office
 - leaving at person’s dwelling with one 18 years or older (resident)
 - leaving with clerk of court (person has no known address [Rule 5(b)(2)(C)])
- Mailing (to last known address - is complete on mailing) [Rule 5(b)(2)(B)]
- Other Means, (all complete on transmission) [including but not limited to:]
 - **E-Service** (Per CRCP 121 Sec. 1-26 -- this is E-filing in ICCES; *i.e.*, E-Service and E-filing refer to the same thing)
 - **Overnight courier** (when consented to by person served)
 - **Facsimile** or **Email** address (designation by person served of email or facsimile in a filing constitutes consent in writing)
 - **E-Filing** (parties who have subscribed to service authorized under C.R.C.P. 121 § 1-26 1.(d) have agreed to E-Service)

Additional References Re: Service

CRCP 5(d): Filing Certificate of Service. All papers after the initial pleading required to be served upon a party, ***together with a certificate of service***, [not defined] must be filed with the court within a reasonable time after service, but disclosures under Rule C.R.C.P. 26(a)(1) or (2) and the following discovery requests and responses shall not be filed until they are used in the proceeding or the court orders otherwise: (i)depositions, (ii)interrogatories, (iii)requests for documents or to permit entry upon land, and (iv)requests for admission.

CRPP 8.7 – “. . . certificate of service ***stating that a copy of the filing or order has been mailed or delivered to the person making the demand*** and to the personal representative.”

Form M-2.1 (advisement persons on 72-hour hold) - “. . . I certify that on _____, 20____, I delivered a copy . . .”

1 CCR 104-3-16. Motions. . . . If filed by mail or hand-delivery, the certificate of service must indicate that service was executed on the date of filing ***and indicate the method of service.***”

Rule LCrR 49.1 (Fed’l local rules) Formatting . . filing, and service . . . – “. . . The Notice of Electronic Filing (NEF) generated by CM/ECF constitutes a certificate of service. Registration in CM/ECF shall constitute consent to electronic service of all pleadings or documents. . . .”

<input type="checkbox"/> District Court <input type="checkbox"/> Denver Probate Court _____ County, Colorado Court address:	
In the Matter of the Estate of: Deceased/Protected Person/Ward.	^COURT USE ONLY^
Attorney or Party Without Attorney (Name and Address): Phone Number: Email: Fax Number: Attorney Reg.#:	Case Number: Division: Courtroom:
SUPPLEMENTAL FEE DISCLOSURE PURSUANT TO C.R.S. § 15-10-602(9)	

I, _____ (name) am the:

- Guardian
- Conservator
- Personal Representative
- Special Administrator
- Attorney for the fiduciary
- Other: _____

in the above referenced matter.

Pursuant to my continuing obligation to disclose any material changes to the basis for charging fees pursuant to C.R.S. § 15-10-602(9), I, make the following statement(s):

1. As a fiduciary, I may receive compensation.

- My basis of compensation was previously disclosed in _____ (name of document), but has changed as follows and will be effective as of _____ (date):

or

- The basis of my compensation was not previously disclosed and is as follows effective as of _____ (date):

2. As fiduciary, I may compensate my attorney.

My attorney's basis of compensation was previously disclosed in _____ (name of document), but has changed as follows and is effective as of _____ (date).

or

My attorney's basis of compensation was not previously disclosed and is as follows effective as of _____ (date):

Dated _____

Name and Fiduciary Title

Address: _____

Primary phone: _____

CERTIFICATE OF SERVICE

I certify that on _____ (date), a copy of this Supplemental Disclosure Pursuant to C.R.S. § 15-10-602(9) was e-filed with the Court and served as follows on each of the following:

Name and Address	Relationship to (Decedent/Ward/Protected Person)	Manner of Service*

***Insert one of the following: hand delivery, First-Class mail, Certified mail, e-served through ICCES, or fax**

Signature of person certifying service

§ 15-10-602. Recovery of reasonable compensation and costs.

Colorado Statutes

Title 15. PROBATE, TRUSTS, AND FIDUCIARIES

COLORADO PROBATE CODE

Article 10. General Provisions, Definitions, Jurisdiction

Part 6. COMPENSATION AND COST RECOVERY

Current through Chapter 364 of the 2015 Legislative Session

§ 15-10-602. Recovery of reasonable compensation and costs

- (1) A fiduciary and his or her lawyer are entitled to reasonable compensation for services rendered on behalf of an estate.
- (2) A lawyer hired by a respondent, ward, or protected person is entitled to reasonable compensation and costs incurred for the legal representation the lawyer provides for the respondent, ward, or protected person.
- (3) A third party who performs services at the request of a court is entitled to reasonable compensation.
- (4) A person's entitlement to compensation or costs shall not limit or remove a court's inherent authority, discretion, and responsibility to determine the reasonableness of compensation and costs when appropriate.
- (5) Except as limited or otherwise restricted by a court order, compensation and costs that may be recovered pursuant to this section may be paid directly or reimbursed without a court order. A court shall order a person who receives excessive compensation or payment for inappropriate costs to make appropriate refunds.
- (6) Except as provided in sections 15-10-605(4), 15-14-318(4), and 15-14-431(5), if any fiduciary or person with priority for appointment as personal representative, conservator, guardian, agent, custodian, or trustee defends or prosecutes a proceeding in good faith, whether successful or not, the fiduciary or person is entitled to receive from the estate reimbursement for necessary costs and disbursements, including but not limited to reasonable attorney fees.
- (7)
 - (a) Except as otherwise provided in part 5 of this article or in this part 6, a nonfiduciary or his or her lawyer is not entitled to receive compensation from an estate.

- (b) If a lawyer or another person not appointed by the court provides services that result in an order beneficial to the estate, respondent, ward, or protected person, the lawyer or other person not appointed by the court may receive costs and reasonable compensation from the estate as provided below:
- (I) The lawyer or other person shall file a request for compensation for services or costs alleged to have resulted in the order within fourteen days after the entry of the order or within a greater or lesser time as the court may direct. Any objection thereto shall be filed within fourteen days after the filing of the request for compensation or costs.
 - (II) After a request for compensation or costs or an objection to such a request, if any has been filed, the court shall determine, without a hearing, the benefit, if any, that the estate received from the services provided.
 - (III) If the court determines that a compensable benefit resulted from the services, then the person requesting compensation or costs shall submit to the court only those fees or costs purportedly incurred in providing the beneficial services. If no objection to those fees and costs is filed, the court shall determine the amount of compensation or costs to be awarded for the benefit, without a hearing.
 - (IV) An interested person disputing the reasonableness of the amount of compensation or costs requested for the beneficial services may file an objection. If an objection is filed, the proceedings to resolve the dispute shall be governed by section 15-10-604.
- (c) In determining a reasonable amount of compensation or costs, the court may take into account, in addition to the factors set forth in section 15-10-603(3) :
- (I) The value of a benefit to the estate, respondent, ward, or protected person;
 - (II) The number of parties involved in addressing the issue;
 - (III) The efforts made by the lawyer or person not appointed by the court to reduce and minimize issues; and
 - (IV) Any actions by the lawyer or person not appointed by the court that unnecessarily expanded issues or delayed or hindered the efficient administration of the estate.
- (d) For the purposes of this subsection (7), services rendered by a lawyer or a person not appointed by a court that confer a benefit to an estate, respondent, ward, or protected person are those significant, demonstrable, and generally noncumulative services that assist the court in resolving material issues in the administration of an estate. By way of example and not limitation, such benefits may result in

significantly increasing or preventing a significant decrease in the size of the estate, preventing or exposing maladministration or a material breach of fiduciary duty, or clarifying and upholding a decedent's, settlor's, principal's, respondent's, ward's, or protected person's intent with respect to a material issue in dispute.

- (8) A fiduciary who is a member of a law firm may use the services of the law firm and charge for the reasonable value of the services of the members and staff of the firm that assist the fiduciary in performing his or her duties.
- (9) Every application or petition for appointment of a fiduciary filed under this code, including without limitation those required under sections 15-12-301, 15-12-402, 15-12-614, 15-12-621, 15-12-622, 15-14-202, 15-14-204, 15-14-304, and 15-14-403, shall include a statement by the applicant or petitioner disclosing 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. The disclosure statement shall specifically describe, as is applicable, the hourly rates to be charged, any amounts to be charged pursuant to a published fee schedule, including the rates and basis for charging fees for any extraordinary services, and any other bases upon which a fee charged to the estate will be calculated. 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.

Cite as C.R.S. § 15-10-602

History. L. 2011: Entire part added, (SB11-083), ch. 101, p. 296, §1, effective August 10. L. 2012: (7)(b)(I) amended, (SB12-175), ch. 208, p. 837, §41, effective July 1.

RULES AND FORMS COMMITTEE
TRUST AND ESTATE SECTION
THE COLORADO BAR ASSOCIATION

Rules and Forms—Style Manual

*As of January 19, 2017

• **Address Blocks**

Name: _____
Street Address: _____
City: _____ State: _____ Zip Code: _____
Mailing Address, if different: _____
Primary Phone #: _____
Alternate Phone #: _____
Email Address: _____

*Purpose: To move “mailing address” below “city, state and zip” due to the occurrence of the mailing address not always having the same city and zip as the street address; to change “home phone” to “primary phone” due to people not having home phones anymore; to change “work phone” to “alternate phone”; to move email address to always appear on the bottom line (instead of sometimes appearing after zip code) to provide more space

• **Best interest (not best interests)**

*Purpose: To be consistent with the statutes. Both usages occur but the singular is what is used in the statutes)

• **Partner in a civil union (not partner of a civil union)**

• **No extraneous capitalizations (guardian, conservator, ward, respondent, personal representative, etc.)**

*Purpose: To be consistent with the statutes; terms are not capitalized in the statutes

• **Capitalization of “Court”**

• **Use of the clarifier “the”**

[t]he guardian...
[t]he ward...
[t]he conservator...
[t]he protected person...
[t]he personal representative...
[t]he decedent...
[t]he petitioner

• **Use ‘or’ not “OR” to divide sections/options**

- Use “§’ instead of “section” for statutory citations
- Use “C.R.S. § ...” for citations
- “Colorado Probate Code” instead of “code”
- “Notes”—word “Note(s)” bolded but not the actual note; numbered
- “e.g.” NOT “i.e.”
- Left Justification font spacing

• Orders—General Format:

<input type="checkbox"/> District Court <input type="checkbox"/> Denver Probate Court _____ County, Colorado Court address:	▲COURT USE ONLY▲
In the Matter of the Estate of: Deceased.	Case Number: Division: Courtroom:
ORDER FOR ****	

Upon consideration of the (Name of Pleading),

The Court FINDS that:

1. Finding
2. Finding
3. Finding
4. Finding

The Court further FINDS:

The Court ORDERS the following:

1. Finding
2. Finding
3. Finding
4. Finding

The Court further ORDERS:

BY THE COURT:

 Judge Magistrate

Dated: _____

• General Document Caption

<input type="checkbox"/> District Court <input type="checkbox"/> Denver Probate Court _____ County, Colorado Court address:	
In the Matter of the Estate of: Deceased.	<p style="text-align: center;">▲COURT USE ONLY▲</p>
Attorney or Party Without Attorney (Name and Address): Phone Number: Email: Fax Number: Attorney Reg.#:	Case Number: Division: Courtroom:
DOCUMENT TITLE	

Outstanding Issues

• Page Formatting

*Issue—some probate Orders need to be recorded and the current standard formatting of the margins on the JDF forms do not comply with the recording requirements in most counties; additionally, the footer measurement is outside of the print area for most word processing programs

*Applicable Rules—CRPP 5 establishes that the approved JDF forms may be used as they are formatted; CRCP 10(d)(2)(I) set out that “[a]ll documents shall use margins of 1 1/2 inches at the top of each page, and 1 inch at the left, right, and bottom of each page.”; the Committee believes that CRCP 10(d)(2)(I) was more relevant when the Courts had paper files and needed to be able to secure them in the files and needed a wide top margin to do so

*The Committee requests that JDF margins be standardized to 1” on all sides with a .5” footer margin

• Certificate of Service

CERTIFICATE OF SERVICE

I certify that on _____ (date), a copy of this (name of document) was served as follows on each of the following:

Name and Address	Relationship to (Decedent/Ward/Protected Person)	Manner of Service*

***Insert one of the following: hand delivery, First-Class mail, Certified mail, e-served through ICCES, or fax**

Signature of person certifying service

***Applicable Rules**

C.R.P.P. 8. Process and Notice

The issuance, service, and proof of service of any process, notice, or order of court under the code shall be governed by the provisions of the code and these rules. When no provision of the code or these rules is applicable, the Colorado Rules of Civil Procedure shall govern. Except when otherwise ordered by the court in any specific case or when service is by publication, if notice of a hearing on any petition or other pleading is required, the petition or other pleading shall be served with the notice. When served by publication, the notice shall briefly state the nature of the relief requested. The petition or other pleading need not be attached to or filed with the proof of service, waiver of notice, or waiver of service.

C.R.P.P. 8.1. Constitutional Adequacy of Notice

When statutory notice is deemed by the court to be constitutionally inadequate, the court shall provide by local rule or on a case-by-case basis for such notice as will meet constitutional requirements.

C.R.P.P. 8.2. Waiver of Notice

Unless otherwise approved by the court, a waiver of notice shall identify the nature of the hearings or other matters, notice of which is waived.

***The issue of appropriate service methods will be taken up by a R&F Subcommittee and addressed at the September meeting**

Rules and Forms Pending Projects

As of January 19, 2017

JDFs

Passed by R&F and Pending Approval				
Description	General Issues	R&F Approval Date	Status	Notes
JDF 943—Notice to Creditors by Publication Pursuant to §15-12-801	Notice <i>and</i> Proof of Publication NOT required by statute	9/17/2015	Pending	<ul style="list-style-type: none"> Previously submitted to PAC; likely to be submitted to the Supreme Court Committee after Rule Revision project approved
JDF 940—Information of Appointment	Update of Paragraph #10 regarding age 21 to 18 due to Reviser’s Bill	08/20/2015	Pending	<ul style="list-style-type: none"> Previously submitted to PAC; likely to be submitted to the Supreme Court Committee after Rule Revision project approved
JDF *** Rule 16/62 Petition for Approval of Settlement of Claims Pursuant to Rule 16/62 of the Colorado Rules of Probate Procedure	New form		Pending	<ul style="list-style-type: none"> Rule 62 pending approval from Supreme Court Committee
JDF *** Order Approving Settlement of Claims Pursuant to Rule 16/62 of the Colorado Rules of Probate Procedure	New form		Pending	<ul style="list-style-type: none"> Rule 62 pending approval from Supreme Court Committee

For Consideration by R&F			
Description	General Issues	Status of R&F Review	Notes
Certificate of Service	<ul style="list-style-type: none"> Adequacy of notice options currently stated on all JDFs 	Pending	<ul style="list-style-type: none">
JDF 844 Notice of Appointment of Emergency Guardian and JDF 843 Order Appointing Emergency Guardian for Adult	<ul style="list-style-type: none"> Need to match Order and Notice language—using 843 language in 844 	Complete	<ul style="list-style-type: none">
JDF 889 Waiver of Hearing, Waiver of Final Conservator’s Report, Waiver of Audit, and Approval of Schedule Distribution	<ul style="list-style-type: none"> Issue—authority? 	Pending	<ul style="list-style-type: none">

<p>JDF 888 Petition for Termination of Conservatorship</p>	<ul style="list-style-type: none"> • Issue: “meaningless if the protected person dies, because the conservatorship terminates upon death of the protected person” pursuant to § 15-14-431(1); “a petition to discharge the conservator, rather than a petition to terminate is what is required by statute” pursuant to § 15-14-431(2) • Form Petition to Discharge? • Note—also maybe to SRC to consider giving conservator clearer authority regarding conservator’s continuing authority to administer assets after the death of the protected person • Issue: #6—add a column to list the distribution of each asset (what is going to the PR and what is POD) 	<p>Pending</p>	<ul style="list-style-type: none"> •
<p>JDF 916 Application for Informal Appointment of Personal Representative</p>	<ul style="list-style-type: none"> • Issue—Item #8 refers to JDF 907 (Instructions for Intestate) but JDF 907 and 906 (Instructions for Testate) are not included on the Court website list and not in Greenbook—at least clarification that 907 are instructions, not another form • From #8, JDF 916: “The names and addresses of the Decedent’s spouse, partner in a civil union, children and other heirs are as follows: • If a guardian or conservator has been appointed for one of the persons listed below, also provide the name and address of the guardian or conservator. • If a minor child is listed, list the child’s parent(s), guardian or conservator. • If a spouse, partner in a civil union, or child has predeceased the Decedent, include the date of death. • A sample of this section is included in the Instructions - JDF 907.” 		<ul style="list-style-type: none"> •

866 and 867 Restricted Account Order and Acknowledgment	<ul style="list-style-type: none"> • Fiduciary and bank compliance 	Pending	•
JDF 834 Guardian's Report-Minor JDF 850 Guardian's Report-Adult	<ul style="list-style-type: none"> • Add section for list of current doctors and what they treat • Whether or not Ward has health insurance and what type 	Pending	•

Rules

Description	General Issues	Date Approved by R&F	To PAC?	Status
CRPP Project	Total overhaul	February 2014	Yes	Being reviewed by SCPRF

Practitioner Forms

Description	General Issues	Status	Notes
Approved and to Green Book	<ul style="list-style-type: none"> • PF 001—Petition for Elective Share • PF 002—Order Determining Elective Share • PF 003—Request for Allowances • PF 004—Elective Share Worksheets 		
Augmented Estate Worksheet	Consistency	Pending	<ul style="list-style-type: none"> • WP and Xcel Worksheets prepared; sample case/application pending
Deed Project	Consistency	Pending	<ul style="list-style-type: none"> • Subcommittee continuation to be reviewed; possibly "Notes on Use" of Bradford/CLE forms
Supplemental Fee Disclosures Pursuant to §15-12-602(9)	Consistency/new issue	Pending	•
Trust Challenge Notice Pursuant to §15-16-704(1)(a)	Consistency/new issue	Pending	•

Miscellaneous/Ongoing

- "Style Manual" updates