

Colorado Judicial Branch



PROTECTIVE PROCEEDINGS TASK FORCE

FINAL REPORT TO THE CHIEF JUSTICE AND STATE COURT ADMINISTRATOR

January 4, 2008

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Preface

The work to date on this project has revealed the many strengths of the Colorado probate system.

First, the audit report itself raised virtually no deficiencies in the handling of decedents' estates. Much of this is a credit to the forward-looking legislation in Colorado in the form of the Colorado Probate Code; but much credit is also due to the Judicial Branch, which has adopted the Probate Code enthusiastically to the end that the distribution of decedents' estates in Colorado is widely regarded both by our own citizens and by those in other states as a model system. The adoption, in 2000, of the Uniform Guardianship and Protective Proceedings Act was a broad and laudable effort by the legislature to insure that the rights of our most vulnerable citizens were safe in protective proceedings. Its implementation on January 1, 2001 coincided unfortunately with the beginning of draconian budgets cuts throughout the Judicial Branch.

The audit, while not praising every aspect of the judiciary's implementation of this legislation, nevertheless made clear that Colorado has an appropriate and a necessary legal structure, the majority of the services provided by the courts are appropriate and not in need of change, and in only the limited areas where additional resources and state-wide consistency can greatly assist, was the judiciary faulted.

We have committed to any necessary improvements in order that this area of the law will also enjoy a national reputation for excellence and we look forward to the support of the legislature in this endeavor.

Respectfully,

M. Jon Kolomitz
C. Jean Stewart
Co-Chairs of the Protective Proceedings Task Force

Introduction

The Protective Proceedings Task Force was created by the Chief Justice in November 2006 in response to an audit completed in September 2006 that disclosed deficiencies in the supervision by the Judicial Branch of protective proceedings.

The initial report of the Protective Proceedings Task Force was provided to the State Court Administrator and Chief Justice dated February 28, 2007 and a follow-up report was prepared in September 2007 for the public hearing. A public hearing was held on September 28, 2007, to provide the opportunity for the public to present their issues and concerns in the area of protective proceedings. This report summarizes the issues presented by the public and identifies a response from the Task Force.

This final report sets forth the efforts undertaken to date and recommendations by the Judicial Branch to address the issues noted in the audit report. To enable the reader to consider these matters in context, the underlying audit, charge to the Task Force and other backgrounds documents are included in the appendices.

Executive Summary

Narrative Response

The Probate Performance Audit Report noted concerns or deficiencies in connection with protective proceedings by the Judicial Branch in (1) monitoring and supervising court-appointed fiduciaries, (2) appointee compensation, (3) appointee screening and selection, (4) notice and communications to interested parties, and (5) necessary system improvements. The audit made specific recommendations regarding each area. The Office of the State Court Administrator (SCAO) agrees with these recommendations. It is these recommendations, and related matters, that the Task Force worked to implement. Detailed responses are set forth below.

The overall response by the Task Force is summarized by its undertakings in the broad areas of communications, monitoring and enforcement, and policies and resources. These branch-wide objectives are being implemented by:

- ◆ Revisions to the guide book used by judicial assistants in determining the appropriate action to be taken upon the happening of specified events in protective proceedings cases. This guide book, better known as the Clerk's Manual, is the at-hand reference for judicial assistants throughout Colorado when they are presented with first-impression case processing issues in their courts. The creation and publication of a companion work for the use of lay fiduciaries is the User's Manual. It is geared to helping appointees understand their fiduciary capacities and what practical steps to take when assuming their positions. Training for fiduciaries, judges, and court visitors is an additional component of the communications response.
- ◆ Updating and revising the forms used by *pro se* litigants and attorneys and developing instructions to assist *pro se* litigants. This extensive overhaul of the forms and instructions available to the public on the Judicial Branch self-help center website has been labor intensive and is still in progress. The revised forms are shorter, clearer, more consistent and have better instructions. In addition, we are developing many new instructions to assist the *pro se* litigants. The process for future revisions and drafting of new forms and instructions has also been streamlined.
- ◆ Creating new, more specific case classifications, modifying and refining event codes and providing appropriate monitoring forms. These codes detailed in a later section of this report are the computer input shorthand keys that allow improved tracking and monitoring of protective proceedings cases. The entry of the code "CRPT" for example, will record the filing of a Conservator's Accounting Report by a fiduciary in the Register of Actions for the case, which is the chronological summary of all actions taken in that case. Court employees will set a date in the future when the next accounting is due and will enter event codes for tracking and statistical purposes to document the filing and review of required reports. Reminder notices, delinquency notices, show cause orders, or other kinds of reporting and monitoring documents will be entered as event codes to identify the court's role in monitoring the filing of the required reports. Prior to the efforts of the Task Force no such events codes existed;

now ten event codes have been approved for protective proceedings cases. These event codes will also allow the compilation of tracking data for specific courts, judges, case types, and actions. In addition, consistent business practices are being implemented to better monitor protective proceedings. (For details see the reports from the Best Practices and User's Manual subcommittees.)

- ◆ Systemic changes. The Task Force supports (1) the adoption of statutes to clarify and strengthen the role of the courts in overseeing the administration of protective proceedings, (2) the earmarking of resources within the Judicial Branch to assist in administering and training in probate matters, and (3) on going efforts to improve supervision of protective proceedings. (See the specific recommendations made by the Further Studies Subcommittee.)

Responses to Specific Audit Recommendations

In summary, the recommendations made in the audit and the responses of the Task Force are as follows:

Recommendation #1:

Improve the consistency and effectiveness of court review of conservator and guardian plans and reports by establishing minimum review procedures; requiring guardians and conservators to maintain detailed information on fees and expenditures; and developing a risk-based model for reviewing higher-risk guardian and conservator cases.

Task Force Response:

Review and reporting procedures have been established by creating new event codes that will automatically schedule matters for review by judges or judicial assistants. Review work has been added to the daily Order of Business (Rule 3 of the Colorado Probate Rules of Procedure) for Probate Judges and the State Court Administrator's Office has agreed to review and reevaluate the manner in which "review" time is accounted for in staffing models. Periodic report forms have been revised to require fiduciaries to report fees and expenditures in detailed categories so that problems and irregularities can more readily be identified by court staff, interested persons and judicial officer. An assessment tool (JDF 804 – Monitoring Criteria Checklist) has been developed for judges to use in evaluating risks and suggested levels of supervision in protective proceedings to the end that more regular and stringent review can be assigned to higher risk cases. The Task Force anticipates that this form will be available in March/April of 2008.

Recommendation #2:

Consider a range of options for ensuring fees charged by guardians and conservators are reasonable and that policies for determining reasonableness are consistently applied by the courts.

Task Force Response:

Although concerned about the reasonableness and fairness of fiduciary fees, the Task Force concluded that under Goldfarb v. Virginia State Bar, 421 U.S. 773 (1975) a fee schedule as such would constitute price-fixing and thus would violate the Sherman Antitrust Act. The Task Force concluded that the best available approach to monitoring fees is for reviewing judges to require detailed accountings and justifications. This will require judicial education as to the factors constituting reasonableness of fees. In addition, more statewide training of judges will provide less experienced judges with opportunities to develop standards for reviews based on training materials and interaction with experienced judges.

Recommendation #3:

Improve procedures for ensuring that professional and nonprofessional guardians and conservators are qualified to perform their duties toward protected persons.

Task Force Response:

The creation of user manuals for both guardians and conservators will help to educate and inform fiduciaries as to their duties and will provide forms and materials to improve compliance with court orders and with statutory reporting requirements. The Task Force generally is committed to the use of both lay and family fiduciaries. Numerous scenarios for the training of both have been considered by the Further Studies Subcommittee recognizing that in those states where guardians and conservators follow a state-prescribed training program, are certified, licensed, registered, regulated and disciplined by the states, significantly more financial resources at the state level are devoted to guardianship/conservatorship programs. While the Task Force recognizes that professional fiduciaries play a significant role in a system such as ours, the Task Force concluded that specific qualifications for those professional fiduciaries should only be established by legislation.

Recommendation #4:

Improve communications used to inform interested parties of their rights and responsibilities related to oversight of trustees and personal representatives.

Task Force Response:

Existing forms used to provide notice to interested persons have been revised to clarify and to highlight the rights and responsibilities of interested persons *vis-a-vis*, trustees and personal representatives. Although this recommendation is somewhat abroad from the matter of protective proceedings, in that courts seldom appoint trustees and because personal representatives are usually designated in wills, the Task Force concluded that the same general practices apply, and that the expanded notice provisions will serve all types of estates and fiduciaries. The Probate Forms Subcommittee has changed the form of notice to interested persons in decedent's estates to feature certain important notice requirements more prominently on the forms. With the encouragement of the Task Force, the Colorado Bar Association Probate and Trust Law Section's Statutory Revisions Committee has proposed a change in the

procedure and the form of notice to trust beneficiaries to directly address the concern set out in the Probate Audit regarding notice to persons with interests in trusts.

Recommendation #5:

Strengthen controls over the management of probate cases by making improvements to the automated case management system.

Task Force Response:

Two tasks are underway within the Judicial Branch to improve the electronic case management system. The first is the creation of new event codes and business practices which are an adjunct to the expanded program. These codes will enable protective proceedings to be better tracked. The second task is the creation of the jPOD (Judicial Paper on Demand) program, as the successor to the present ICON/Eclipse systems. The jPOD system will enable judges and judicial assistants to more easily access protective proceedings files and to set monitoring/supervision deadlines. The jPOD system is expected to be operational statewide in the next 3 – 4 years, with some sections being completed in phases.

Protective Proceedings Task Force Committee Members

Task Force members appointed by the Chief Justice and with her consent:

Shelly Agos	Probate Registrar, 18 th Judicial District
Honorable Rebecca Bromley	District Judge, 4 th Judicial District
Honorable David Dickinson	District Judge, 6 th Judicial District
Sandra Franklin	Consultant, Retired Probate Magistrate
Honorable Sharon Hansen	District Judge, 22 nd Judicial District
Cyndi Hauber	Court Services Analyst, State Court Administrator's Office
Honorable Barbara Hughes	Magistrate, 4 th Judicial District
Judy Kinney	Probate Registrar, 1 st Judicial District
Honorable M. Jon Kolomitz	District Judge, 16 th Judicial District
John Lauce	Probate Registrar, 20 th Judicial District
Lauris Laue	Probate Registrar, 19 th Judicial District
Lee Cole	District Administrator, Denver Probate Court
Jerry Marroney	State Court Administrator
Honorable Frederic Rodgers	County/District Judge, Gilpin Combined Court
Caren Stanley	District Administrator, 15 th and 16 th Judicial Districts
Honorable C. Jean Stewart	Probate Judge, Denver Probate Court

Methodology

The Protective Proceedings Task Force addressed the charge from the Chief Justice by creating subcommittees concerning Best Business Practices, User's Manual, Probate Forms, and Further Studies. In addition to members of the Task Force, each subcommittee includes persons from within the Judicial Branch and attorneys with specialized skills and topical knowledge. The Probate Forms and Best Business Practices subcommittees include bar members and liaisons with bar groups. In addition, the Probate Forms subcommittee has worked with *pro se* litigants to obtain their input. The Further Studies subcommittee also included representatives from advocacy and stakeholder groups or persons with particular expertise. Members of each subcommittee are listed in the respective subcommittee's report.

Each subcommittee has met numerous times, and will continue to meet as needed to complete on-going projects, noting that the Final Report details work in progress for several subcommittees, most notably those dealing with Best Business Practices and Probate Forms. The work of the User's Manual Subcommittee and Further Studies Subcommittee also involves matters that are underway and will take some time to complete.

The audit report raised questions almost exclusively about protective proceedings, that is, guardianships (care of the persons) and conservatorships (care of the property of incapacitated persons) so the Task Force primarily dealt with those concerns and only incidentally, most notably regarding Probate Forms, spoke to other type of estate matters filed in Colorado Probate Courts.

The Final Report of the Task Force is not an all-inclusive report of every undertaking or accomplishment of the group but rather should be viewed, in part, as an outline for continuing efforts to resolve many matters dealing with protective proceedings.

Best Business Practices Subcommittee Report

Honorable C. Jean Stewart, Chair
Cyndi Hauber, Staff

Shelly Agos	Arapahoe Probate Registrar - 18 th Judicial District
Lee Cole	Denver Probate District Administrator
Cathy Daly	Denver Regional Trainer - 2 nd Judicial District
Angelika Ebert	LaJunta Electronic Recording Operator - 16 th Judicial District
Carl Glatstein	Attorney - Glatstein & Obrien, LLP
Honorable Barbara Hughes	Probate Magistrate - 4 th Judicial District
Susie Jordan	Denver Probate Court Protective Proceedings Facilitator
Judy Kinney	Jefferson Probate Registrar - 1 st Judicial District
Honorable M. Jon Kolomitz	Chief Judge - 16 th Judicial District
John Lauce	Boulder Probate Register - 20 th Judicial District
Lauris Laue	Greeley Probate Registrar - 19 th Judicial District
Linda Riggle	Denver Probate Registrar

The Best Business Practices subcommittee (BBP) is developing procedures aimed at creating uniform protective proceedings (guardianships and conservatorships) and probate (decedent's estates) procedures among districts. This committee is updating the current probate section of the clerk's manual to assist the courts in understanding and implementing such procedures. This committee is developing new procedures for court personnel and recommending new codes that will assist the court in identifying reports/plans filed with the court, reports/plans reviewed by the court and the number of Delay Prevention Orders issued if reports/plans are not received. See **Appendix 7** for new codes and **Appendix 8** for a draft version of Monitoring of Plans and Reports - Conservatorship. Uniformity of all probate matters will provide for greater efficiency for the both the courts and all court users (members of the bar and self-represented litigants).

Among the early efforts by the BBP committee was a successful campaign to make consistent and standard throughout the state all the procedures attendant to non-appearance hearings held pursuant to Rule 8.8 Colorado Rules of Probate procedure. This change will take place early in 2008. Making these changes depended solely upon cooperation and flexibility among districts, clerks, judges and attorneys.

Implementation of many other new procedures depends upon additional staffing at the local level. The BBP committee supports the need for Protective Proceeding Facilitators and Monitoring Specialist, as recommended by the Further Studies Subcommittee, to perform such duties as highlighted in the Further Studies Subcommittee report.

As a significant component of achieving consistency throughout the state and improved handling of these specialized case types, the BBP committee is recommending several steps be taken at the state level.

First, the committee recommends that the Chief Justice designate personnel in each district to serve as specialists and liaisons with other districts, with SCAO and with local bar associations

to provide for consistent contacts within the district for information exchange, training, and standards.

Second, the BBP committee recommends enhanced training for Judges and Magistrates who handle protective proceedings and District Administrators, Clerks of Court and judicial assistants. Training programs should be developed at the state level and regularly made available to all personnel within the system who regularly encounter these cases.

Third, the BBP committee is recommending that statewide training programs, such as a training program for court visitors, be developed and presented regularly throughout the state or via video or disk to make consistent, as much as possible, the services provided to the courts and the judges by court visitors throughout the state. The same type of training programs should be considered and developed for Guardians ad Litem, for court-appointed attorneys, and for independent evaluators.

Many members of the BBP committee also participate in the jPOD (Judicial Paper on Demand) development meetings. This new Judicial Department Computer system will allow for many of the court issued forms to be generated automatically from this system. For example, the committee is proposing that all Delay Prevention Orders be issued automatically when reports are past-due.

This committee also recommends fairly minor changes to the Colorado Rules of Probate Procedure, some of which that have already been approved by the Supreme Court in November of 2007. See list below for rule changes approved by the Supreme Court.

Rule Changes Approved by the Supreme Court.

C.R.P.P. 3 – Order of Business.

The Committee elected to include specific reference to documents filed, instead of referencing such as “matters of course.” Number 5 was added to identify the courts responsibilities of monitoring protective proceeding actions. Similar such language is already referenced by statute and the committee wanted to include similar language in the Probate Rules. The Probate Audit report issued in September, 2006 focused upon guardians and conservators because the auditors recognized that courts have a higher level of responsibility for monitoring these appointees.

C.R.P.P. 5 – Preparation of Pleadings.

The proposed amendment to C.R.C.P. 5 references a change to the Judicial Department (JDF) forms.

C.R.P.P. 6 – Form of Claim.

The proposed amendment to C.R.C.P. 6 references a change to the JDF form.

C.R.P.P.7 – Identification of Party and Attorney.

The proposed amendment adds inclusion of e-mail address information on documents. Many courts are requiring this information to assist the courts when sending information to parties representing themselves.

C.R.C.P. 9 – Verification of Documents.

The courts are finding that there is a greater need to have forms verified, as some courts have received questionable documents from people who are representing themselves. The Courts also believe that if the documents are verified, the number of required hearings may be reduced as orders can be made from such verified documents. The Probate Forms subcommittee would like the flexibility to revise forms, as appropriate, by adding verification statements upon requests received from court personnel.

C.R.P.P. 18 – Foreign Personal Representative and Conservators.

The proposed amendments to C.R.C.P. 18 reference a change to the new JDF forms.

This committee is also in the process of revising six other rules: (1) Rule 8.8 Non Appearance Hearings, (2) Rule 28 Inventories, (3) Rule 30.1 Conservatorship – Closing, (4) Rule 31 Accountings, (5) Rule 32 Accounts – Multiple Minors or Beneficiaries, and (6) Rule 33 Objection to Accountings of the Colorado Rules of Probate Procedure. This committee anticipates that the rules identified above will be provided to the Supreme Court in early 2008 for approval.

Many of the proposed changes to both forms and procedures address the increasing pressure on courts to meet the needs of *pro se* litigants. To insure court access to all citizens, the BBP committee is trying to create systems, procedures, forms and policies that work efficiently and fairly for both the practicing attorneys who work in this area as well as the many *pro se* litigants.

This committee is also proposing some statutory changes to two sections: (1) §15-14-418, General duties of conservator - financial plan and (2) §15-14-419, Inventory. These changes would require that the Inventory with Financial Plan (single form) be filed within sixty days of appointment of the fiduciary. Under the present statutes the timelines differ for the filing of each.

In order to bring probate case filing fees into alignment with civil case filing fees and to help support additional staffing costs, the committee recommends a variety of changes to §13-32-102, C.R.S. regarding fees. A summary of such recommendations are as follows:

1. Elimination of a reduced fee for small estates. Many Probate Registrars have indicated that such matters require the same amount of time to prepare.
2. A filing fee required of all parties filing a Petition requesting affirmative relief.
3. A filing fee for a disclaimer.
4. An increase in the filing fee (\$25.00) for any demand of notice filed.
5. A filing fee for any response or objection.
6. A filing fee for a Request for Correction.
7. A filing fee for a Motion to Modify or Re-Open an estate. The fee would be similar to that required in a Domestic Relations case to modify an existing order or decree.

8. An Inventory Fee on a sliding scale depending on the gross value of the estate. This fee would be a possible revenue source for funding for the positions of Facilitators/Probate Monitoring Specialists. This committee recommends that this fee be allocated to the Judicial Stabilization Fund.

User's Manual Subcommittee Report

Lauris Laue, Chair
Cyndi Hauber, Staff

Carl Glatstein	Attorney - Glatstein & Obrien, LLP
Sandra Franklin	Consultant, Retired Probate Magistrate
Honorable M. Jon Kolomitz	Chief Judge - 16 th Judicial District
Natalie Schlidt	Probate Registrar - 17 th Judicial District

The User's Manual subcommittee is developing a manual for newly appointed guardians and conservators that will describe, in plain English, their duties and the filing requirements. Below is the table of contents for the Conservator's Manual. See **Appendix 9**, for a draft Conservator's Manual.

1. Acknowledgment Form (This is also a good place to place any Orders you receive from the Court.)
2. Definitions
3. Information Regarding Your Appointment as a Conservator
4. Frequently Asked Questions
5. Resources
6. Blank Forms to get You Started
 - ◆ JDF 868 Motion to Withdraw Funds from Restricted Account
 - ◆ JDF 869 Order Allowing Withdraw of Funds from Restricted Account
 - ◆ JDF 870 Restricted Account Log
 - ◆ JDF 882 Conservator's Inventory with Financial Plan (Not final at this time)
 - ◆ JDF 885 Conservator's Report (Not final at this time.)
 - ◆ JDF 886 Income and Expense Only - Conservator's Report (Not final at this time.)
7. Pre-filing Report Checklist
8. Sample Forms Completed (Not completed at this time.)
9. Your Personal Section (This may be a great place for you to maintain financial documentation, receipts, etc.)

Once the three forms listed above are approved by the Forms subcommittee and Supreme Court, this committee anticipates that the manual will be available to the courts and included on the Judicial Branch website by March/April 2008.

This committee is in the process of developing a Guardian's Manual and anticipates that this manual will be completed by the end of calendar year 2008 or earlier. This manual will be developed in a very similar fashion to the Conservator's Manual.

Probate Forms Subcommittee Report

Honorable Barbara Hughes, Chair
Cyndi Hauber, Staff

Shelly Agos	Arapahoe Probate Registrar - 18 th Judicial District
David Bernhart	Assistant Attorney - Denver County Human Services Section
Kelly Dickson Cooper	Attorney - Holland and Hart
Angelika Ebert	LaJunta Electronic Recording Operator - 16 th Judicial District
Carl Glatstein	Attorney - Glatstein & Obrien, LLP
Susie Jordan	Denver Probate Court Protective Proceedings Facilitator
Judy Kinney	Jefferson Probate Registrar - 1 st Judicial District
John Lauce	Boulder Probate Register - 20 th Judicial District
Lucy Murray	Certified Public Accountant
Linda Riggle	Denver Probate Registrar
Honorable C. Jean Stewart	Presiding Denver Probate Judge

The Probate Forms subcommittee is in the process of converting all current Colorado Probate Code (CPC) forms to Judicial Department forms (JDF). This conversion brings the procedures regarding probate and protective proceedings forms into conformity with other forms in use in the state. It will allow the Judicial Branch with an opportunity to respond in a timely manner to the needs of the courts when revising existing forms or new forms as requested by court personnel. All forms approved by this subcommittee must be approved by the Supreme Court before publishing and posting to the website. It is the goal of this subcommittee to have all the protective proceeding forms and instructions completed and available on the Judicial Branch website self-help center by March/April of 2008.

The forms that have been approved by this committee and ready for submission to the Supreme Court or have been approved by the Supreme Court are as follows:

- JDF 711 Notice of Hearing
- JDF 712 Notice of Non-Appearance Hearing Pursuant to C.R.P.P. 8.8
- JDF 714 Affidavit Regarding Due Diligence and Proof of Publication
- JDF 716 Notice of Hearing by Publication
- JDF 718 Personal Service Affidavit
- JDF 721 Irrevocable Power of Attorney Designating Clerk of Court as Agent for Service of Process
- JDF 722 Objection: To Non-Appearance Hearing
- JDF 730 Decree of Final Discharge
- JDF 731 Receipt and Release
- JDF 800 Acknowledgment and Responsibilities
- JDF 801 Delay Prevention Order
- JDF 802 Order to Show Cause
- JDF 804 Monitoring Criteria Pursuant to §15-14-420(4), C.R.S.
- JDF 805 Acceptance of Office
- JDF 806 Notice of Hearing to Interested Persons
- JDF 807 Notice of Hearing to Respondent/Minor
- JDF 810 Visitor's Report

- JDF 825 Verified Consent of Parent
- JDF 826 Verified Consent or Nomination of Minor
- JDF 830 Letters of Guardianship - Minor
- JDF 835 Petition for Termination of Guardianship - Minor
- JDF 836 Order for Termination of Guardianship - Minor
- JDF 844 Notice of Appointment of Emergency Guardian and Notice of Right to Hearing
- JDF 849 Letters of Guardianship - Adult
- JDF 852 Petition for Termination of Guardianship - Adult
- JDF 853 Verified Notice of Death
- JDF 854 Order for Termination of Guardianship - Adult
- JDF 855 Petition for Modification of Guardianship - Adult and Minor
- JDF 856 Order for Modification of Guardianship - Adult and Minor
- JDF 857 Petition for Appointment of Co-Guardian/Successor
- JDF 858 Order Appointing Co-Guardian/Successor
- JDF 863 Letters of Conservatorship - Minor
- JDF 866 Order for Deposit of Funds to Restricted Account
- JDF 867 Acknowledgment of Deposit of Funds to Restricted Account
- JDF 868 Motion to Withdraw Funds from Restricted Account
- JDF 869 Order Allowing Withdraw of Funds from Restricted Account
- JDF 870 Restricted Account Log
- JDF 879 Petition for Appointment of Co-Conservator/Successor
- JDF 880 Letters of Conservatorship - Adult
- JDF 883 Order Regarding Approval of Conservator's Inventory with Financial Plan
- JDF 884 Order Appointing Co-Conservator or Successor
- JDF 891 Foreign Conservator's Sworn Statement
- JDF 892 Certificate of Ancillary Filing – Conservatorship
- JDF 912 Renunciation
- JDF 940 Information of Appointment

Members of the probate bar sit on this subcommittee, and forms are circulated among the members of the Estate and Trust Section's Rules and Forms Committee of the Colorado Bar Association for comment. Most importantly, focus groups of *pro se* litigants have been created to insure that they have input on the forms most frequently used by *pro se* consumers. To provide access to the courts, it is the goal of this subcommittee to ensure that the forms developed are more user-friendly for *pro se* litigants.

This committee has devoted substantial time developing all reports/plans that Guardians, Conservators and Court Visitors are to file with the court. All new reports/plans will provide a summary to allow the court to quickly identify potential issues and to assist in the monitoring of such cases.

This committee is also developing the following instructions to assist court users. The instructions are designed to provide general information, definitions, filing fee information, lists of necessary forms, and step-by-step information on the filing process. See **Appendix 10**, for draft Instructions for Minor Conservatorship - JDF 860.

- Instructions for Minor Guardianship
- Instructions for Adult Guardianship
- Instructions to Terminate Guardianship (Adult and Minor)

- Instructions for Minor Conservatorship
- Instructions for Adult Conservatorship
- Instructions to Terminate Conservatorship (Adult and Minor)

At the completion of this current project involving the forms related to Protective Proceedings (Guardianships, Conservatorships, Rule 16 Hearings, and related cases), the Forms committee plans to work on General/Miscellaneous forms and Decedent's Estate forms with a targeted completion date of December 31, 2008. Attorneys, the public, and Registrars throughout the state and other interest groups will be consulted about these revisions as well.

Further Studies Subcommittee Report

Honorable M. Jon Kolomitz, Chair Sandie Franklin and Cyndi Hauber, Staff

Jeff Clayton	Policy Analyst, State Court Administrator's Office
Honorable David Dickinson	District Judge, 6 th Judicial District
Carl Glatstein	Attorney - Glatstein & Obrien, LLP
William Hanna	Public Member at Large
Cyndi Hauber	Court Services Analyst, State Court Administrator's Office
Jane Holmes	Clerk of Court - Ouray Combined Court
Honorable Dan Kaup	District Judge, 8 th Judicial District
Alice Kitt	Guardianship Alliance
Marcie McMinimee	Public Administrator/Attorney/Elder Law Section of CBA
Christine Murphy	Governor's Policy Office
Representative Ellen Roberts	Legislature
Honorable Frederic Rodgers	County/District Judge, Gilpin Combined Court
Pat Stanis	Colorado Coalition for Elder Rights and Adult Protection
Honorable C. Jean Stewart	Presiding Denver Probate Judge
Michael Stiff	Attorney - Hutchinson and Stiff
Erica Wood	American Bar Association

The Further Studies Subcommittee makes the following recommendations and conclusions:

- ◆ The Further Studies Subcommittee recommends pilot projects to establish a Protective Proceedings Facilitator/Monitoring Specialist position in some or all Judicial Districts. Such specialists will enable districts to better monitor guardianships and conservatorships, particularly filing requirements, by providing a trained, knowledgeable person who is dedicated to the task. Through a subcommittee, the Further Studies Subcommittee designed a detailed pilot plan concerning the protective proceedings facilitator concept. See **Appendix 11** - Report of the Further Studies Subcommittee on Probate Facilitators/State Office Resources of the Protective Proceedings. The Further Studies Subcommittee recommends that the State Court Administrator conduct such a pilot study in accordance with the subcommittee's recommendations. In addition, the Further Studies Subcommittee recommends immediate programmatic support at the state level to implement the other recommendations contained in the subcommittee report.
- ◆ The Further Studies Subcommittee agrees that professional and nonprofessional guardians, conservators and court visitors need training, and that certification or registration program for professional guardians and conservators should be considered. The subcommittee recommends that the Office of the State Court Administrator develop and implement such programs through the appointment of special committees, noting that some existing models exist for each either in Colorado or other states.

- ◆ Although not an audit item, the Further Studies Subcommittee recognizes that a need for public guardians appointed according to a statutory plan as additional means of extending protection to the elderly and to meet the unaddressed needs of those who do not have the resources for private guardianship assistance. The Further Studies Subcommittee thus supports the creation of a pilot public guardian project.
- ◆ As to public access to protective proceedings records, many of the concerns raised in the audit have been addressed by Revised Chief Justice Directive 05-01, effective July 1, 2007. Therefore, the Further Studies Subcommittee makes no recommendations regarding public access. However, there is concern about the burden on clerks who must redact information before releasing it to the public. The Further Studies Subcommittee recognizes that the Best Practices Committee may suggest methods for reducing the time required for this task.
- ◆ The Further Studies Subcommittee encourages the Colorado General Assembly to consider adopting the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act as another measure to insure protection of the estates of incapacitated person.
- ◆ The Further Studies Subcommittee supports the “Probate Code Fiduciary Oversight Bill” being finalized by the Colorado Bar Association for introduction in the 2008 session of the Colorado General Assembly. This act vividly and unambiguously identifies the wide variety of options available to courts to control and manage troublesome estates. It will provide additional tools for courts to employ in carrying out monitoring responsibilities.
- ◆ The matter of the creation and supervision of protective proceedings and the need to provide protection for the elderly and for incapacitated persons has recently spawned considerable national interest and merits further in-depth consideration in a manner beyond the charge to the Task Force. Many of the concerns of those involved the field of “elder law” invite further inquiry into topics which may have a long-term impact on protective proceedings but do not bear directly on those matters placed at issue in the audit report. Thus, in order to remain abreast of developments on all fronts which effect protective proceedings, the Further Studies Subcommittee recommends the creation of a standing group to address new concerns and to improve judicial oversight of protective proceedings.

“We note the untimely passing on December 5th of Alice Kitt, whose contributions and zest will be missed by all.”

Suggestions from Public Hearing and Response from Task Force

A public hearing was held on September 28, 2007. The hearing was moderated by Gerald Marroney, the State Court Administrator. Several members of the Task Force were also present. The Task Force received written information from seven presenters to support their issues and concerns, including individuals who have existing probate cases and members of the bar. See **Appendix 5** for the Minutes from the Public Hearing and **Appendix 6** for a summary of various suggestions addressed during the public hearing and the response from the Task Force.