



Colorado Probate Cases and the Denver Probate Court

by C. Jean Stewart

Each case filed at the district court level in Colorado is classified by the *pro se* party or attorney who files it or by the clerk who enters it into ICON (our affectionate acronym for the Integrated Colorado Online Network). When entered into ICON, the *pro se* party, attorney, or clerk chooses one of seven general case types: civil, criminal, domestic relations, juvenile delinquency, other juvenile, mental health, or probate. This article focuses on handling the case classification "Probate," and specifically discusses the functions of the Denver Probate Court.

Case Categories

In addition to the general case types, cases are more specifically classified and coded as to subject matter. Probate cases include all matters arising under the Colorado Probate Code ("CPC"), CRS Title 15, Articles 10 through 17 and 19. They include the following case classifications:

- Decedent's Estate Proceedings:
 - Intestate Proceedings (Informal or Formal), Determination of Heirship
 - Testate Proceedings (Informal or Formal)
 - Special Administration (Informal or Formal)
 - Ancillary Proceedings
- Protective Proceedings
 - Conservatorships (adult or minor)
 - Guardianships (adult or minor)
- Single Transactions, including personal injury settlements, pursuant to Rule 16 of the Colorado Rules of Probate Procedure ("CRPP")
- Uniform Veterans Guardianship Act proceedings (CRS §§ 28-5-201 *et seq.*)¹
- Disposition of Last Remains (CRS §§ 15-19-101 *et seq.*)¹

Assignments of Judges

Throughout Colorado, the process of assigning probate cases to individual district court judges varies. Seven Judicial Districts ("JDs") (5, 8, 12, 13, 16, 17, and 21) assign cases on a blind draw, even-odd, or random basis. Four JDs (3, 7, 9, and 14) assign cases geographically by county.² Six JDs (1, 4, 10, 18, 19, and 20) assign probate cases to divisions or judges who have agreed to accept or specialize in this subject matter or who have been assigned by their chief judges to accept them. In the 2nd JD (City and County of Denver), this assignment is mandated

by Article VI, §§ 9 and 14 of the Colorado Constitution and by CRS § 13-9-103.³

The Colorado Probate Code

The CPC, an adaptation of the Uniform Probate Code ("UPC"), became effective in Colorado on July 1, 1974. It represented a significant departure from the historical system of administration of decedents' estates marked by close and complete judicial oversight. Administration of decedents' estates in Colorado is now divided into three levels: affidavit procedure (no court involvement); administrative (generally uncontested, informal, and unsupervised); and judicial probate (requiring some court involvement). In addition to the CPC, probate cases are governed by the CRPP. Probate judges also can draw on the Colorado Rules of Civil Procedure, when appropriate, to supplement the probate rules.

Collection of Personal Property by Affidavit Procedure

Assume a Colorado resident dies with property, exclusive of real estate, that has an aggregate net value less than \$50,000.⁴ Armed with an Affidavit for Collection of Personal Property (CPC Form 50), any interested party (a family member, designated fiduciary, or other interested person) can collect all of the assets, take care of any obligations outstanding at the time of the decedent's death, and distribute the remaining assets to the persons entitled to receive distributions. All of this can be done without seeking court appointment as personal representative for the estate. This procedure has done a great deal to reduce the burden on Colorado probate courts.

Administrative Probate Proceedings And the Probate Registrar

The thrust of the UPC was to alter the fundamental nature of the probate process in Colorado from a judicially supervised proceeding to an administrative procedure. The CPC shifts re-

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sponsibility for administration and oversight from the probate courts to fiduciaries, recognizing that these are sometimes laypersons. It requires that persons with an interest in the administration of the estate (for example, heirs, devisees, and creditors) assume more responsibility for the oversight of the process than the court.

To that end, an informal probate proceeding (the validation of the decedent's Last Will and Testament and the appointment of the personal representative) can be handled entirely as an administrative proceeding before one of the twenty-two designated Probate Registrars. This type of proceeding is available throughout the state, without notice or hearing and, in many cases, on a "while-you-wait" basis. This flexible, informal, administrative process of probate enjoyed in Colorado since 1974 makes the validation of a decedent's will and appointment of a personal representative easier than getting a driver's license.

The administrative process is commenced with the filing of an application. The current statewide fee for a probate proceeding is \$146. Certified copies of the Personal Representative's Letters cost an additional fee set by individual court clerks. A decedent's estate also can be closed informally, without court involvement, by filing a verified closing statement under CRS § 15-12-1003.

Formal and Contested Probate Cases

For a variety of reasons, an interested person, as defined under the CPC at CRS § 15-10-201(27), may want to open an estate with notice to all interested persons (for example, to cut off claims of undue influence or lack of testamentary capacity). This "formal" probate process is initiated with a petition and is accompanied by notice and a hearing before a judge or magistrate.

All estates in Colorado, whether opened informally or formally, presumptively proceed as unsupervised proceedings. The personal representative handles all decisions during the administration without notice, hearings, or court approval, following the guidelines of the CPC, CRPP, and common law governing administration of estates. Personal representatives may request court guidance with regard to individual decisions. Either the personal representative or any other interested person may petition for the court to convert the estate into a "supervised" administration, which is more akin to the historical model. These proceedings attract an additional fee and are the exception rather than the rule.

Estates may be "closed" either administratively by the filing of a verified closing statement or formally by petition. The Petition for Formal Closing provides the personal representative with a court order approving all of the accounts and actions during the administration, as well as final approval of the plan of distribution. Many estates that were opened informally and proceeded through administration unsupervised are nevertheless closed formally to provide this added protection to the personal representative.

Throughout the administration process, the court provides no independent oversight or investigation. The responsibility for monitoring the proceedings falls to those whose interests are affected.

Protective Proceedings

Protective proceedings include guardianships and conservatorships for minors and adults, single transactions, settlement

of personal injury cases, and Uniform Veterans Guardianship Act⁵ cases. These proceedings are governed by the Colorado Uniform Guardianship and Protective Proceedings Act, effective on January 1, 2001.⁶ Protective proceedings, because they involve such significant deprivations of liberty and freedom of decision, are accompanied by heightened levels of protections for the subjects of the proceeding, including personal service as a jurisdictional component, mandatory hearings, periodic reviews, and reporting. The Probate and Trust Section of the Colorado Bar Association and the Colorado legislature have worked well together to keep these statutes modern but still protective of the rights of the most vulnerable of our citizens.

Trusts and Other Matters

The final categories of case types assigned throughout the state to probate judges include trust proceedings. Although all trusts in Colorado can be administered free from the supervision of a court, both testamentary and *inter vivos* trusts come under the jurisdiction of probate courts when issues of administration, interpretation, termination, and breach arise.

Deposit of Wills

Historically, all district courts, including the Denver Probate Court, have accepted deposited wills pursuant to CRS § 15-11-515, which provides that "[a] will may be deposited by the testator or the testator's agent with any court for safekeeping." (*Emphasis added.*) In October 2003, Colorado Supreme Court Chief Justice Mary Mullarkey entered an Order Concerning the Deposit of Wills, authorizing the Chief Judge of each judicial district to discontinue this service due to the current budget crisis and the effect staff cuts have had on courts. Currently, the Denver Probate Court continues to accept deposited wills, but some other districts cannot, due to limitations of space and staff.

Denver Probate Court

In addition to probate cases, the Denver Probate Court has jurisdiction over all Denver mental health⁷ cases, resulting in 11 percent of the 2nd JD caseload.⁸ The court maintains a website at http://www.courts.state.co.us/district/02nd/probate/about_ourcourt.htm.

Mandatory Electronic Filing

On July 1, 2003, the Denver Probate Court adopted a policy of mandatory electronic filing for all attorneys in probate cases. Court staff will scan and upload documents filed in paper format for a \$20 fee per filing. The adoption of electronic filing has substantially improved the efficiency of the court and has been greeted with enthusiasm by lawyers.

Conclusion

The Denver Probate Court occupies a unique position in the Colorado Judicial Branch because of its specialized and limited jurisdiction assigned by the Colorado Constitution and the Colorado Probate Code. Its jurisdiction and its responsibilities are replicated in each district throughout the state in a variety of ways. As the size and complexity of contested estates mount and the emphasis on the efficiency and value of specialized courts increases, the Denver Probate Court will continue to play a vital role in processing decedents' estates, protective proceedings, and mental health cases.

NOTES

1. The Colorado legislature adopted the "Disposition of Last Remains Act" in 2003, setting out an order of priority of those persons with priority for determination of the disposition of the last remains of decedents who have failed to adopt and execute the form entitled "Declaration of Disposition of Last Remains," pursuant to CRS §§ 15-19-101 *et seq.* The statute vests jurisdiction over disputes about the implementation of the statute in the "probate court of the county of the decedent's residence."

2. The 6, 11, and 15 JDs each use a combined geographical and even-odd case number assignment system.

3. *See also* CRS § 15-12-106.

4. This affidavit procedure has been modified three times since the adoption of the CPC to conform to changing economic times. From 1975 through June 30, 1981, an estate of \$10,000 or less was eligible for the affidavit proceeding. On July 1, 1981, the Colorado legislature increased the size of the eligible estate to \$20,000; on July 1, 1991, it increased the size again to \$27,000; and on July 1, 2002, the size of the estate eligible for collection and administration by the affidavit procedure was raised to \$50,000.

5. CRS §§ 28-5-201 *et seq.*

6. CRS §§ 15-14-101 *et seq.*

7. Mental health cases are governed by CRS §§ 25-1-1107 (involuntary commitment of drug abusers); 25-1-311 (involuntary commitment of alcoholics); 27-10.5-110 (imposition of legal disability—developmentally disabled); and 27-10-101 *et seq.* (care and treatment of the mentally ill).

8. By protocol, dated October 7, 1996, the Denver Probate Court also handles all modifications of child support arising out of the death of the parent obligated to pay support, pursuant to CRS § 14-10-122(3). ■