

## THE RIGHT COURT/THE RIGHT JUDGE

The Denver Probate Court is a court of limited jurisdiction. Denver is not the only district, however, where probate cases are heard. As I addressed in my July 2004 Judges' Corner article in *The Colorado Lawyer*, *Colorado Probate Cases and the Denver Probate Court*, Vol. 33, No. 7, p. 67, a probate case is a probate case wherever it is filed.

Notwithstanding the many benefits to the citizens of having the specialized court here in the City & County of Denver, logistical and practical concerns arise occasionally when a civil action is pending or should be filed in Denver District Court and a "related" probate case is also pending or could be filed in Denver Probate Court. Attorneys and parties sometimes lament that the "limited" but "exclusive" jurisdiction of the Denver Probate Court presents an obstacle to consolidation of cases that is not present in other districts, where they think that a general jurisdiction judge would agree to hear both the civil case and the probate case, thus offering efficiencies to both the court and the litigants.<sup>1</sup>

There are two procedures available in Denver that provide opportunities for efficient handling of the "related cases." One procedure involves transferring the probate case to the district court already handling the related civil case. This can be done by invoking Chief Justice Directive 85-23; see <http://www.denverprobatecourt.org/attorneyinfo.htm>. The chief judge of Denver District Court can assign the district court judge who is handling the civil case to also hear the probate case, "upon the request of the judge of the Denver Probate Court."

Before I make such a request, I always consult with the district court judge in advance to insure that he/she is willing and able to accept the assignment and I typically consult with all counsel and pro se parties in the case to insure their assent. The probate-to-district transfer can also be triggered by a motion to transfer the case. If all of the parties in the case consent, unless an obstacle is present (for example, if the district court judge and I agree that it is not more efficient to transfer the case or, if it appears that the parties are forum or judge shopping), I will typically act favorably on such a motion.

The other procedure available in a situation where related cases are pending in both civil and probate divisions of Denver District Court affects a district-to-probate transfer. As part of its supervisory powers, the Colorado Supreme Court can appoint a judge of the Denver Probate Court to be a district court judge for the limited purpose of hearing a specific civil case. This can make sense when the civil action pending in Denver District Court is related to a probate case in Denver Probate Court and the judges, parties and counsel agree that it makes sense to have the issues considered and perhaps even tried in tandem.

The procedure that has developed to implement this procedure requires again that all of the parties and their counsel agree to this procedure. If both judges also agree the Colorado Supreme Court, in response to a motion filed, enters an Order appointing the probate judge to be a Denver District Court judge for purposes of further proceedings in the civil case. A form of motion and a form of order to accomplish this assignment are available at <http://www.denverprobatecourt.org/forms.htm>.

Although both of these procedures can assist in resolving questions of jurisdiction and provide some measure of judicial efficiency, they are not intended as a substitute for arguments and rulings on legitimate jurisdictional controversies. If the case is not properly heard in probate court and should be under the jurisdiction of the district court, naming a district court judge to preside over the probate case will not resolve that jurisdictional fault.

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<sup>1</sup> While this subject is not handled specifically in the July 2004 article referenced in the text and is beyond the scope of this article, the reality is that even in other districts there are occasions when a civil action and a probate action are proceeding independently under two different judges and issues of judicial efficiency and the risk of different results need to be addressed.