AGENDA

1:00 - 1:15 pm **Welcome and Opening Remarks**

Paul is being driven home from his annual physical by Mary, his Guardian. They are T-boned at an intersection. Both are injured, Mary seriously.

As a result, Mary will not be able to continue her appointment and Paul now needs a successor guardian (Peter).

In addition, Paul (and Mary) likely have a claim (settlement) against the driver that T-boned them and possibly Paul against Mary and her insurance.

The settlement needs to be approved pursuant to C.R.P.P. 62 and a Conservator/Fiduciary for Paul needs to be appointed.

1:15 - 2:00 pm **Post Decree Petition for Successor Guardian requiring an actual appearance hearing in compliance with C.R.S. § 15-14-319**

- Post- adjudication right to counsel
- Filing of the petition
- Potential GAL appointment
- Ethical issues that may arise

2:00 – 2:10 pm **BREAK**

2:10 – 2:15 pm **Introduction to new topic --- New Petitions for Personal Injury Settlement that Require Conservatorships, Petition requirements and Process**

2:15 – 2:45 pm **Visitor Issues**

- What triggers the appointment of a visitor
- What visitors do
- What happens when a visitor is appointed
- Who pays for it

2:45 – 3:45 pm **New Petitions Pursuant to C.R.P.P. 16 and § 15-14-406 and Post Appointment Fiduciary Duties**

- Rule 16/62
- Notice
- Ethical issues that arise
- Post appointment fiduciary duties

3:45 – 3:55 pm **BREAK**

3:55 – 5:00 pm **Panel Discussion Regarding Issues Raised in Storyline**

- Ethical considerations from the bench
- Practice tips
- Any other questions

I'm sensing a conflict of interest now
You say you have no money?

Protective Proceedings CLE

November 8, 2018

Presented by the Arapahoe District Court Probate Best Practices Committee

Post-Decree Issues

Successor Guardian

1. How does the Court know a successor is needed?
2. If the current Guardian is injured/incapacitated, who informs the Court?
    a. Ward, possibly
    b. Family/friend of Guardian
    c. Care provider/placement/hospital
    d. Adult Protective Services (APS)
        --brought in by the Court after DPO
        --brought in by hospital/care facility/family
3. If Court is made aware of the need for a Successor Guardian, the Court can
    a. contact/order APS to investigate
    b. appoint a GAL §15-14-115 or Visitor §15-14-318(3.5)(e)(I)
    c. upon finding by the Court, or recommendation of Visitor or request of the Respondent, an attorney can be appointed post-adjudication pursuant to §15-14-319, C.R.S.
    d. order a professional evaluation §15-14-306
4. Mary could be aware and notify the Court, but be unable to name a successor or file; GAL or APS could file if an appropriate successor is found. Perhaps a *temporary* substitute guardian would be adequate? See §15-14-313, C.R.S.
5. APS cannot be forced by the Court to become guardian, or successor or temporary guardian. See *In re Estate of Morgan*, 160 P.3d 356 (Colo.App.2007). What if there is no one to serve? Public Guardian?
6. If a conservator is appointed, could that conservator serve as both?
    a. see §15-14-310, C.R.S.
    b. what do our Judicial Officers consider "good cause" for such appointment?

It's Over!
If she sings ...

COURT VISITOR

I. Court Visitor appointments in guardianship and conservatorship cases

A. Statutory Authority

§15-14-305 – Guardianship Matters

§15-14-406 – Conservatorship Matters

B. When are appointments made

II. Purpose of Court Visitors Appointments

A. Eyes and Ears of the Court – visit with Respondent and report back to the court regarding the overall situation

B. Advise Respondent of Rights and report back to the court regarding responses.

C. Recommendations based on responses

JUSTIA

View the 2017 Colorado Revised Statutes | View Previous Versions of the Colorado Revised Statutes

2016 Colorado Revised Statutes
Title 15 - Probate, Trusts, and Fiduciaries
Colorado Probate Code
Article 14 - Persons Under Disability - Protection
Part 3 - Guardianship of Incapacitated Person
§ 15-14-305. Preliminaries to hearing

Universal Citation: CO Rev Stat § 15-14-305 (2016)

(1) Upon receipt of a petition to establish a guardianship, the court shall set a date and time for hearing the petition and appoint a visitor. The duties and reporting requirements of the visitor are limited to the relief requested in the petition. The visitor must be a person who has such training as the court deems appropriate.

(2) The court shall appoint a lawyer to represent the respondent in the proceeding if:

(a) Requested by the respondent;

(b) Recommended by the visitor; or

(c) The court determines that the respondent needs representation.

(3) The visitor shall interview the respondent in person and, to the extent that the respondent is able to understand:

(a) Explain to the respondent the substance of the petition, the nature, purpose, and effect of the proceeding, the respondent's rights at the hearing, and the general powers and duties of a guardian;

(b) Determine the respondent's views about the proposed guardian, the proposed guardian's powers and duties, and the scope and duration of the proposed guardianship;

(c) Inform the respondent of the right to employ and consult with a lawyer at the respondent's own expense and the right to request a court-appointed lawyer; and

(d) Inform the respondent that all costs and expenses of the proceeding, including respondent's attorney fees, will be paid from the respondent's estate unless the court directs otherwise.

(4) In addition to the duties imposed by subsection (3) of this section, the visitor shall:

(a) Interview the petitioner and the proposed guardian;

(b) Visit the respondent's present dwelling and any dwelling in which the respondent will live, if known, if the appointment is made;

(c) Obtain information from any physician or other person who is known to have treated, advised, or assessed the respondent's relevant physical or mental condition; and

(d) Make any other investigation the court directs.

(5) The visitor shall promptly file a report in writing with the court, which must include:

(a) A recommendation as to whether a lawyer should be appointed to represent the respondent and whether a guardian ad litem should be appointed to represent the respondent's best interest;

(b) A summary of daily functions the respondent can manage without assistance, could manage with the assistance of supportive services or benefits, including use of appropriate technological assistance, and cannot manage;

(c) Recommendations regarding the appropriateness of guardianship, including whether less restrictive means of intervention are available, the type of guardianship, and, if a limited guardianship, the powers to be granted to the limited guardian;

(d) A statement of the qualifications of the proposed guardian, together with a statement as to whether the respondent approves or disapproves of:

(I) The proposed guardian;

(II) The powers and duties proposed; and

(III) The scope of the guardianship;

(e) A statement as to whether the proposed dwelling meets the respondent's individual needs;

(f) A recommendation as to whether a professional evaluation or further evaluation is necessary; and

(g) Any other matters the court directs.

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JUSTIA

View Previous Versions of the Colorado Revised Statutes

2017 Colorado Revised Statutes
Title 15 - Probate, Trusts, and Fiduciaries
Colorado Probate Code
Article 14 - Persons Under Disability - Protection
Part 4 - Protection of Property of Protected Person
§ 15-14-406. Original petition - persons under disability - preliminaries to hearing

Universal Citation: CO Rev Stat § 15-14-406 (2017)

(1) Upon the filing of a petition for a conservatorship or other protective order for a respondent for reasons other than being a minor, the court shall set a date for hearing. The court shall appoint a visitor unless the petition does not request the appointment of a conservator and the respondent is represented by a lawyer. The duties and reporting requirements of the visitor are limited to the relief requested in the petition. The visitor must be a person who has such training or experience as the court deems appropriate.

(2) The court shall appoint a lawyer to represent the respondent in the proceeding if:

(a) Requested by the respondent;

(b) Recommended by the visitor; or

(c) The court determines that the respondent needs representation.

(3) The visitor shall interview the respondent in person and, to the extent that the respondent

is able to understand:

(a) Explain to the respondent the substance of the petition and the nature, purpose, and effect of the proceeding;

(b) If the appointment of a conservator is requested, inform the respondent of the general powers and duties of a conservator and determine the respondent's views regarding the proposed conservator, the proposed conservator's powers and duties, and the scope and duration of the proposed conservatorship;

(c) Inform the respondent of the respondent's rights, including the right to employ and consult with a lawyer at the respondent's own expense, and the right to request a court-appointed lawyer; and

(d) Inform the respondent that all costs and expenses of the proceeding, including respondent's attorney fees, will be paid from the respondent's estate unless the court directs otherwise.

(4) In addition to the duties imposed by subsection (3) of this section, the visitor shall:

(a) Interview the petitioner and the proposed conservator, if any; and

(b) Make any other investigation the court directs.

(5) The visitor shall promptly file a report with the court, which must include:

(a) A recommendation as to whether a lawyer should be appointed to represent the respondent and whether a guardian ad litem should be appointed to represent the respondent's best interest;

(b) Recommendations regarding the appropriateness of a conservatorship, including whether less restrictive means of intervention are available, the type of conservatorship, and, if a limited conservatorship, the powers and duties to be granted the limited conservator, and the assets over which the conservator should be granted authority;

(c) A statement of the qualifications of the proposed conservator, together with a statement as to whether the respondent approves or disapproves of:

(I) The proposed conservator;

(II) The powers and duties proposed; and

(III) The scope of the conservatorship;

(d) A recommendation as to whether a professional evaluation or further evaluation is

necessary; and

(e) Any other matters the court directs.

(6) While a petition to establish a conservatorship or for another protective order is pending, after preliminary hearing and without notice to others, the court may issue orders to preserve and apply the property of the respondent as may be required for the support of the respondent or individuals who are in fact dependent upon the respondent. The court may appoint a special conservator to assist in that task.

(7) Repealed.

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Kellie K. McBride
CLE Presentation 11/08/18
Court Visitor

Parts I and II (Jeanette Goodwin)

III. What Happens When a Visitor is Appointed
   A. Order Appointing Visitor
   B. Visitor Procedures
      1. Review Order, Petition, & Exhibits
      2. Establish interview appointments
      3. Conduct Interviews
      4. Complete & Submit Report

IV. Who Pays for the Visitor Services
   A. Petitioner
   B. State
   C. CJD 04-05
      1. "Appointment and Payment Procedures for Court-appointed Counsel, Guardians *ad litem*, Child and Family Investigators, and Court Visitors paid by the Judicial Department in proceedings under Titles 12, 13, 14, 15, 19 (special respondents in dependency and neglect only), 22, 25.5, and 27, C.R.S.," was amended to incorporate changes to the structure of the Office of Respondent Parents' Counsel. On July 1, 2016, pursuant to legislation, the Office of Respondent Parents' Counsel (ORPC) assumed responsibility for the contracts and payment for the attorneys with whom the ORPC contracts. The State Court Administrator's Office no longer has authority over RPC appointments. The revisions to the directive address payment procedures and remove provisions that dealt with policy and procedural matters related to respondent parent representation. Additionally, non-substantive formatting and organizational changes were made to the Directive.

☐District Court ☐Denver Probate Court _____ County, Colorado Court Address: **In the Interest of:** **Respondent**	▲ **COURT USE ONLY** ▲ Case Number: Division: Courtroom:

ORDER APPOINTING COURT VISITOR

On the court's own motion, _____ is appointed as the court visitor in this matter. The court finds that this appointment is necessary

☐to investigate the allegations made in the Petition for Appointment of Guardian pursuant to § 15-14-305(1) C.R.S.

and/or

☐to investigate the allegations made in the Petition for Appointment of a Conservator pursuant to § 15-14-406(1) C.R.S.

In compliance with the Health Insurance Portability and Accountability Act of 1996 or HIPAA, the court visitor must have access, without further release or liability, to all relevant information regarding the respondent including, but not limited to, psychiatric, psychological, drug, alcohol, medical, law enforcement, school, social services, financial reports, evaluations, and other information.

The court visitor must also have access to interview the respondent in person in order to fulfill the duties of a court visitor. If a hearing has been set, the hearing is scheduled at the following time and location:

Date:_____ **Time:**_____ **Courtroom or Division:**_____

Address:_____

The visitor fee is:

☐the responsibility of the petitioner (petitioner may seek reimbursement from respondent's estate.).

☐to be submitted to the court and paid at state expense. A finding of indigency has been made by the court.

☐to be determined at a later date by the court.

Date: _____

_____

☐Judge ☐Magistrate ☐Probate Registrar ☐ (Deputy) Clerk of Court

❑District Court ❑Denver Probate Court _____ County, Colorado Court Address: **In the Interest of:** **Respondent**	▲ **COURT USE ONLY** ▲
Court Visitor (Name):	Case Number: Division Courtroom

COURT VISITOR'S REPORT
❑GUARDIANSHIP ❑CONSERVATORSHIP ❑COMBINED

Instruction to court visitor: Please complete every applicable section of this form. If a section is not applicable, please enter N/A.

I, _____(name), submit the following report concerning the investigation that I conducted as the court-appointed visitor in this ❑guardianship pursuant to § 15-14-305, C.R.S. ❑conservatorship pursuant to § 15-14-406, C.R.S.

Summary:

		Yes	No
A.	A **lawyer** should be appointed to represent the respondent. Reason: ❑The respondent requested a lawyer. ❑Other: _____	❑	❑
B.	A **guardian ad litem** should be appointed to represent the respondent's best interests. Reason: _____	❑	❑
C.	A **professional evaluator** should be appointed to examine the respondent and prepare an evaluation. Reason: ❑The respondent has demanded an evaluation. ❑Other: _____	❑	❑
D.	I believe the proposed guardianship, including the type of guardianship, is appropriate and that less restrictive means of intervention are unavailable. Suggested limitations on guardian's powers and duties: _____ _____ _____	❑	❑
E.	The nominated guardian should be appointed for the respondent.	❑	❑
F.	I believe the proposed conservatorship, including the type of conservatorship, is appropriate and that less restrictive means of intervention are unavailable. Suggested limitations on conservator's powers and duties, and assets over which the conservator should be granted authority: _____ _____ _____	❑	❑
G.	The nominated conservator should be appointed for the respondent.	❑	❑

Yes ☐ No ☐

H. The respondent needs an interpreter.
If yes, for what language? _____

List any interested persons involved who may need an interpreter, and for what language:
_____
_____
_____

I. Significant concern(s):

_____
_____
_____

I. Observations:

A. The activities of daily living (daily functions) that the respondent can manage without assistance; could manage with the assistance of supportive services or benefits, including the use of appropriate technological assistance; and cannot manage are as follows:

_____
_____
_____
_____

B. The financial functions that the respondent can or cannot effectively manage are as follows:

_____
_____
_____
_____

II. Interview of Respondent:

I interviewed the respondent, in person, on _____ (date) at _____ (location). I provided the Notice of Rights to Respondent (JDF 797) and, to the extent the respondent was able to understand, explained the rights contained therein.

A. Other persons present at the interview:

_____
_____

B. Respondent's physical appearance:

_____
_____

C. Respondent was oriented to time and place ☐Yes ☐No

D. After I explained the substance of the petition, the nature, purpose, and effect of the proceeding, and the general powers and duties of a guardian, conservator, or both, as appropriate to this case, I asked the following questions and the respondent answered as follows:

1. Do you understand what I've explained to you? ❑Yes ❑No ❑Did not respond
   If **No,** please explain or comment. _____
   _____

2. Do you understand the Notice of Rights to Respondent (JDF 797)? ❑Yes ❑No ❑Did not respond

3. Do you have a lawyer? ❑Yes ❑No ❑Did not respond
   If **Yes**, please provide name: _____

4. Do you want a lawyer to be appointed for you? ❑Yes ❑No ❑Did not respond
   If **Yes**, please explain: _____
   _____

5. Do you have a doctor? ❑Yes ❑No ❑Did not respond
   If **Yes**, please provide name: _____

6. Is your doctor the same doctor who provided the letter attached to the petition filed in these proceedings? ❑Yes ❑No ❑Did not respond

7. Who are the family members or other people who are the most helpful to you?
   _____
   _____
   _____

Guardianship Only

1. Do you need any help with your daily living activities or daily functions? ❑Yes ❑No ❑Did not respond
   If **Yes**, in what areas? _____
   _____

2. Do you know the proposed guardian? ❑Yes ❑No ❑Did not respond
   If **Yes**, who do you think the proposed guardian is? _____
   If **No**, why not? _____
   (If respondent provides the wrong name of the proposed guardian, then inform them of the correct proposed guardian).

3. Do you think that he or she should be appointed as your guardian? ❑Yes ❑No ❑Did not respond

4. How do you feel about the proposed guardianship? (Scope, powers, duties, and duration.)
   ❑**Did not respond**
   ❑**Responded as follows:** _____
   _____
   _____
   _____
   _____

Conservatorship Only

1. Do you need any help with your finances? ❑Yes ❑No ❑Did not respond
   Identify specific areas (check writing, bill paying, etc.) _____

   _____

   _____

2. Do you know the proposed conservator? ❑Yes ❑No ❑Did not respond

   If **Yes**, who do you think the proposed conservator is?
   If **No**, why not?_____-(If respondent provides the wrong name of the proposed conservator, then inform them of the correct proposed conservator).

3. Do you think that he or she should be appointed as your conservator? ❑Yes ❑No ❑Did not respond

4. How do you feel about the proposed conservatorship? (Scope, powers, duties, and duration.)
   ❑**Did not respond**
   ❑**Responded as follows:** _____

   _____

   _____

III. Interview of Person Nominated as Guardian:

A. Date and place of interview:

_____

_____

B. Person seeking appointment was asked and responded as follows:

1. Name and address:

   _____

   _____

2. Relationship (including non-family) to respondent:

   _____

   _____

3. Occupation: _____
4. Why was this petition initiated?

   _____

   _____

5. Where has the respondent resided during the last 3months?

   _____

   _____

a. Who, if anyone, has been caring for the respondent during this period?

_____

_____

b. What type of care has been provided?

❑None
❑In-home care
❑Assisted living
❑Hospital or nursing home

c. What type of care will be provided if you are appointed as guardian?

❑None
❑In-home care
❑Assisted living
❑Hospital or nursing home

6. What changes in residence are contemplated?

❑None
❑Private home ❑Other facility. Please provide name and address:

_____

7. What are your qualifications to be guardian for respondent? _____

_____

_____

IV. Interview of Person Nominated as Conservator:

A. Date and place of interview:

_____

_____

B. Person seeking appointment was asked and responded as follows:

1. Name and address:

_____

_____

_____

2. Relationship (including non-family) to respondent:

_____

_____

3. Occupation: _____

4. Why was this petition initiated?

_____

_____

5. Where has the respondent resided during the last 3months?

_____

_____

6. Who, if anyone, has been handling the respondent's financial affairs during this period?

_____

_____

7. Does the respondent owe you (conservator nominee) any money or property? ❑ Yes ❑ No
If **Yes,** please explain. _____

_____

8. Do you (conservator nominee) owe the respondent any money or property? ❑ Yes ❑ No
If **Yes,** please explain. _____

_____

9. What are your qualifications to be conservator for respondent? _____

_____

_____

V. Interview of Petitioner, if Different than the Nominated Guardian or Conservator:

A. Name of person: _____

B. Date and place of interview: _____

_____

C. Petitioner was asked and responded as follows:

1. Occupation: _____

2. Have there been any significant changes since you filed the petition? ❑ Yes ❑ No

Comments: _____

_____

_____

VI. Interview of Other Interested Persons:

A. Name of person: _____ Relationship to respondent: _____

B. Date and place of interview:

_____

_____

C. Other person asked and responded as follows:

1. Address: _____

2. Occupation: _____

3. Should a guardian or conservator be appointed? ❑ Yes ❑ No

Comments: _____

_____

_____

Note: **This section should be completed as many times as there are interested persons interviewed. Attach the additional interview notes to this report.**

VII. Report on Condition of Respondent's Current Residence:

A. Date visited: ____/____/____

B. Address: _____

_____

C. Type of dwelling: _____

D. Condition:

1. Lawn and landscaping: _____

2. Exterior: _____

3. Interior: _____

a. Utilities working ❑**Yes** ❑**No** Additional comments _____

b. Clean ❑**Yes** ❑**No** Additional comments _____

c. Fire hazards ❑**Yes** ❑**No** Additional comments _____

d. Appropriate accessibility ❑**Yes** ❑**No** Additional comments _____

e. Other issues or concerns (explain) _____

_____

E. I believe the respondent's current dwelling meets his or her needs. ❑**Yes** ❑ **No**

VIII. Report on Condition of Respondent's Proposed Residence, if a change is contemplated:

A. Date visited: ____/____/____

B. Address: _____

_____

C. Type of dwelling: _____

D. Condition:

1. Lawn and landscaping: _____

2. Exterior: _____

3. Interior: _____

a. Utilities working ❑**Yes** ❑**No** Additional comments _____

b. Clean ❑**Yes** ❑**No** Additional comments _____

c. Fire hazards ❑**Yes** ❑**No** Additional comments _____

d. Appropriate accessibility ❑**Yes** ❑**No** Additional comments _____

e. Other issues or concerns (explain) _____

E. I believe the respondent's proposed dwelling meets his or her needs. ❑Yes ❑No

IX. Physicians or Other Persons Who Are Known to Have Treated, Advised, or Assessed the Respondent's Relevant Physical or Mental Condition:

Please identify the sources of the information: _____

_____

A. Physicians and psychiatrists: _____

Comments: _____

_____

B. Psychologists and psychotherapists: _____

Comments: _____

_____

C. Nurses and nurse aids: _____

Comments: _____

_____

D. Other compensated health care providers: _____

Comments: _____

_____

E. Family members, relatives, and friends: _____

Comments: _____

_____

F. Others: _____

Comments: _____

_____

❑ By checking this box, I am acknowledging I am filling in the blanks and not changing anything else on the form.

❑ By checking this box, I am acknowledging that I have made a change to the original content of this form.

Date: _____

_____
Signature of Court Visitor

VERIFICATION

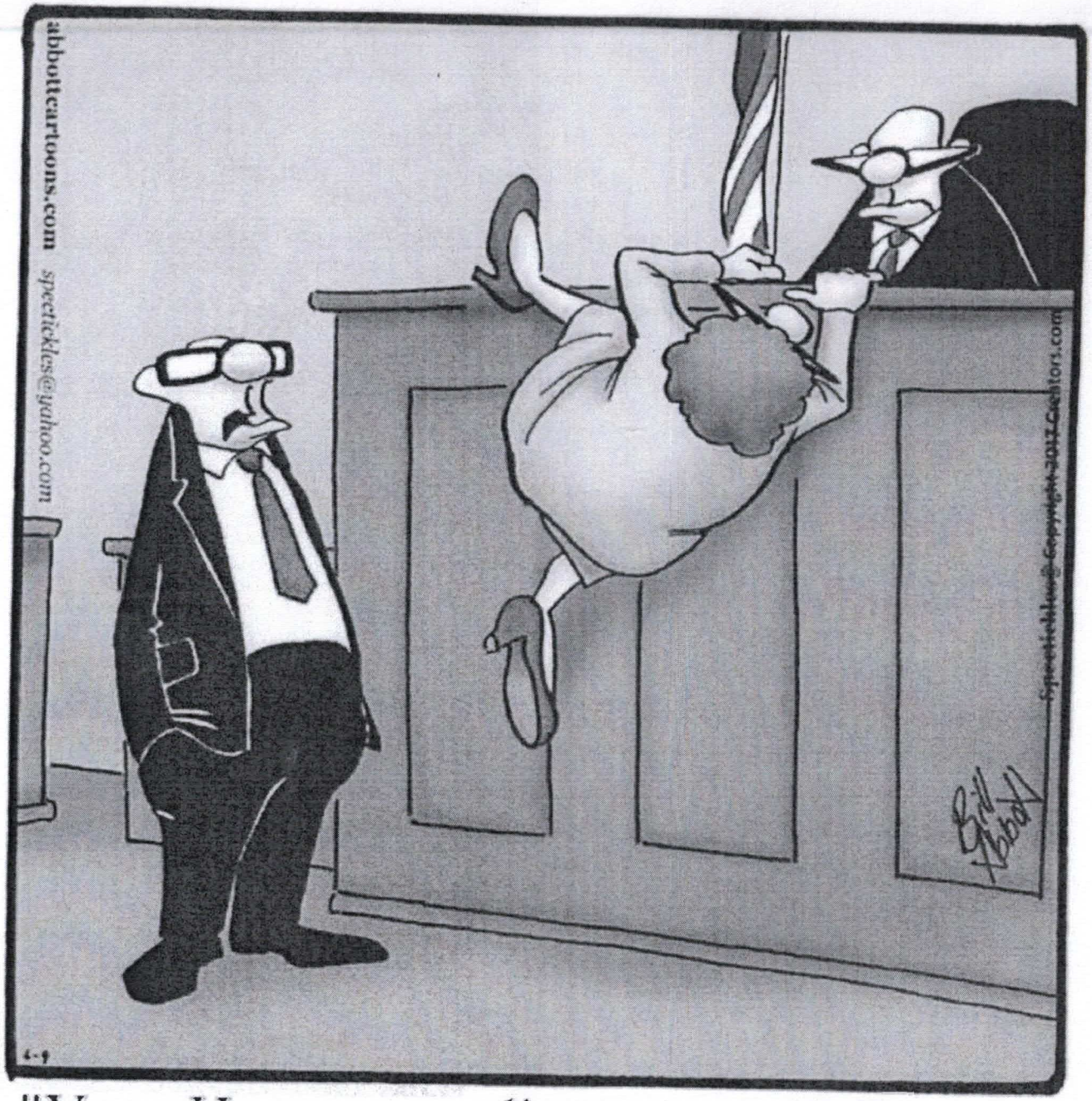
I declare under penalty of perjury under the law of Colorado that the foregoing is true and correct.

Executed on the _____ day of _____, _____,
(date) (month) (year)

at _____
(city or other location, and state OR country)

_____
(printed name)

_____
(signature)



"Your Honor, my client respectfully asks that you reconsider your decision."

18thJD Probate Best Practices Team
CLE November 8, 2018

Tips From Counsel and the Bench When Seeking Probate Court Approval of Your Settlement

Presented by:

Marco D. Chayet 18thJD PA

CHAYET & DANZO LLC
WWW.COLORADOELDERLAW.COM

Probate Magistrate H. Clay Hurst

FACT PATTERN

Paul is being driven home from his annual physical by Mary, his Guardian. They are T-boned at an intersection. Both are injured, Mary seriously.

As a result, Mary will not be able to continue her appointment and Paul now needs a successor guardian (Peter).

In addition, Paul (and Mary) likely have a claim (settlement) against the driver that T-boned them and possibly Paul against Mary and her insurance.

The settlement needs to be approved pursuant to C.R.P.P. 62 and a Conservator/Fiduciary for Paul needs to be appointed.

---

1. **Tips to remember and issues to consider for Paul, Mary and Peter:**

PAUL:

A. Is Paul incapacitated? (why?)
B. Who files the claim for Paul?
C. Can Paul sufficiently express preferences (Runyon)?
D. Is Paul on Public Benefits?
E. Does Paul have family?
F. Does Paul's age matter?
G. Should the settlement go into a conservatorship and/or a trust?

MARY:

A. What is Mary's "serious injury"?
B. Was Mary a professional guardian or family member/friend guardian?
C. Was she driving in the scope of her work as a professional guardian?
D. Does Mary have auto, umbrella or home insurance?

PETER:

A. Who is Peter?
B. Is Peter a professional or private guardian nominee?
C. Should Peter be the conservator and/or trustee for Paul?

2. **When should the parties, professionals or personal injury attorney seek the advice of a probate lawyer specialist in Rule 62 proceedings?**

A. The earlier the better!

B. If the injured party is a Minor;

C. If the injured party is an Incapacitated Adult;

1. Incapacity vs. Diminished Capacity?

i. Adjudication such as a Guardianship
ii. Be familiar with Colorado Rule of Professional Responsibility 1.14
iii. Be familiar with Formal Ethics Opinion 126:Representing the Adult With Diminished Capacity
iv. Who is your client?
v. The engagement agreement!

D. When Public Benefits are involved, particularly to pay for care in the future. There are different kinds of Public Benefits. Know the differences between entitlement benefits and needs based benefits.
i. Medicaid
ii. Medicare

iii. SSDI
iv. SSI

E. Do you need a Trust or other Custodial Vehicle?
   i. Disability Trust?
   ii. Pooled Trust
   iii. Support Trust for HEMS-no public benefits
   iv. Medicare Set Aside Trust-Workers Comp vs. Third Party Liability
   v. Qualified Settlement Fund (QSF)
   vi. Custodial Account

3. Do you need a decision maker now to start the law suits—before engagement, filing, settlement?

   i. Guardian?
   ii. Conservator?
   iii. Agent under Power of Attorney?
   iv. Trustee?
   v. Next Friend?

4. The Settlement:

i. Don't settle until you know the answers!
ii. Is legal authority needed to enter into a settlement agreement, i.e., conservator?
iii. Has a conservator already been appointed?
iv. Can a guardian seek settlement if there is no Conservator?
v. One time transaction.
vi. Special Conservatorship.
vii. Who has priority for appointment?
viii. Family vs. Professional: Is a professional conservator needed?

5. Who hires and pays the probate lawyer?

   i. The plaintiff, the parents, the next friend, the fiduciary, the trial attorney, the defendant?
   ii. Pay from the settlement proceeds (the injured party)?
   iii. Pay from the contingency fee?
   iv. Pay as a cost of the case?
   v. Demand the defendant pay for the probate attorney.

6. When do you really need to get probate court approval? and what information do we need to get the approval?

   i. Remember: When the plaintiff is under 18, there is a conservator and/or guardian appointed, or the adult client is "incapacitated".
   ii. Probate Rule 62 petitions are filed most often in connection with personal injury, wrongful death, or medical malpractice cases; life insurance proceeds, payments; and distribution of decedents' estates.

iii. A lot of Rule 62 petitions are filed by counsel for a fiduciary of the ward. The fiduciary is a guardian, conservator, or next friend of the ward, and usually is a parent when a minor child is involved.
iv. They can also be filed pro se.
v. Can they/should they be filed by the defendant and/or insurance company?
vi. Keep in mind, when a minor child or a disabled adult is to receive payments after the settlement of a claim, a favorable ruling on a Rule 62 petition provides the payor (generally an insurance company, a defendant, or the insurance company for a defendant) with final court approval of the terms, conditions, and amount of the payment, as well as an order authorizing and binding a fiduciary to provide a receipt for the payment and sign a binding release.
vii. Small Estates Under CRS 15-14-118

7. What information must you have for Probate Court approval Under Rule 62?

(a) This rule sets forth procedures by which a court considers requests for approval of the proposed settlement of claims on behalf of a minor or an adult in need of protection pursuant to§ 15-14-401, et seq., C.R.S., ("respondent"). In connection with a proceeding brought under this rule, the court must:

(1) Consider the reasonableness of the proposed settlement and enter appropriate orders as the court finds will serve the best interest of the respondent;

(2) Ensure that the adult respondent, a minor respondent's parent, an adult respondent's or minor respondent's legal guardian, conservator, other fiduciary, next friend, guardian ad litem, and other interested persons as the court deems proper, have been advised of the finality of the proposed settlement;

(3) Adjudicate the allowance or disallowance, in whole or in part, of any outstanding liens and claims against settlement funds, including attorney fees; and

(4) Make protective arrangements for the conservation and use of the net settlement funds, in the best interest of the respondent, taking into account the nature and scope of the proposed settlement, the anticipated duration and nature of the respondent's disability, the cost of any future medical treatment and care required to treat respondent's disability, and any other relevant factors, pursuant to § 15-14-101, et seq., C.R.S.

(b) Venue for a petition brought under this rule must be in accordance with § 15-14-108(3), C.R.S.

(c) A petition for approval of a proposed settlement of a claim on behalf of the respondent may be filed by an adult respondent, a fiduciary for a respondent, an interested person as defined in § 15-10-201(27), C.R.S., a next friend, or guardian ad litem. The petition must be presented in accordance with the procedures set forth in this rule.

(d) A petition for approval of settlement must include the following information:

(1) Facts.
A. The respondent's name and address;
B. The respondent's date of birth;
C. If the respondent is a minor, the name and contact information of each legal guardian. If the identity or contact information of any legal guardian is unknown, or if any parental rights have been terminated, the petition must so state;
D. The name and contact information of the respondent's spouse, partner in a civil union, or if the respondent has none, an adult with whom the respondent has resided for more than six months within one year before the filing of the petition;
E. The name and contact information of any guardian, conservator, custodian, trustee, agent under a power of attorney, or any other court appointed fiduciary for the respondent; and
F. The date and a brief description of the event or transaction giving rise to the claim.

(2) Claims and Liabilities.

A. The contact information of each party against whom the respondent may have a claim;
B. The basis for each of the respondent's claims;
C. The defenses and counterclaims if any, to the respondent's claims; and
D. The name and contact information of each insurance company involved in the claim, the type of policy, the policy limits, and the identity of the insured.

(3) Damages.

A. A description of the respondent's injuries;
B. The amount of any time missed by the respondent from school or employment and a summary of any lost income resulting from the respondent's injuries;
C. A summary of any damage to respondent's property;
D. A summary of any expenses incurred for medical or other care provider services as a result of the respondent's injuries; and
E. The identification of any person, organization, institution, or state or federal agency that paid any of the respondent's expenses and a summary of any expenses that have been or will be paid by each particular source.

(4) Medical Status.

A. A description of the respondent's current condition including but not limited to the nature and extent of any disability, disfigurement, or physical or psychological impairments and any current treatments and therapies; and
B. An explanation of the respondent's prognosis and any anticipated treatments and therapies.

(5) Status of Claims.

A. For this claim and any other related claim, the status of the claim and if any civil action

has been filed, the court, case number, and parties; and
B. For this claim and any other related claim, identify the amount of the claim and contact information of any party having a subrogation right including any state or federal agency paying or planning to pay benefits to or for the respondent. A list of all subrogation claims and liens against the settlement proceeds must be included as well as a summary of efforts to negotiate them.

(6) Proposed Settlement and Proposed Disposition of Settlement Proceeds.

A. The name and contact information of any party or entity making and receiving payment under the proposed settlement;
B. The proposed settlement amount, payment terms, and proposed disposition, including any restrictions on the accessibility of the funds and whether any proceeds will be deposited into a restricted account;
C. The details of any structured settlement, annuity, insurance policy or trust instrument, including the terms, present value, discount rate, if applicable, payment structure and the identity of the trustee or entity administering such arrangements;
D. The legal fees and costs being requested to be paid from the settlement proceeds; and
E. Whether there is a need for continuing court supervision, the appointment of a fiduciary or the continuation of an existing fiduciary appointment. The court may appoint a conservator, trustee, or other fiduciary to manage the settlement proceeds or make other protective arrangements in the best interest of the respondent.

(7) Exhibits.

A. The petition must list each exhibit filed with the petition.
B. The following exhibits must be attached to the petition:
(i) A written statement by the respondent's physician or other health care provider, if any. The statement must set forth the information required by subsection (d)(4) of this rule and comply with Rule 60 unless otherwise ordered by the court;
(ii) Relevant legal fee agreements, statement of costs and billing records and billing summary; and
(iii) Any proposed settlement agreements and proposed releases.

C. The court may continue, vacate, or place conditions on approval of the proposed settlement in response to petitioner's failure to include such exhibits.

(e) Notice of a hearing and a copy of the petition must be given in accordance with § 15-14-404(1)and (2), C.R.S., and Rule 20, unless otherwise ordered by the court.

(f) An appearance hearing is required for petitions brought under this rule.

(g) The petitioner, the respondent, and any nominated fiduciary must attend the hearing, unless excused by the court for good cause.

(h) The court may appoint a guardian ad litem, attorney, or other professional to investigate and report to the court, or represent the respondent. The court may order the payment of fees and costs for

such guardian ad litem, attorney, or other professional to be paid from the settlement or other sources as may be deemed appropriate by the court.

8. **Each County May Have Different Requirements/No uniformity.**

    i. There are currently Rule CMO/Orders from Denver, El Paso, JeffCo issued for probate settlement of personal injury cases. Watch for one in Arapahoe.

9. **Caution entering into arrangement for periodic payments prior to consulting probate counsel.**

    i. This will tie up money that may be needed for big-ticket items, i.e., the purchase of a house or car.
    ii. If there is a disability trust, the beneficiary of the annuity contract should be the trust.
    iii. The state medical assistance program must be named as remainder beneficiary under a contract for periodic payments, up to the amount of medical assistance provided during the individual's lifetime.

10. **What are the client's goals for the use of the settlement proceeds?**

    i. If the client is a minor vs. what are the parents' goals?
    ii. Do they want to purchase a house or car?
    iii. Pay for education or travel?
    iv. Different goals have different ramifications for planning!

11. **Does the client have any plans to move outside the state of Colorado?**

    i. Do they already live outside of Colorado?
    ii. Probate court jurisdiction for the person injured in Colorado but lives out of state

OTHER RELATED TIPS:

12. **If the client is receiving Medicaid:**

    i. Is it through the ACA/MAGI program?
    ii. Or long-term care/HCBS/waiver program?

13. **Have you already contacted Medicaid, Medicare, and the private insurance company to inquire about any applicable liens or claims against the settlement proceeds?**

    i. Has the person received public benefits in any other state besides Colorado? If so, have you already contacted Medicaid in that state regarding their lien?

14. **Have you negotiated a reduction of any liens/claims?**

15. Does the client have a disability determination through Social Security?

i. Either through Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI)?

16. Does the client have a pre-existing medical condition or disability that predated the accident?

i. Is it possible to differentiate that pre-existing condition/disability from the injuries sustained in the accident?

17. Is the proposed settlement for one client?

i. Does anyone else (spouse, parents, children) have a claim to any portion of the settlement proceeds?
ii. If so, has an allocation been made in the settlement agreement?

18. Does the PI firm have time records?

i. Expert affidavit regarding the appropriateness of the contingency fee?
ii. Has/will the PI firm agreed to reduce its percentage?

19. If you anticipate utilizing probate counsel, do not file a Rule 16 petition without counsel's prior review, even if you view counsel's role to be limited, i.e., the preparation of a disability trust.

20. Is there a need for a professional trustee, whether for a disability trust or a support trust?

i. Bank as a Trustee
ii. Family member Trustee
iii. Lawyer as a trustee
iv. The Private fiduciary/trustee

21. Does the client REALLY wish to preserve eligibility for any needs-based public benefits, such as Medicaid and SSI?

i. The settlement may be big enough to question the need for public benefits.

22. What is a Qualified Settlement Fund (QSF), should you consider it?

i. A QSF is a type of trust account that can be used by a plaintiff or multiple plaintiffs settling a claim to protect the settlement proceeds.
ii. A QSF shelters the proceeds without constructive receipt by the plaintiff, which could trigger tax consequences or public benefit ineligibility.
iii. Among other benefits, a QSF provides the plaintiff additional time to resolve any claims or subrogated interests against the proceeds; arrange long-term

planning for the proceeds, including structuring the funds; or fund a disability trust for the plaintiff's immediate needs.

iv. Obtaining court approval of a settlement often can be delayed by factors such as unresolved liens or subrogation claims, or when additional time is needed to contemplate a financial plan or to apply for government benefits. Using QSFs

v. Additionally, a QSF enables the protected person to receive his or her settlement proceeds immediately. These proceeds can be used to fund a special needs trust or a structured settlement.

vi. A QSF also benefits the insurance company paying out the proceeds, because on payment, the insurer is released from any further liability in the matter.

vii. A QSF can further provide the immediate financial resources to fund future litigation against additional defendants on behalf of their clients.

ATTACHMENTS:

A. Probate Rule 62 Intake Form

B. "Use of Trusts in Disability and Personal Injury Planning" by Marco Chayet and Dawn Hewitt

C. Proposed Rule 62 Petition-Final Edit

D. Proposed Rule 62 Order-Final Edit

E. Rule 62

CHAYET & DANZO LLC

WWW.COLORADOELDERLAW.COM

PROBATE PERSONAL INJURY RULE 62 INTAKE FORM

Name: _____

Address: _____

Work phone: _____ Cell phone: _____

Other contact: _____ Fax: _____

Email: _____

Preferred way to contact? _____

Your accuracy in completing this form will assist Chayet & Danzo, LLC, in our analysis of your case. Please contact Marco Chayet at Marco@ColroadoElderLaw.com or (303)355-8500 with any questions.

I. FACTUAL BACKGROUND

Plaintiff's Information: Name: _____

Address: _____

Telephone Number: _____

Marital Status: M _____ S _____

Social security number: _____

Date of Birth _____

List Plaintiff's Spouse or Partner and any Minor Children. Provide date of birth for any minor children and indicate if children are from current spouse/partner or a previous marriage or relationship:

1. Provide date of accident, the nature of the Plaintiff's injury and basis for the lawsuit.
2. Is the Plaintiff mentally competent? YES _____ NO _____
3. Where does the Plaintiff live (home, public housing, group home, skilled nursing facility)?
4. Who is the Plaintiff's primary care provider:
5. U.S. Citizen? YES _____ NO _____
6. Veteran? YES _____ NO _____
7. Is the Plaintiff represented by an attorney (s)? YES _____ NO _____
8. If Yes, identify counsel of record for each party to the lawsuit:
9. List contact information for each structured settlement broker involved in the case.

II. MEDICAL DATA

10. Health Diagnosis
11. Prognosis
12. Ongoing Expenses. List anticipated ongoing medical expenses, or attach copy of life care plan.
13. Health Insurance Is the Plaintiff covered under a health insurance policy? YES _____ NO _____

    If Yes, attach copy of policy or summary of benefits: If a government or military health insurance coverage just indicate type of plan:

14. What are the conditions for continued coverage or when is coverage expected to cease:

15. If the Plaintiff is covered under a group health plan, is the Plaintiff's continued coverage under the group plan as a result of a spouse or other family member? YES _____ NO _____

16. If the Plaintiff's coverage is the result of a spouse or other family member, indicate how long the Plaintiff can maintain coverage under the group health plan.

III. THE SETTLEMENT

17. How much is the overall settlement?

18. How much has the Plaintiff received prior to the settlement?

19. How is the settlement being paid?

20. If all or a portion of the settlement is being paid by a structured settlement annuity, provide a summary of the terms of the annuity indicating how much of the annuity payments are guaranteed.

21. What are the costs?

22. What is the contingency fee?

23. Are fees owed to more than one lawyer? YES _____ NO _____

24. Will there be any attorney liens filed in the case? YES _____ NO _____

25. Indicate if there are any loss of consortium claims, claims for minors or other derivative claims.

26. If all or part of the settlement has been paid to a trust account, provide the date or dates and amounts the settlement was paid.

27. Indicate if there has been any allocation of damages:

IV. LIENS AND/OR SUBROGATION CLAIMS

28. Has Medicaid or Medicare been notified of the settlement? YES _____ NO _____

If yes, please attach a copy of the notification and any other correspondence.

29. Is there a Medicaid lien or Medicare claim? YES _____ NO _____

    If yes, please attach a copy of the claim and state if all or part of the lien or claim has been paid.

30. Are there any insurance subrogation claims in the case? YES _____ NO _____

    If yes, how much and to whom?

V. PROTECTIVE PROCEEDINGS

31. Has a conservator, guardian or guardian ad litem been appointed? YES ___ NO ___

    If yes, please attach a copy of Order.

VI. PUBLIC BENEFITS

32. Is the Plaintiff or anyone in the Plaintiff's household or immediate family receiving public benefits? YES _____ NO _____.

    If yes, what public benefits?

33. Is the Plaintiff eligible for Medicare? YES _____ NO _____

    If yes, since when?

34. If Plaintiff is not eligible for Medicare, has the Plaintiff filed for SSDI? YES ___ NO____

    If yes, specify date Plaintiff first received SSDI.

35. What public benefits is the Plaintiff receiving? (Please list all public benefits; i.e., Medicaid, special waiver programs, SSI, SSDI, Food Stamps, TANF Medicare, etc.)

36. Is the Plaintiff currently residing in government subsidized housing? YES ___ NO ___

37. Is it likely Plaintiff will require public benefits assistance in the future? YES __ NO __

38. Does the Plaintiff have any other income? YES _____ NO _____

    If yes, from what source?

39. Does the Plaintiff have any other assets? YES _____ NO _____

    If yes, please identify?

40. Has someone made an application for public benefits that is still pending? YES _____ NO _____

41. What does the Plaintiff hope to achieve with this settlement?

42. What kinds of services does the Plaintiff now need that he or she is not receiving?

43. What kinds of equipment or personal property (vehicle, specialized medical equipment, etc) does the Plaintiff hope to purchase with this settlement?

44. Does the Plaintiff want to purchase a home: Yes _____ No _____

45. Do you have any other legal issues which I should be aware of? Yes _____ No _____

If yes, please explain:

Use of Trusts in Disability and Personal Injury Planning

By Marco D. Chayet and Dawn R. Hewitt[1]
Chayet & Danzo, LLC
Probate and Elder Law Attorneys

There are several different types of trusts that can be used to enhance the quality of life for a trust beneficiary with special needs. These trusts generally supplement benefits that the beneficiary receives through public assistance programs, such as Supplemental Security Income (SSI) and Medicaid. There is also a trust that deals with Medicare issues which is explained in this article as well.

As supplemental needs trusts, or special needs trusts, there are certain items that trust funds cannot be used to pay, such as food and shelter. The reason for this is that the beneficiary's public assistance programs are intended to pay for food and shelter. However, in spite of these narrow exceptions for trust distributions, the trusts can be used for a wide range of purposes.

Some examples of how funds in a properly created special needs trusts can be used are for medical treatment and medication that are not otherwise covered through Medicaid, attendant care for non-medical services, education expenses, vehicle with modifications, travel, and entertainment. These are just a few examples. There are literally innumerable ways that funds in the trusts can be used.

Special needs trusts are often distinguished by the manner in which they are created and funded. Colorado's Medicaid regulations require that any trust that is created for the benefit of a Medicaid beneficiary be submitted to the state Medicaid agency for review and approval. The type of trust determines the provisions that it must contain to comply with Medicaid regulations and SSI criteria. There are six trusts generally used in special needs planning. They are (1) disability trusts, (2) pooled trusts, (3) third party discretionary trusts, (4) testamentary special needs trust, and (5) income trusts.

Number (6) is the Medicare Set Aside Trusts. Medicare is a public benefit completely different than Medicaid. Medicare is the federal health insurance program for people who are 65 or older, certain younger people with disabilities, and people with End-Stage Renal Disease (permanent kidney failure requiring dialysis or a transplant, sometimes called ESRD). For purposes of this article we talk about Medicare and the Medicare Set-Aside Trust in the context

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of settling a personal injury case.

If you are already a Medicare recipient at the time of the settlement of your personal injury case, you may have to use some of the settlement funds to reimburse the federal government for injury-related "conditional" medical expenses that Medicare paid for prior to your settlement. This is because Medicare is a "secondary" payer that is only supposed to pay for medical services that are not provided by another party. In the case of your personal injury settlement, the person who injured you includes funds in your settlement to pay for your past medical expenses. Therefore, he is the "primary" payer, and some of those settlement funds must be applied towards any bills that Medicare has already paid on your behalf.

The following is a discussion of the aforementioned trusts used in disability and personal injury planning in Colorado:

Disability Trust

A disability trust is created for a trust beneficiary under the age of 65 who is disabled under Social Security's criteria. The disability trust is funded with the beneficiary's own assets. Some common types of assets that are used to fund a disability trust are proceeds from a personal injury settlement and an inheritance. Assets that are held in a properly created disability trust are exempt and will not affect the beneficiary's ability to receive Medicaid and SSI. Federal and state law require the disability trust to be established by the beneficiary, beneficiary's parent, grandparent, or legal guardian, or by a court.

A disability trust must contain certain provisions for it to be exempt for Medicaid and SSI. Most notably, it must contain a provision to reimburse the state medical assistance program up to the amount of benefits paid for the beneficiary during the beneficiary's lifetime. Repayment must be made under either of the following circumstances: (1) the beneficiary no longer requires medical assistance in the state where he has been receiving benefits (i.e., the beneficiary moves to a different state, or the beneficiary no longer wishes to receive medical benefits), or (2) the beneficiary dies.

If the trust is to be funded with an annuity or other periodic payments, then the state Medicaid agency must be named as the remainder beneficiary under the contract, up to the amount of medical assistance paid on behalf of the beneficiary.

The trust can contain a provision for distributions to remote contingent beneficiaries in the event that there are funds remaining in the trust after repayment is made to the state.

The trust must contain the name and mailing address of the trustee. It is also generally advisable to name a successor trustee in case the original trustee is unable to act for any reason, such as if the trustee resigns, becomes incapacitated, or dies. Notice of any change in trustee must be given to the state Medicaid agency within 30 calendar days.

The trustee has sole discretion on the use of trust funds. Therefore, it is advisable to select a trustee who knows the beneficiary's situation and needs well and who is willing to work with the beneficiary and/or the beneficiary's legal representative to use the trust in the beneficiary's best interests. Professional trustees can also be named.

The trustee should not make distributions from the trust directly to the beneficiary, such as giving cash to the beneficiary. Nor should the trustee expend trust monies for food or shelter. Such distributions can be seen as income to the beneficiary and could affect the beneficiary's ongoing eligibility for benefits.

Additionally, trust monies should not be used to purchase non-exempt assets, which would also affect ongoing eligibility.

Aside from these limitations, the trust assets can be used in a wide variety of ways. The trustee will be required to provide regular accountings of the trust to the county and state Medicaid agencies. Therefore, it is imperative for the beneficiary's ongoing public benefits eligibility that the trustee properly administer the trust and maintain detailed records.

Pooled Trust

A pooled trust is similar to a disability trust, in that it is funded with the beneficiary's own assets and that it requires the trust beneficiary to be disabled under Social Security's criteria. The pooled trust is most commonly used for Medicaid recipients who are over the age of 65, but it can also be used by younger individuals. The trust is established by the individual, a parent, grandparent, or legal guardian, or by the court.

The pooled trust differs from the disability trust in that it is established for many disabled individuals, instead of just one individual. Each beneficiary has a separate account. The accounts are pooled for investment and management purposes. Also, the trustee of a pooled trust must be a non-profit organization, approved by the Internal Revenue Service.

Similar to the disability trust, funds remaining in the individual's account at his death must be used to reimburse the state Medicaid agency up to the amount of medical assistance provided on the individual's behalf, to the extent that those funds are not retained by the pooled trust. Additionally, funds in a properly created and administered pooled trust are exempt and do not affect the individual's ongoing eligibility for Medicaid. The trustee has the same wide range of discretion to use trust funds for the benefit of the beneficiary.

There are special funding requirements for pooled trust beneficiaries over the age of 65. Specifically, there must be a written care plan for the use of the funds in the pooled trust that is actuarially sound based on the individual's life expectancy. Absent such a care plan, Medicaid will view the transfer of funds into a pooled trust as a transfer without consideration and will impose a penalty period. During any applicable penalty period, the individual will not be able to receive Medicaid benefits.

Third Party Discretionary Trust

A third party discretionary trust (TPDT) is different from a disability trust and a pooled trust because it is funded with assets that do not belong to the trust beneficiary. A TPDT is commonly established by a relative of the trust beneficiary, such as a parent or grandparent, for the purpose of gifting money or property that can be used for the benefit of the beneficiary, while allowing the beneficiary to remain eligible for SSI and Medicaid.

Another difference is that a TPDT does not contain a payback provision to reimburse the state Medicaid agency for benefits provided on behalf of the beneficiary. Also, there is no requirement that the beneficiary be disabled under Social Security's criteria. Finally, there are no restrictions on the beneficiary's age.

One advantage to establishing a TPDT is that it can receive gifts of money and property from many different sources. For example, a TPDT established by the beneficiary's parent can receive gifts of money or property, not only from the parent, but also from the beneficiary's grandparents or other relatives. The TPDT can even be a beneficiary under a will. The TPDT can continue to be funded, even after the death of the person who created it.

Another advantage of the TPDT is that it is extremely flexible and diverse in terms of funding, use, and longevity. Further, establishing a single entity to hold property simplifies administration and allows for greater flexibility in managing property.

Testamentary Special Needs Trust

A testamentary special needs trust (TSNT) is similar to a TPDT in that it can be created by anyone under their will to hold property to be used for the benefit of the trust beneficiary upon the death of the person who created the trust.

The disadvantage to the TSNT is that it is not funded until the person who created it dies, and it can only hold assets belonging to the person who created the trust.

This trust is generally used by parents of a special needs child who want to leave their child property in a manner that will not affect the child's eligibility for SSI and Medicaid.

A TSNT can also be used by the spouse of a disabled person who receives certain types of Medicaid benefits. However, in the case of spouses, there are limitations on the amount of the spouse's assets that can be used to fund the trust.

Income Trust

An income trust is necessary for an individual who requires long-term care and whose income exceeds 300% of the SSI limit. For 2018, the 300% limit is $2,250. Each month, the

individual's income is deposited into the income trust. The location where the individual receives long-term care services, such as at home, in assisted living, or in a skilled nursing facility, determines how his income is used each month.

For example, if the individual receives home and community based services (HCBS) at home, he may be able to keep $2,250 of his income each month to use for his living expenses. However, if the individual receives HCBS in an assisted living facility, or receives skilled nursing care in a nursing facility, then most of his income will be paid to the facility each month as his patient payment. He will be allowed to keep a small amount, usually less than $100, each month for his personal needs.

There are also some allowances for the use of all or part of the individual's income for use by his spouse if the spouse does not require care, as well as for health insurance premiums, deductibles, co-insurance, and special medical services.

Medicare Set-Aside Trust

If you are injured because of someone else's negligence, you may have to resort to a personal injury lawsuit in order to obtain payment for the medical care you will need in the future and to compensate you for your pain and suffering. If your injury falls under the workers' compensation system, or if you are receiving Medicare or can be expected to receive Medicare, you may need to create a special kind of trust, called a Medicare Set-Aside, to reimburse the government for future medical expenses related to your injury. (Many people younger than age 65 receive Medicare through their receipt of Social Security Disability Insurance (SSDI) benefits.)

A Medicare Set-Aside is a trust or trust-like arrangement that is set up to hold settlement proceeds for future medical expenses. A specialized company evaluates your future medical needs, recommends an amount that should be set aside for future medical care, and the government approves the amount. The funds are then either placed in the Medicare Set-Aside account in one lump-sum or the account is funded with a "structured settlement annuity" that will refill the account over time. In either case, the administrator of the Medicare Set-Aside trust may use the funds only to pay for medical care related to your personal injury, leaving Medicare or your private insurance free to provide coverage for medical expenses that are not related to your injury.

Medicare Set-Asides have been used for years in workers' compensation cases, and the federal government has an extensive set of reporting and monitoring rules in place for those cases. But recently, the government has instituted a new set of reporting requirements for anyone who is responsible for compensating a personal injury victim, and many practitioners believe that the government will soon require Medicare Set-Asides for all personal injury cases (right now, you are responsible for protecting Medicare's interest in your future medical care in case of a settlement, but there are few hard-and-fast rules defining this requirement, especially for small claims).

Currently, the government is interested in setting up a Medicare Set-Aside if you are a Medicare recipient settling a personal injury claim for more than $25,000 or if you settle for more than $250,000 *and* can be expected to receive Medicare within 30 months of settlement (this

happens a lot if you receive Social Security Disability Insurance, which has a 24-month waiting period before you can receive Medicare benefits). However, these rules are in a constant state of flux and no one can predict how extensive the Medicare Set-Aside requirements will become.

Conclusion

There a several different ways of creating a special needs trust to enhance the quality of life for the trust beneficiary without jeopardizing his or her eligibility for public assistance. The disability trust, pooled trust, third party discretionary trust, testamentary special needs trust, income trust, and Medicare Set-Aside Trust are the main trusts used for disability and personal injury planning. The goals for funding and use of the trust will determine which type of trust is most appropriate. You should work closely with an elder law/probate attorney who is experienced with these types of trusts as well as the different public benefits programs to decide which trust works best for your situation.

TRANSCRIPT REQUEST FORM
Public Defender's Office
Pursuant to Chief Justice Directive 2005-03 (amended July 2015)

This transcript request form must be completed by any person requesting a transcript from any court proceeding whether reported stenographically or by electronic recording means. Upon completion of this **Transcript Request Form,** please follow established policies and procedures for each judicial district which outline instructions for ordering transcripts, tapes or digital recording disks. This information is available on the Colorado Judicial website at www.courts.state.co.us. 12:46 PM

State-Paid Transcript Rates

Ordinary Rate	Original Price/page $3.00 Copy to Party Price/page $.00 Add'l Copy to Non-Party Price/page $.75	**Expedited Rate** (within 10 days)	Original Price/page $3.75 Copy to Party Price/page $.00 Add'l Copy to Non-Party Price/page $.75
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ORDERING PARTY INFORMATION

1. Full Name	2. Phone Number	3. Email Address	
Sara Tafoya	303-799-9001	sara.tafoya@coloradodefenders.u	
4. Mailing Address	5. City	6. State	7. Zip Code
13356 E. Briarwood Ave.	Centennial	CO	80112

TRANSCRIPT INFORMATION

8. Case No.	9. Case Caption (i.e. People v. John Doe)	10. County	Hearing Held in:
17JD739	People v. Christopher Gallegos	Arapahoe	District Ct ☒ County Ct ☐
11. Judicial Officer/Division	12. Transcript Type: ☐Appeal - 50 ☐Motions - 51 ☒PH - 54 56 - Other ☐		
Chase/22			

13. Transcript Requested [Specify portion(s) and date(s) of proceeding(s) requested]

Portion(s)	Portion(s)	Date(s)/Time(s)	Court Reporter(s)
☒ Entire Proceedings	☐ Testimony-Specify Witness:	7/10/18 @ 8:30am	
☐ Jury Voir Dire			
☐ Opening Statements			
☐ Closing Arguments	☐ Pre/Post Trial Hrg-Specify:		
☐ Jury Instructions			
☐ Judge's Ruling	☐ Other:		

ORDERING INFORMATION

14. **Date of Request**	15. Rate Category: ☒Ordinary (State Pd.) ☐Expedited ☐Hourly ☐Daily
11/6/18	**Date Needed**: 11/28/18
16. Orig. + Copies (Spcy #) 1+0 =1	17. Certification (By signing below, I certify our office will pay all charges.)
Disk: E-mail: X	(Signature) /s/ Sara Tafoya (Date) 11/6/18

FOR COURT USE ONLY

Date of Request	Transcript To Be Prepared By (Name of Court Rpt/ERO)	Date Court Rptr/ERO Contacted	
Notice of **Estimate** to Ordering Party Date # of pages	Date of Deposit/Satisfactory Payment Arrangements	Deposit Paid $	Bal Pd/Refund $
Date Transcript Mailed/Delivered	I certify that the preparation of this transcript is in compliance with the fee & format prescribed by CJD 05-03. Reporter/ERO Signature Date		

For Payment: Complete information below, attach invoice with invoice #, and submit to requesting PD Office.

Court Reporter Tax ID: _____ New Address? Yes / No

TO BE COMPLETED BY REGIONAL PD OFFICE

Payment approved by: _____ Date: _____

❑District Court ❑Denver Probate Court _____County, Colorado Court Address: **In the Interest of:** **Respondent**	**COURT USE ONLY**
Attorney or Party Without Attorney (Name and Address): Phone Number: E-mail: FAX Number: Atty. Reg. #:	Case Number: Division: Courtroom:

PETITION FOR APPROVAL OF SETTLEMENT OF CLAIMS PURSUANT TO RULE 62 OF THE COLORADO RULES OF PROBATE PROCEDURE

_____ (name), the petitioner, pursuant to Rule 16 of the Colorado Rules of Probate Procedure, petitions the court as follows:

Section I – Venue, Jurisdiction, and Parties

1. **Venue for this proceeding is proper in this county because the respondent:**
   ❑resides in this county.
   ❑does not reside in this state, but has property in this county.

2. **Information about the petitioner:**

   Name: _____ Relationship to respondent: _____

   Street address: _____

   City: _____ State: _____ Zip code: _____

   Mailing address, if different: _____

   Primary phone #: _____ Alternate phone #: _____

   Email address: _____

3. **Information about respondent:**

   Name: _____ Gender: _____ Age: __ Date of birth:_____

   Street address: _____

   City: _____ State: _____ Zip code: _____

   Mailing address, if different: _____

   Primary phone #: _____ Alternate phone #: _____

   Email address: _____

4. **Information about respondent's spouse, partner in a civil union, or adult who has resided with respondent for more than six months within one year before the filing of this petition:**

Name: _____ Relationship to respondent: _____

Street address: _____

City: _____ State: _____ Zip code: _____

Mailing address, if different: _____

Primary phone #: _____ Alternate phone #: _____

Email address: _____

5. **Information about respondent's parents (if respondent is a minor), legal guardian, custodian, trustee, agent under power of attorney, or court-appointed guardian or conservator**

Name: _____ Relationship to respondent: _____

Street address: _____

City: _____ State: _____ Zip code: _____

Mailing address, if different: _____

Primary phone #: _____ Alternate phone #: _____

Email address: _____

Name: _____ Relationship to respondent: _____

Street address: _____

City: _____ State: _____ Zip code: _____

Mailing address, if different: _____

Primary phone #: _____ Alternate phone #: _____

Email address: _____

*Note: If a parent cannot be found, please check the rules on Notice by Publication.

If there is a court-appointed fiduciary, the case information and reason for the fiduciary's appointment is as follows:

_____

_____

_____

Section 2 – Claims and Liabilities

6. **The date and a brief description of the event or transaction giving rise to the claim:**

_____

_____

_____

_____

_____

7. **Information about each party against whom respondent may have a claim:**

Name: _____

Street address: _____

City: _____ State: _____ Zip Code: _____

Mailing address, if different: _____

Primary phone #: _____ Alternate phone #: _____

Name: _____

Street address: _____

City: _____ State: _____ Zip Code: _____ Primary phone #: _____

Mailing address, if different: _____

Primary phone #: _____ Alternate phone #: _____

8. **The legal basis for each of the respondent's claims are as follows:**

_____

_____

9. **The defenses and/or counterclaims, if any, to the respondent's claims are as follows:**

_____

_____

10. **Information for each insurance company involved in the claim, the type of policy, the policy limits and the identity of the insured:**

Name of insurance company: _____ Name of insured: _____

Address: _____

City: _____State:_____ Zip code: _____

Contact person:_____ Phone #:_____

Type of policy: _____ Policy limits: _____

Name of insurance company: _____ Name of insured: _____

Address: _____

City: _____State:_____ Zip code: _____

Contact person:_____ Phone #:_____

Type of policy: _____ Policy limits: _____

Section 3 – Damages

11. A description of the respondent's injuries:

_____

_____

_____

_____

_____

12. The amount of time missed by the respondent from school or employment:

_____

_____

_____

13. A summary of lost income resulting from respondent's injuries:

_____

_____

_____

14. A summary of any damage to respondent's property:

_____

_____

_____

15. A summary of any expenses incurred for medical or other care provider services as a result of the respondent's injuries:

	Name of Provider	Expenses	Expenses Paid	Source of Payment (if any)	Outstanding Expenses
1					
2					
3					
4					
5					
5					
6					
	Total	$	$	$	$

Section 4 – Medical Status

16. **A description of respondent's current condition including but not limited to the nature and extent of any disability, disfigurement, or physical or psychological impairments, and any current treatments and/or therapies: ❑Current Physician Letter attached**

_____

_____

_____

17. **An explanation of respondent's prognosis and any anticipated treatments and/or therapy:**

_____

_____

_____

Section 5 – Status of Claims

18. **For this claim and any other related claim, the status of the claim and if any civil action has been filed, the court, case number, and parties:**

_____

_____

_____

19. **Information about each party having a subrogation right against this claim or any related claim including any state or federal agency paying or planning to pay benefits to or for respondent and the amount of each subrogation:**

Name of claimant/subrogation holder: _____ Amount of subrogation: $_____

Address: _____

City: _____ State: _____ Zip code: _____ Phone #: _____

Name of claimant/subrogation holder: _____ Amount of subrogation $_____

Address: _____

City: _____ State: _____ Zip code: _____ Phone #: _____

20. **A summary of efforts to negotiate any subrogation rights against this claim or any related claim:**

_____

_____

_____

Section 6 – Proposed Settlement, Payment Terms and Proposed Disposition of Settlement Proceeds

21. Information about each party making and receiving payment under the proposed settlement:

Name of party/entity making payment:_____ Amount: _____

Address: _____

City: _____State:_____ Zip code: _____

Name of party/entity receiving payment:_____

Name of party/entity making payment:_____Amount: _____

Address: _____

City: _____State:_____ Zip code: _____

Name of party/entity receiving payment:_____

Name of party/entity making payment:_____Amount: _____

Address: _____

City: _____State:_____ Zip code: _____

Name of party/entity receiving payment: _____

22. The settlement amount and proposed disposition, including any restrictions on the accessibility of the funds.

	Description	Amount
A	Gross Settlement Amount	$
B	Attorney Fees	$
C	Attorney Costs	$
D	Payment of Medical Bills per section 15	$
E	Payment of Subrogation Claim per section 19	$
F	TOTAL PAYOUTS (B+C+D+E)	$
G	Net Settlement Proceeds (A-F)	$

23. The details of any structured settlement, annuity, insurance policy or trust instrument, including the terms and payment structure and the identity of the trustee or entity administering such arrangements:

_____

_____

_____

24. The requested attorney fees and costs to be paid from the settlement proceeds are summarized as follows:

_____

_____

_____

25. **Whether there is a need for continuing court supervision, the appointment of a fiduciary, or the continuation of an existing fiduciary appointment:**

_____

_____

_____

26. **The following documents are attached to this petition:**

- ☐ Attorney fee agreement
- ☐ Attorney statement of costs
- ☐ Attorney billing records, billing summary or attorney fee affidavit
- ☐ Written statement by physician or other health care provider
- ☐ Proposed settlement agreement(s)/releases
- ☐ Other: _____
- ☐ Other: _____

27. An interpreter is requested for the following person(s): _____ (Language Need(s): _____)

WHEREFORE, petitioner requests that after notice and hearing, the Court

- ☐ find that the proposed settlement of the claim is in the best interests of the respondent;
- ☐ find that the Court authorize the acceptance of $ _____ in full settlement of the respondent's personal injury claim;
- ☐ authorize payment of $ _____ to be paid out of the settlement proceeds for any outstanding claims, attorney fees and costs per section 6; and
- ☐ authorize disposition of the net proceeds of the settlement in the manner set forth in this Petition.

Respectfully submitted on _____ (date).

_____ or _____

Signature of Attorney for petitioner or Signature of petitioner

TRANSCRIPT REQUEST FORM

Public Defender's Office

Pursuant to Chief Justice Directive 2005-03 (amended July 2015)

This transcript request form must be completed by any person requesting a transcript from any court proceeding whether reported stenographically or by electronic recording means. Upon completion of this **Transcript Request Form,** please follow established policies and procedures for each judicial district which outline instructions for ordering transcripts, tapes or digital recording disks. This information is available on the Colorado Judicial website at www.courts.state.co.us. Date filed: 11-6-2018 2:46 PM

State-Paid Transcript Rates

Ordinary Rate	Original Price/page $3.00 Copy to Party Price/page $.00 Add'l Copy to Non-Party Price/page $.75	**Expedited Rate** (within 10 days)	Original Price/page $3.75 Copy to Party Price/page $.00 Add'l Copy to Non-Party Price/page $.75
Hourly Rate (within 2 hours of adjournment)	Original Price/page $6.25 Copy to Party price/page $1.25 Add'l Copy to Non-Party Price/page $1.25	**Daily Rate** (following adjournment & prior to normal opening hour of court the following morning)	Original Price per page $5.25 Copy to party Price per page $1.00 Add'l Copy to Non-Party Price/page $1.00

ORDERING PARTY INFORMATION

1. Full Name	2. Phone Number	3. Email Address	
Sara Tafoya	303-799-9001	sara.tafoya@coloradodefenders.u	
4. Mailing Address	**5. City**	**6. State**	**7. Zip Code**
13356 E. Briarwood Ave.	Centennial	CO	80112

TRANSCRIPT INFORMATION

8. Case No.	9. Case Caption (i.e. People v. John Doe)	10. County	Hearing Held in:
17JD739	People v. Christopher Gallegos	Arapahoe	District Ct ☒ County Ct ☐

11. Judicial Officer/Division: Chase/22

12. Transcript Type: ☐ Appeal - 50 ☐ Motions - 51 ☒ PH - 54 56 - Other ☐

13. Transcript Requested [Specify portion(s) and date(s) of proceeding(s) requested]

Portion(s)	Portion(s)	Date(s)/Time(s)	Court Reporter(s)
☒ Entire Proceedings	☐ Testimony-Specify Witness:	7/9/18 @ 8:30am	
☐ Jury Voir Dire			
☐ Opening Statements			
☐ Closing Arguments	☐ Pre/Post Trial Hrg-Specify:		
☐ Jury Instructions			
☐ Judge's Ruling	☐ Other:		

ORDERING INFORMATION

14. **Date of Request**: 11/6/18

15. Rate Category: ☒ Ordinary (State Pd.) ☐ Expedited ☐ Hourly ☐ Daily
Date Needed: 11/28/18

16. Orig. + Copies (Spcy #) 1+0 =1

Disk: E-mail: X

17. Certification (By signing below, I certify our office will pay all charges.)

(Signature) /s/ Sara Tafoya (Date) 11/6/18

FOR COURT USE ONLY

Date of Request	Transcript To Be Prepared By (Name of Court Rpt/ERO)	Date Court Rptr/ERO Contacted	
Notice of **Estimate** to Ordering Party Date _____ # of pages _____	Date of Deposit/Satisfactory Payment Arrangements	Deposit Paid $	Bal Pd/Refund $
Date Transcript Mailed/Delivered	I certify that the preparation of this transcript is in compliance with the fee & format prescribed by CJD 05-03. _____ Reporter/ERO Signature		Date

For Payment: Complete information below, attach invoice with invoice #, and submit to requesting PD Office.

Court Reporter Tax ID: _____ New Address? Yes / No

TO BE COMPLETED BY REGIONAL PD OFFICE

Payment approved by: _____ Date: _____

❑District Court ❑Denver Probate Court _____County, Colorado Court Address: **In the Interest of:** **Respondent**	**COURT USE ONLY** Case Number:

ORDER APPROVING SETTLEMENT OF CLAIMS PURSUANT TO RULE 62 OF THE COLORADO RULES OF PROBATE PROCEDURE

THIS MATTER comes before the Court on the Petition to Settle the Personal Injury Claim of _____ (hereinafter "respondent") that was filed by _____ ("petitioner"). The hearing was held on _____ (date). The petitioner and the respondent appeared at the hearing.

The Court finds that:

1. Venue is proper;
2. Any required notices have been given or waived;
3. It is in the best interest of the respondent to settle the claim of the respondent against _____ in the amount of $ _____;
4. The Court has advised the following of the finality of the settlement:
   - ❑the petitioner
   - ❑the respondent's parent(s)
   - ❑legal guardian/conservator/fiduciary
5. In light of the supporting documentation provided, the requested attorney fees and costs of $_____ are:
   - ❑approved.
   - ❑adjusted and approved by the Court as follows:

     _____

     _____

     _____

The Court further finds that:

❑this matter deals with a small estate under §15-14-118, C.R.S., and no useful purpose would be served by the appointment of a conservator.

OR

❑the appointment of a conservator is appropriate, and the conservator's powers shall be as set forth in the Order Appointing Conservator.

OR

❑a conservator for the respondent has already been appointed.

OR

❑another fiduciary for the respondent is already in place.

The Court Orders:

1. The petitioner is authorized to accept the total amount of $_____ as full and final settlement of the personal injury claim.

2. This authorization includes the acceptance of $_____ to be paid by_____ (name).

3. The petitioner is further authorized to execute the Settlement Agreement(s) and Releases with _____ (name) and fully discharge said claims and to pay the following out of the proceeds:

   ❑ $_____ to _____ (name of payee).
   ❑ $_____ to _____ (name of payee).
   ❑ $_____ in attorney fees to _____ (name of attorney/law firm).
   ❑ $_____ in costs to _____ (name of attorney/law firm).
   ❑ Other:
   _____
   _____
   _____

4. The net settlement amount of $_____ is to be:
   ❑ deposited into a restricted account from which there shall be no withdrawals without prior Court approval. The funds shall be deposited within 45 days of the issuance of this Order and the petitioner shall file an acknowledgment of said deposit by the filing of JDF 867 by _____ (date).
   ❑ deposited with the Clerk of Court into the Court Registry to be held in a special separate federally insured, restricted interest-bearing account until the respondent reaches the age of twenty-one (21). Deposit must be made within 45 days. There shall be no withdrawals without prior Court approval.
   ❑ administered in accordance with the Order Appointing Conservator issued on _____ (date).
   ❑ other: _____
   _____
   _____

5. The Court further ORDERS that there shall be no payment of attorney fees until the Court has received and acknowledged the deposit of the net settlement amount.

Date: _____ _____
Judge/Magistrate

Rule 62. Court Approval of Settlement of Claims of Persons Under Disability

(a) This rule sets forth procedures by which a court considers requests for approval of the proposed settlement of claims on behalf of a minor or an adult in need of protection pursuant to§ 15-14-401, et seq., C.R.S., ("respondent"). In connection with a proceeding brought under this rule, the court must:

(1) Consider the reasonableness of the proposed settlement and enter appropriate orders as the court finds will serve the best interest of the respondent;

(2) Ensure that the adult respondent, a minor respondent's parent, an adult respondent's or minor respondent's legal guardian, conservator, other fiduciary, next friend, guardian ad litem, and other interested persons as the court deems proper, have been advised of the finality of the proposed settlement;

(3) Adjudicate the allowance or disallowance, in whole or in part, of any outstanding liens and claims against settlement funds, including attorney fees; and

(4) Make protective arrangements for the conservation and use of the net settlement funds, in the best interest of the respondent, taking into account the nature and scope of the proposed settlement, the anticipated duration and nature of the respondent's disability, the cost of any future medical treatment and care required to treat respondent's disability, and any other relevant factors, pursuant to § 15-14-101, et seq., C.R.S.

(b) Venue for a petition brought under this rule must be in accordance with § 15-14-108(3), C.R.S.

(c) A petition for approval of a proposed settlement of a claim on behalf of the respondent may be filed by an adult respondent, a fiduciary for a respondent, an interested person as defined in § 15-10-201(27), C.R.S., a next friend, or guardian ad litem. The petition must be presented in accordance with the procedures set forth in this rule.

(d) A petition for approval of settlement must include the following information:

(1) Facts.
A. The respondent's name and address;

B. The respondent's date of birth;
C. If the respondent is a minor, the name and contact information of each legal guardian. If the identity or contact information of any legal guardian is unknown, or if any parental rights have been terminated, the petition must so state;
D. The name and contact information of the respondent's spouse, partner in a civil union, or if the respondent has none, an adult with whom the respondent has resided for more than six months within one year before the filing of the petition;
E. The name and contact information of any guardian, conservator, custodian, trustee, agent under a power of attorney, or any other court appointed fiduciary for the respondent; and
F. The date and a brief description of the event or transaction giving rise to the claim.

(2) Claims and Liabilities.

A. The contact information of each party against whom the respondent may have a claim;
B. The basis for each of the respondent's claims;
C. The defenses and counterclaims if any, to the respondent's claims; and
D. The name and contact information of each insurance company involved in the claim, the type of policy, the policy limits, and the identity of the insured.

(3) Damages.

A. A description of the respondent's injuries;
B. The amount of any time missed by the respondent from school or employment and a summary of any lost income resulting from the respondent's injuries;
C. A summary of any damage to respondent's property;
D. A summary of any expenses incurred for medical or other care provider services as a result of the respondent's injuries; and
E. The identification of any person, organization, institution, or state or federal agency that paid any of the respondent's expenses and a summary of any expenses that have been or will be paid by each particular source.

(4) Medical Status.

A. A description of the respondent's current condition including but not limited to the nature and extent of any disability, disfigurement, or physical or psychological impairments and any current treatments and therapies; and

B. An explanation of the respondent's prognosis and any anticipated treatments and therapies.

(5) Status of Claims.

A. For this claim and any other related claim, the status of the claim and if any civil action has been filed, the court, case number, and parties; and
B. For this claim and any other related claim, identify the amount of the claim and contact information of any party having a subrogation right including any state or federal agency paying or planning to pay benefits to or for the respondent. A list of all subrogation claims and liens against the settlement proceeds must be included as well as a summary of efforts to negotiate them.

(6) Proposed Settlement and Proposed Disposition of Settlement Proceeds.

A. The name and contact information of any party or entity making and receiving payment under the proposed settlement;
B. The proposed settlement amount, payment terms, and proposed disposition, including any restrictions on the accessibility of the funds and whether any proceeds will be deposited into a restricted account;
C. The details of any structured settlement, annuity, insurance policy or trust instrument, including the terms, present value, discount rate, if applicable, payment structure and the identity of the trustee or entity administering such arrangements;
D. The legal fees and costs being requested to be paid from the settlement proceeds; and
E. Whether there is a need for continuing court supervision, the appointment of a fiduciary or the continuation of an existing fiduciary appointment. The court may appoint a conservator, trustee, or other fiduciary to manage the settlement proceeds or make other protective arrangements in the best interest of the respondent.

(7) Exhibits.

A. The petition must list each exhibit filed with the petition.
B. The following exhibits must be attached to the petition:
(i) A written statement by the respondent's physician or other health care provider, if any. The statement must set forth the information required by subsection (d)(4) of this rule and comply with Rule 60 unless otherwise ordered by the court;
(ii) Relevant legal fee agreements, statement of costs and billing records and billing

summary; and
(iii) Any proposed settlement agreements and proposed releases.

C. The court may continue, vacate, or place conditions on approval of the proposed settlement in response to petitioner's failure to include such exhibits.

(e) Notice of a hearing and a copy of the petition must be given in accordance with § 15-14-404(1)and (2), C.R.S., and Rule 20, unless otherwise ordered by the court.

(f) An appearance hearing is required for petitions brought under this rule.

(g) The petitioner, the respondent, and any nominated fiduciary must attend the hearing, unless excused by the court for good cause.

(h) The court may appoint a guardian ad litem, attorney, or other professional to investigate and report to the court, or represent the respondent. The court may order the payment of fees and costs for such guardian ad litem, attorney, or other professional to be paid from the settlement or other sources as may be deemed appropriate by the court.

Post Appointment
Conservator Duties

By
Frank R. Baysore, NCG
Partner, Baysore & Christian Fiduciary Services LLC

1. Obtain certified letters from court

2. Research location of assets

    a. Search home for documents—bank and investment statements, etc.
    b. Review past tax returns if available
        i. Otherwise request IRS transcript to identify 1099's
    c. File change of address with post office from protected party to yourself
    d. Search State Treasurer's Lost Property web site (Great Colorado Payback)
    e. Digital assets
        i. Add access to digital assets in order of appointment
        ii. Review Fiduciary Access to Digital Assets Act
        iii. Try to get passwords for social media accounts
        iv. Hire computer expert to access computers, smart phones, etc.

3. Begin marshalling assets

    a. Bank accounts
    b. Investment accounts
    c. Insurance policies
    d. Real estate
        i. Get letters recorded
        ii. Change locks if vacant
        iii. Check status of property taxes
        iv. Check status of property insurance
        v. Line up lawn and snow removal services
        vi. Check furnace, sprinkler system, security system, etc.
    e. Motor vehicles
        i. Get keys/titles for all vehicles
        ii. Check status of insurance
        iii. Assure vehicles are safe
    f. Personal property
        i. Inventory/photograph items
        ii. Place jewelry, coin collections in safe deposit box
    g. Obtain protected persons will if possible

4. Court pleadings
    a. Send notification of appointment to all interested parties as defined in court order

b. Prepare/send Inventory and Financial Plan to all interested parties

5. Begin paying bills as applicable
6. Develop plan to sell real and personal property if applicable
7. Become Rep Pay for SS, other govt pensions.

It turns out "fiduciary"
means you have to give it back.

Colorado Supreme Court
Office of Continuing Legal & Judicial Education
1300 Broadway, Suite 510
Denver, CO 80203
(303) 928-7771
www.coloradosupremecourt.us

NOTICE OF ACCREDITATION

The Board has accredited the following continuing legal education seminar under Rule 260:

NAME OF SEMINAR	LOCATION	DATE	SPONSOR	GENERAL CREDITS	ETHICS CREDITS
PROBATE BEST PRACTICE	CENTENNIAL CO	11/8/2018	ARABAR	4	2

Colorado attorneys and judges who attend the entire seminar may claim the credits indicated. If any Ethics Credits are indicated, they may be claimed by attending those parts of the seminar indicated below the seminar's name. Ethics credits are NOT IN ADDITION TO General Credits. General and Ethics Credits are NOT added to or subtracted from each other. This accreditation is awarded provided the sponsor permits the Board's staff to attend the seminar; gives every Colorado attorney and judge attending a copy of this combined notice/affidavit form; accepts at the seminar, this form after it is executed by attending Colorado attorneys and judges; and delivers the executed forms to the Board within 10 days after the seminar.

Date Reviewed: 10/23/2018

AFFIDAVIT

INSTRUCTIONS: Colorado attorneys and judges may report CLE Credits earned at this seminar by logging into the Online CLE Transcript. You can access the online entry of Affidavits by visiting http://www.cletrack.com Click on CLE Transcripts, login and select Enter Online Affidavits. You can enter your affidavit using the Course ID located at the bottom of this page.

DO NOT CLAIM THESE CREDITS ON ANY OTHER AFFIDAVIT

CERTIFICATION OF ATTENDANCE: By signing below I certify that I am entitled to claim:

_____ General Credits _____ Ethics Credits

ATTY NUMBER _____ LAST NAME (print) _____

SIGNATURE _____ DATE _____

COURSE ID: 766375