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## PART 1: GENERAL

### Rule 1. Scope of Rules - How Known and Cited

(a) **Procedure Governed.** These rules shall govern the procedure in the probate court for the city and county of Denver and district courts when sitting in probate. In case of conflict between these rules and the Colorado Rules of Civil Procedure set forth in Chapter 1, or between these rules and any local rules of probate procedure, these rules shall control.

(b) **How Known and Cited.** These rules shall be known and cited as the Colorado Rules of Probate Procedure, or C.R.P.P.

### Rule 2. Definitions

(a) As used in these rules, unless the context otherwise requires:

(1) “Document or Documents” means any petition, ~~or~~ application, inventory, claim, accounting, notice or demand for notice, motion, and any other writing which is filed with the court.

(2) “Accounting” means any written statement that substantially conforms to JDF 942 for decedents' estates, JDF 885 for conservatorships, and to the 1984 version of the Uniform Fiduciary Accounting Standards as recommended by the Committee on National Fiduciary Accounting Standards.

(3) “Colorado Probate Code” means Articles 10 to 17 of Title 15 of the Colorado Revised Statutes.

(b) Except as otherwise provided in this rule, terms used in these rules shall be as defined in the applicable sections of Title 15, C.R.S., as amended.

### Rule 3. Registry of Court – Payments and Withdrawals

Payments into and withdrawals from the registry of the court shall be made only upon order of court.

### Rule 4. Security of Court Records

For good cause shown, the court may order all or any part of a court record to be placed under security as outlined below:

(a) The court may seal a court record. A sealed court record is only accessible to judges and court staff. Parties, attorneys, other people affiliated with the case, and the public shall not obtain

**Comment [B1]:** This is ambiguous. For example, for a decedent's estate, does the statement have to conform BOTH to JDF 942 AND to the Uniform Fiduciary Accounting Standards? For a conservatorship, does the statement have to conform to JDF 885 alone, or BOTH to JDF 885 and to the Uniform Fiduciary Accounting Standards? If you intend BOTH conservatorship AND estate statements to have to conform to the Uniform Fiduciary Accounting Standards, then I suggest you reword the rule to state explicitly that both estate and conservatorship statements have to comply with the Accounting Standards, and THEN state that an estate statement must also comply with JDF 942, and a conservator statement must also comply with JDF 885.

a sealed court record without a court order.

(b) The court may suppress a court record. A suppressed court record is any court record within a suppressed case or a court record that has been assigned a security level of suppressed by the court. Except as otherwise provided in Chief Justice Directive 05-01, only judges, court staff, and parties to the case (and, if represented, their attorneys) may access a suppressed court record without a court order.

**Comment [B2]:** What does this mean? Is a "security level of suppressed" a term of art? Is this different from the first sentence (which says that the court may suppress a record)? Do you mean to say "has been designated as [or ordered to be?] 'suppressed' by the court"?

(c) A suppressed register of actions is accessible without a court order only to judges, court staff, parties to the case, (and, if represented, their attorneys) and persons or agencies who have been granted view access to the electronic record.

**Comment [B3]:** What is "view access"? Is that a term of art? How about "access to view the electronic record"? How about adding that they have been granted access BY THE COURT to view the record?

(d) A protected court record is only accessible to the public after redaction in accordance with applicable law and Chief Justice Directive 05-01.

#### **Rule 5. Delegation of Powers to Clerk and Deputy Clerk**

(a) In addition to duties and powers exercised as registrar in informal proceedings, the court by written order may delegate to the clerk or deputy clerk any one or more of the following duties, powers and authorities to be exercised under the supervision of the court:

(1) To appoint fiduciaries and to issue letters, if there is no written objection to the appointment or issuance on file;

**Comment [B4]:** I find it surprising that a clerk – and not a judge – would be given the power to appoint a fiduciary (even though the clerk would do so under the court's supervision), and I think the public might also be surprised by that. Is such a delegation necessary for efficiency? My research indicates that the procedure may be constitutional, but is it a good idea?

(2) To set a date for hearing on any matter and to vacate any such setting;

(3) To issue dedimus to take testimony of a witness to a will;

(4) To approve the bond of a fiduciary;

**Comment [B5]:** Same as above comment

(5) To appoint a guardian ad litem, subject to the provisions of law;

(6) To certify copies of documents filed in the court;

(7) To order a deposited will lodged in the records and to notify the named personal representative;

(8) To enter an order for service by mailing or by publication where such order is authorized by law or by the Colorado Rules of Civil Procedure;

(9) To correct any clerical error in documents filed in the court;

(10) To appoint a special administrator in connection with the claim of a fiduciary;

(11) To order a will transferred to another jurisdiction pursuant to Rule 51 herein;

(12) To admit wills to formal probate and to determine heirship, if there is no objection to such admission or determination by any interested person;

**Comment [B6]:** Same as previous comment.

(13) To enter estate closing orders in formal proceedings, if there is no objection to entry of such order by any interested person;

(14) To issue a citation to appear to be examined regarding assets alleged to be concealed, etc., pursuant to § 15-12-723, C.R.S.;

(15) To order an estate reopened for subsequent administration pursuant to § 15-12-1008, C.R.S.;

(16) To enter similar orders upon the stipulation of all interested persons.

(b) All orders made and proceedings had by the clerk or deputy clerk under this rule shall be made of permanent record as provided for acts of the court done by the judge.

(c) Any person in interest affected by an order entered or action taken under the authority of this rule may have the matter heard by the judge by filing a motion for such hearing within 14 days after the entering of the order or the taking of the action. Upon the filing of such a motion, the order or action in question shall be vacated and the motion placed on the calendar of the court for as early a hearing as possible, and the matter shall then be heard by the judge. The judge may, within the same 14 day period referred to above, vacate the order or action on the court's own motion. If a motion for hearing by the judge is not filed within the 14 day period, or the order or action is not vacated by the judge on the court's own motion within such period, the order or action of the clerk or deputy clerk shall be final as of its date subject to normal rights of appeal. The acts, records, orders, and judgments of the clerk or deputy clerk not vacated pursuant to the foregoing provision shall have the same force, validity, and effect as if made by the judge.

## Rule 6. Rules of Court

(a) Local rules. Courts may make rules for the conduct of probate proceedings consistent with these rules. Copies of all such rules shall be submitted to the Supreme Court for its approval before adoption, and, upon their promulgation, a copy shall be furnished to the office of the state court administrator to the end that all rules made as provided herein may be published promptly and that copies may be available to the public.

**Comment [B7]:** Consider the advisability of doing this. It would be preferable to have a uniform set of rules statewide, so that practitioners who find themselves in unfamiliar jurisdictions can't be "home-towned." In my view, if a judge feels that a local rule might be necessary, the rule should be raised with the Probate Rules Committee and considered for uniform adoption.

(b) Procedure not otherwise specified. If no procedure is specifically prescribed by rule or statute, the court may proceed in any lawful manner not inconsistent with these rules of probate procedure and the Colorado Probate Code and shall look to the Colorado Rules of Civil Procedure and to the applicable law if no rule of probate procedure exists.

**Rule 7. RESERVED**

**Rule 8. RESERVED**

**Rule 9. RESERVED**

## PART 2: PLEADINGS

### Rule 10. Judicial Department Forms

The Judicial Department Forms (JDF) approved by the Supreme Court should be used where applicable. Any form filed in a probate proceeding should, insofar as possible, substantially follow the format and content of the approved form, not include language which otherwise would be stricken, emphasize all alternative clauses or choices which have been selected, emphasize all filled-in blanks, and contain a statement that the pleading conforms in substance to the current version of the approved form, citing the JDF number and effective date. Unless the context otherwise requires, terms used in JDFs shall be as defined as provided in Rule 2.

**Comment [B8]:** If you are telling the filer what to do, then you should change this to the active voice and make it clear that this is an affirmative obligation of the practitioner or pro se party. If I were pro se, I would have a really hard time understanding this rule.

**Comment [B9]:** What does this mean? Are you asking for bold type or underlining, or something else?

**Comment [B10]:** What does this mean?

### Rule 11. Identification of Party and Attorney

All documents presented or filed shall bear the name, address, e-mail address and telephone number of the appearing party, and of the attorney, if any.

### Rule 12. Correction of Clerical Errors

(a) Clerical errors in documents filed with the court may be made the subject of a written request for correction only by filing JDF 740 or a document that is in substantial conformance with the JDF 740, together with corrected documents as necessary. "Clerical errors" include, but are not limited to, the following:

**Comment [B11]:** How about changing this to the active voice? That would make it clearer to pro se parties

**Comment [B12]:** How would the filer know whether it is "necessary"?

- (1) Errors in captions (i.e. aka names, etc.);
- (2) Misspellings;
- (3) Errors in dates, other than dates for settings, hearings, and limitations periods;
- (4) Transposition errors.

**Comment [B13]:** Do you mean "a/k/a"? Consider changing to "alternative names used by the parties"?

(b) If the court is not satisfied that a written request for correction is a "clerical error," the request may be denied. A clerical error does not include the addition of an argument, allegation, or fact that has legal significance.

### Rule 13. Petitions Must Indicate Persons Under Legal Disability

If any person who has any interest in the subject matter of a petition is under the age of eighteen years, or otherwise under legal disability, or incapable of adequately representing his or her own interests, each petition, the hearing of which requires the issuance of notice, shall state such fact and the name, age, and residence of such minor or other person when known and the name of the guardian, conservator, or personal representative, if any has been appointed.

**Rule 14. RESERVED**  
**Rule 15. RESERVED**  
**Rule 16. RESERVED**  
**Rule 17. RESERVED**  
**Rule 18. RESERVED**  
**Rule 19. RESERVED**

## PART 3: NOTICE

### Rule 20. Process and Notice

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

### Rule 21. Constitutional Adequacy of Notice

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

**Comment [B14]:** Do you need a rule stating this? Again, consider the advisability of creating local rules. My preference would be to have the rule state: "All notices given in probate proceedings must meet the requirements of the United States and Colorado Constitutions and the Colorado Probate Code." By itself, this would put parties on notice that the court may act if the notice is inadequate.

### Rule 22. Waiver of Notice

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

**Comment [B15]:** Consider whether you should affirmatively state that notice can be waived, for what types of things it can be waived, and how to do so properly.

### Rule 23. Non-Appearance Hearings

Unless otherwise required by statute, these rules or order of court, any matter may be set for a non-appearance hearing. The procedure governing non-appearance hearings is as follows:

**Comment [B16]:** Especially for the benefit of pro se parties, it would be helpful to define what a "non-appearance hearing" is. It doesn't sound like it's a "hearing" at all, if no one is appearing. Is it a procedure whereby the court will take action without appearance of the parties, but if someone asks to appear, then there will be an actual hearing?

- (a) Attendance at the non-appearance hearing is not required or expected.
- (b) Any interested person wishing to object to the requested action set forth in the court filing attached to the notice must file a specific written objection with the court at or before the hearing, and shall furnish a copy of the objection to the person requesting the court order. Form JDF 722, or a form that substantially conforms to JDF 722, may be used and shall be sufficient.
- (c) If no objection is filed, the court may take action on the matter without further notice or hearing.
- (d) If any objection is filed, the objecting party shall, within 14 days after filing the objection, set the objection for an appearance hearing. Failure to timely set the objection

for an appearance hearing as required by section (4) of this rule shall result in the dismissal of the objection with prejudice without further hearing.

(e) If an objection is filed, the court may, in its discretion:

- (1) Rule upon the written filings and briefs submitted;
- (2) Require oral argument;
- (3) Require an evidentiary hearing;
- (4) Order the movant, objector and any other interested person who has entered an appearance to participate in alternative dispute resolution; or
- (5) Enter any other orders the court deems appropriate.

(f) The Notice of a Non-Appearance Hearing, together with copies of the court filing and proposed order must be served on all interested persons no less than 14 days prior to the setting of the hearing and shall include a clear statement of the rules governing such hearings. Form JDF 712 or JDF 963, or a form that substantially conforms to such JDF forms, may be used and shall be sufficient.

#### **Rule 24. Notice of Formal Proceedings Terminating Estates**

The notice of hearing on a petition under § 15-12-1001 or § 15-12-1002, C.R.S., shall include statements:

(a) that interested persons have the responsibility to protect their own rights and interests within the time and in the manner provided by the Colorado Probate Code, including the appropriateness of claims paid, the compensation of personal representatives, attorneys, and others, and the distribution of estate assets, **since** the court will not review or adjudicate these or other matters unless specifically requested to do so by an interested person; and

**Comment [B17]:** Change to "because"

(b) that if any interested person desires to object to any matter such person shall file specific written objections at or before the hearing and shall furnish the personal representative with a copy pursuant to C.R.C.P. 5.

#### **Rule 25. Conservatorship – Closing**

Notice of the hearing on a petition for termination of conservatorship shall be given to the protected person, if then living, and all other interested persons, as defined by law or by the Court pursuant to § 15-10-201(27), C.R.S., if any. Such hearing may be held pursuant to Rule 23.

**Rule 26. RESERVED**  
**Rule 27. RESERVED**  
**Rule 28. RESERVED**  
**Rule 29. RESERVED**

## **PART 4: FIDUCIARIES**

### **Rule 30. Change of Contact Information**

Every fiduciary shall promptly notify the court of any change in the fiduciary's name, address, e-mail address or telephone number by filing JDF 725 or a form that substantially conforms to JDF 725.

### **Rule 31. Accountings and Reports**

(a) An accounting or report prepared by a personal representative, conservator, trustee or other fiduciary shall show with reasonable detail the receipts and disbursements for the period covered by the accounting or report, shall list the assets remaining at the end of the period, and shall describe all other transactions affecting administration during the accounting or report period. The court may require the fiduciary to produce supporting evidence for any and all transactions.

(b) Accountings and reports that substantially conform to JDF 942 for decedents' estates, JDF 885 for conservatorships and to the 1984 version of the Uniform Fiduciary Accounting Standards as recommended by the Committee on National Fiduciary Accounting Standards shall be considered acceptable as to both content and format for purposes of this rule.

### **Rule 32. Appointment of Nonresident – Power of Attorney**

Any person, resident or nonresident of this state, who is qualified to act under the Colorado Probate Code may be appointed as a fiduciary. When appointment is made of a nonresident, the person appointed shall file an irrevocable power of attorney designating the clerk of the court and the clerk's successors in office, as the person upon whom all notices and process issued by a court or tribunal in the state of Colorado may be served, with like effect as personal service on such fiduciary, in relation to any suit, matter, cause, hearing, or thing, affecting or pertaining to the proceeding in regard to which the fiduciary was appointed. The power of attorney required by the provisions of this Rule shall set forth the address of the nonresident fiduciary. The clerk shall promptly forward, by any method that provides delivery confirmation, any notice or process served upon him or her, to the fiduciary at the address last provided in writing to the clerk. The clerk shall file a certificate of service. Such service shall be deemed complete 14 days after mailing. The clerk may require the person issuing or serving such notice or process to furnish sufficient copies, and the person desiring service shall advance the costs and mailing expenses of the clerk.

### **Rule 33. Bond and Surety**

A fiduciary shall file any required bond, or complete other arrangements for security before

letters are issued. Thereafter, the fiduciary shall increase the amount of bond or other security when the fiduciary receives property not previously covered by any bond or other security.

**Rule 34. RESERVED**

**Rule 35. RESERVED**

**Rule 36. RESERVED**

**Rule 37. RESERVED**

**Rule 38. RESERVED**

**Rule 39. RESERVED**

## PART 5: CONTESTED PROCEEDINGS

### Rule 40. Discovery

(a) This Rule establishes the provisions and structure for discovery in all proceedings seeking relief under Title 15, C.R.S. Nothing in this Rule shall alter the court's authority and ability to direct proportional limitations on discovery or to impose a case management structure or enter other discovery orders. Upon appropriate motion or *sua sponte*, the court may apply the Rules of Civil Procedure in whole or in part, may fashion discovery rules applicable to specific proceedings and may apply different discovery rules to different parts of the proceeding.

**Comment [B18]:** Insert "Colorado" before "Rules"

**Comment [B19]:** Insert "(C.R.C.P.)" after "Procedure" (especially important for comprehension by pro se parties).

**Comment [B20]:** Add comma after "proceedings"

(b) Unless otherwise ordered by the court, the parties may engage in the discovery provided by C.R.C.P. 27 through 37. Any discovery conducted in Title 15 proceedings prior to the issuance of a case management or other discovery order shall be subject to C.R.C.P. 26(a)(2)(A), 26(a)(2)(B), 26(a)(4) and (5), and 26(b) through (g). However, due to the unique, expedited and often exigent circumstances in which probate proceedings take place, C.R.C.P. 16, 16.1, 16.2, and 26(a)(1) do not apply to probate proceedings unless ordered by the court or stipulated to by the parties.

(c) C.R.C.P. 45 and 121 § 1-12 are applicable to proceedings under Title 15.

(d) Notwithstanding subsections (a) through (c) of this Rule 40, subpoenas and discovery directed to a respondent in proceedings under Part 3 of Article 14 of Title 15, shall not be permitted without leave of court, or until a petition for appointment of a guardian has been granted under § 15-14-311, C.R.S.

### Rule 41. Jury Trial -- Demand and Waiver

If a jury trial is permitted by law, any jury demand therefor shall be filed with the court, and the requisite fee paid, before the matter is first set for trial. Failure of a party to file and serve a demand for jury trial and pay the requisite fee shall constitute a waiver of trial by jury as provided in C.R.C.P. 38(c).

**Comment [B21]:** Delete "shall be" and replace with "must comply with C.R.C.P. 38 and must be"

**Comment [B22]:** Delete "shall" and replace with "as provided in this rule will"

### Rule 42. Objections to Accounting, Final Settlement, Distribution or Discharge

If any interested person desires to object to any accounting, the final settlement or distribution of an estate, the discharge of a fiduciary, or any other related matter, the interested person shall file specific written objections at or before the hearing thereon, and shall furnish all interested persons with a copy of the objections.

(a) If the matter is uncontested and set for a non-appearance hearing, any interested person wishing to object must file specific written objections with the court at or before the hearing, and shall provide copies of the specific written objections to all interested persons. An objector must set an appearance hearing in accordance with Rule 23.

(b) If the matter is set for an appearance hearing, the objector must file specific written objections 10 or more days before the scheduled hearing. If the objector fails to provide copies of the specific written objections within the required time frame, the Petitioner is entitled to a continuance of the hearing.

**Rule 43. RESERVED**

**Rule 44. RESERVED**

**Rule 45. RESERVED**

**Rule 46. RESERVED**

**Rule 47. RESERVED**

**Rule 48. RESERVED**

**Rule 49. RESERVED**

## **PART 6: DECEDENT'S ESTATES**

**Comment [B23]:** Should this be "Decedents' Estates"?

### **Rule 50. Wills – Deposit for Safekeeping and Withdrawals**

A will of a living person tendered to the court for safekeeping in accordance with § 15-11-515, C.R.S. shall be placed in a "Deposited Will File" and a certificate of deposit issued. In the testator's lifetime, the deposited will may be withdrawn only in strict accordance with the statute. After the testator's death, a deposited will shall be transferred to the "Lodged Will File."

### **Rule 51. Transfer of Lodged Wills**

If a petition under § 15-11-516, C.R.S. to transfer a will is filed and if the requested transfer is to a court within this state, no notice need be given; if the requested transfer is to a court without this state, notice shall be given to the person nominated as personal representative and such other persons as the court may direct. No filing fee shall be charged for this petition, but the petitioner shall pay any other costs of transferring the original will to the proper court.

**Comment [B24]:** Change to "outside"

### **Rule 52. Informal Probate – Separate Writings**

The existence of one or more separate written statements disposing of tangible personal property under the provisions of § 15-11-513, C.R.S. shall not cause informal probate to be declined under the provisions of § 15-12-304, C.R.S.

### **Rule 53. Heirs and devisees – Unknown, Missing or Nonexistent – Notice to Attorney General**

In a decedent's estate, whenever it appears that there is an unknown heir or devisee, or that the address of any heir or devisee is unknown, or that there is no person qualified to receive a devise or distributive share from the estate, the personal representative shall promptly notify the attorney general. Thereafter, the attorney general shall be given the same information and notice required to be given to persons qualified to receive a devise or distributive share. When making any payment to the state treasurer of any devise or distributive share, the personal representative shall include a copy of the court order obtained under § 15-12-914, C.R.S.

**Comment [B25]:** This term should be consistently capitalized

### **Rule 54. Supervised Administration – Scope of Supervision – Inventory and Accounting**

In directing the activities of a supervised personal representative of a decedent's estate, the court shall order only as much supervision as in its judgment is necessary, after considering the reasons for the request for supervised administration, or circumstances thereafter arising. If supervised administration is ordered, the personal representative shall file with the court an inventory, annual interim accountings, and a final accounting, unless otherwise ordered by the court.

### **Rule 55. Court Order Supporting Deed of Distribution**

When a court order is requested to vest title in a distributee free from the rights of other persons interested in the estate, such order shall not be granted ex parte, but shall require either the stipulation of all interested persons or notice and hearing.

#### **COMMENT**

Note that Colorado Bar Association Real Estate Title Standard 11.1.7 discusses certain requirements for the vesting of marketable title in a distributee. A court order is necessary to vest marketable title in a distributee, free from the rights of all persons interested in the estate to recover the property in case of an improper distribution. This rule requires a notice and hearing procedure as a condition of issuance of such order. A certified copy of the court's order should be recorded with the deed of distribution. Under the title standard, an order is not required to vest marketable title in a purchaser for value from or a lender to such distributee. *See* § 38-35-109, C.R.S.

### **Rule 56. Foreign Personal Representatives**

(a) After the death of a nonresident decedent, copies of the documents evidencing appointment of a domiciliary foreign personal representative may be filed as provided in § 15-13-204, C.R.S. Such documents must have been certified, exemplified or authenticated by the appointing foreign court not more than 60 days prior to filing with a Colorado court, and shall include copies of all of the following that may have been issued by the foreign court:

- (1) The order appointing the domiciliary foreign personal representative, and
- (2) The letters or other documents evidencing or affecting the domiciliary foreign personal representative's authority to act.

(b) Upon filing such documents and a sworn statement by the domiciliary foreign personal representative stating that no administration, or application or petition for administration, is pending in Colorado, the court shall issue its Certificate of Ancillary Filing, substantially conforming to JDF 930.

**Rule 57. RESERVED**

**Rule 58. RESERVED**

**Rule 59. RESERVED**

## **PART 7: PROTECTIVE PROCEEDINGS**

### **Rule 60. Physicians' Letters or Professional Evaluation**

Any physician's letter or professional evaluation utilized as the evidentiary basis to support a petition for the appointment of a guardian, conservator or other protective order under Article 14 of the Colorado Probate Code, unless otherwise directed by the court, should contain: (1) a description of the nature, type, and extent of the respondent's specific cognitive and functional limitations, if any; (2) an evaluation of the respondent's mental and physical condition and, if appropriate, educational potential, adaptive behavior, and social skills; (3) a prognosis for improvement and recommendation as to the appropriate treatment or habilitation plan; and (4) the date of any assessment or examination upon which the report is based.

### **Rule 61. Financial Plan with Inventory and Motion for Approval – Conservatorships**

A Conservator's Financial Plan with Inventory and Motion for Approval shall be filed with the court and served on all interested persons. The request for approval of the Plan may be set on the nonappearance docket, the appearance docket, or not set for hearing and treated as a motion under C.R.C.P. 121.

### **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 shall:

- (1) Consider the reasonableness of the proposed settlement and enter appropriate orders as the court finds will serve the best interests of the respondent;
- (2) Ensure that the petitioner and respondent and/or his/her legal guardian/fiduciary understands 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 interests 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, all pursuant to § 15-14-101, et seq., C.R.S.

(b) Venue for a petition brought under this rule shall 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 a respondent may be filed by respondent's conservator or guardian, or if there is no conservator or guardian, by an interested person, and shall be presented in accordance with the procedures set forth in this rule.

(d) A petition for approval of settlement shall 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 shall 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. A description of the purpose of any court appointed fiduciary shall be included; 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/or 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 time missed by the respondent from school or employment and a summary of 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 expenses that have been or will be paid by each particular source.

(4) Medical Status.

- A. 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; and
- B. An explanation of respondent's prognosis and any anticipated treatments and/or 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/or liens against the settlement proceeds shall 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/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, payment structure and the identity of the trustee or entity administering such arrangements;
- D. 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 interests of the respondent.

**Comment [B26]:** I would insert "and" before "payment" and a comma after "structure"

(7) Exhibits.

- A. The petition shall list each exhibit filed with the petition.
- B. The following exhibits shall be attached to the petition:
  - (i) A written statement by the respondent's physician or other health care provider. The statement shall set forth the information required by subparagraph 4, A and B 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/or 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 (except as otherwise ordered by the court in any specific case), shall be given in accordance with § 15-14-404(1) and (2), C.R.S. and Rule 8.

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

(g) The petitioner, respondent, and any proposed fiduciary shall attend the hearing, unless excused by the court prior to the hearing for good cause.

(h) The court may appoint a guardian ad litem, attorney, or other professional to investigate, report to the court, or represent the respondent.

### **Rule 63. Foreign Conservators**

(a) After the appointment of a conservator for a person who is not a resident of this state, copies of documents evidencing the appointment of such foreign conservator may be filed as provided in § 15-14-433, C.R.S. Such documents must have been certified, exemplified or authenticated by the appointing foreign court not more than 60 days prior to filing with a Colorado court, and shall include copies of all of the following:

(1) The order appointing the foreign conservator,

(2) The letters or other documents evidencing or affecting the foreign conservator's authority to act, and

(3) Any bond of foreign conservator.

(b) Upon filing such documents and a sworn statement by the foreign conservator stating that a conservator has not been appointed in this state and that no petition in a protective proceeding is pending in this state concerning the person for whom the foreign conservator was appointed, the court shall issue its Certificate of Ancillary Filing, substantially conforming to JDF 892.

**Rule 64. RESERVED**

**Rule 65. RESERVED**

**Rule 66. RESERVED**

**Rule 67. RESERVED**

**Rule 68. RESERVED**

**Rule 69. RESERVED**

## **PART 8: TRUSTS**

### **Rule 70. Trust Registration – Amendment, Release and Transfer**

(a) A trustee shall file with the court of current registration an amended trust registration statement to advise the court of any change in the trusteeship, of any change in the principal place of administration, or of termination of the trust.

(b) If the principal place of administration of a trust has been removed from this state, the court may release a trust from registration in this state upon request and after notice to interested parties.

(c) If the principal place of administration of a trust has changed within this state, the trustee may transfer the registration from one court to another within this state by filing in the court to which the registration is transferred an amended trust registration statement with attached thereto a copy of the original trust registration statement and of any amended trust registration statement prior to the current amendment, and by filing in the court from which the registration is being transferred a copy of the amended trust registration statement. The amended statement shall indicate that the trust was registered previously in another court of this state and that the registration is being transferred.

**Rule 71. RESERVED**

**Rule 72. RESERVED**

**Rule 73. RESERVED**

**Rule 74. RESERVED**

**Rule 75. RESERVED**

**Rule 76. RESERVED**

**Rule 77. RESERVED**

**Rule 78. RESERVED**

**Rule 79. RESERVED**