

**NOTICE OF MEETING FOR THE PROBATE TRIAL AND PROCEDURE
COMMITTEE OF THE TRUST AND ESTATE SECTION AND ELDER LAW SECTION
OF THE COLORADO BAR ASSOCIATION**

March 4, 2020 at 10 a.m.

**Location:
COLORADO BAR ASSOCIATION
Suite 1700, West 1
1290 Broadway
Denver, Colorado 80203
(303) 860-1115**

Call in information, please dial 1-571-317-3122 and put in Access Code 459-334-869

AGENDA

1. Welcome and Introductions
2. Review of Minutes from February 5, 2019/Approval
3. Chair's Report
 - a. Probate Bench Book – Kathy Seidel
4. New Business or Requests
 - a. In the Matter of the Estate of Trevino; Amicus Brief
5. Updates/Reports
 - a. CRPP Rule 40(d) regarding discovery in probate cases. Kathy Seidel/Aaron Evans/Jody Pilmer/Zach Schlichting
 - b. Cost Recovery and Compensation Act; C.R.S. § 15-10-604 re procedure and process and CRPP. Marc Darling
 - c. Update from Subcommittee investigating due process surrounding addition of persons believed to have exploited the elderly to list maintained by Departments of Human Services. Lindsay Andrew/Spencer Crona
 - d. C.R.S. §15-14-714(8) Powers of Attorney and agent's duty to account. Marcie McMinimee
 - e. Elective share issues. Zach Schlichting
 - f. Section 15-12-723 citations (location in UPC). Letty Maxfield/Zach Schlichting/Jodie Pilmer
 - g. Conservator's Annual Report - Tabled.
6. Adjournment

NEXT MEETING: April 1, 2020 @ 10 a.m.

REMINDER: Join the Committee through CBA Membership Department – email membership@cobar.org – all notices and updates are sent through the CBA

Probate Trial and Procedure Committee

Minutes of the February 5, 2019 Meeting

The Probate Trial and Procedure Committee met on February 5, 2020 at the Colorado Bar Association Offices, 1290 Broadway Suite 1700. The meeting was called to order at approximately 10:00am.

The following members were present or participated by phone:

Tim Bounds – bounds@evancase.com
Norv Brasch – norv@tealaw.com
Tawni Brix – tbrix@hardinwaldriplaw.com
Lynne Bruzzese – lynne@tealaw.com
Shari Caton – caton@pckpc.com
Gary Clextton – gclextton@m-s-lawyers.com
Aaron Evans – evans@evanscase.com
John Ferguson – john@johnfergusonplc.com
Gunther Goetz – gunther@goetzlawoffice.com
Todd Kastetter – tkastetter@probatetrials.com
Keith Lapuyade – keith.lapuyade@overtonlawfirm.com
Frieda Leonard – frieda@leonardlawplanning.com
Letty Maxfield – letty@tealaw.com
Marcie McMinimee – Mmcmimimee@steenrodllaw.com
James Miller – jmiller@brownandcrona.com
Sal Quintana – s.quintana@qlegalservices.com
Patricia Rankin – prankin99@gmail.com
Tom Rodriguez – Tom@elderlawcolorado.com
Jamie Roth – jamie@jamierothlaw.com
Catherine Seal – cas@kirtlandseal.com
Sandra Sigler – sandra@zumaltsigler.com
Courtney Smitz – courtney@lotusfiduciarygroup.com
Ernest Staggs – estaggs@staggs-morris.com
Douglas Traeger – dtraeger@lathropgage.com
Herb Tucker – htucker@wadeash.com
Alexander Urban – urban@evanscase.com
Annie White – annie@pearmanlawfirm.com
Nathan Williams – nathan@solemlaw.com
Zach Woodward – zach@solemlaw.com
Kris Zumalt – kris@zumaltlaw.com

1 Approval of Minutes of Prior Meeting

The minutes of the December 4, 2019 meeting were approved.

2 Chair's Report

- a. Probate Bench Book – Project is moving forward.

3 New Business or Requests

- a. Cost Recovery and Compensation Act: Marc Darling has agreed to chair committee but has requested a co-chair. Marcie McMinimee agreed to co-chair. Marc will attend March PT&P meeting. In the interim, he requested that those interested in the issues send him an email regarding: what changes do you want; what works; what doesn't work; what needs to be fixed? Kathy Seidel requested that those interested in participating in the committee send her an email.
- b. Letty Maxfield reported that the remote notary bill that has been introduced does not protect content of documents and that it is not likely that prohibitions will be added to the statute. Remote notarization hasn't passed yet but probably will. Lettie is concerned that argument will be put forth that party is entitled to remote notary files because privilege has been waived. She argued for addition to statute that there is no waiver of attorney/client privilege as a result of remote notarization.
- c. C.R.S. § 15-12-723 Hearings. Letty Maxfield raised an issue regarding the placement of this statutory provision in Title 12 as opposed to Title 10. As it stands now, it only applies to probate proceedings and if moved to judicial toolbox of Title 10 would apply to all fiduciaries. Herb Tucker agreed to speak with Jody Pilmer and Zach Schlichting (who wrote this section for the Bench Book) about this issue

4 Updates/Reports

- b. Litigation Updates –
 - a. Update on Rabin v. Freidrich (In re Estate of Rabin) – no amicus brief to be filed by section; issues on appeal read into record.
 - b. In re Rademacher v. Greshler - Herb Tucker gave a summary of the facts and issues of this complicated malpractice case and tied it to concerns similar to Rabin as it involved a dispute over access to attorney files. Herb expressed concerns regarding confidentiality, ethics opinions and what may be a trend by the courts for increased oversight of personal representatives and a burden upon them to show that access to attorney files are needed for the administration of an estate. Keith Lapuyade opined that in his experience,

trial courts usually allow discovery of attorney files but appellate courts tend to be more protective.

- c. Conservator's Annual Report – Tabled
- d. CRPP Rule 40(d) – Approved by Elder Law Section this morning. Will be presented to SRC and T&E Council for approval today.
- e. Due process concerns re “exploitation list’ maintained by Departments of Human Services – No changes.
- f. C.R.S. §15-14-714(8) re Powers of Attorney and Agent's duty to report. No Update.
- g. Elective share if SS is incapacitated; process for determining incapacity when evaluation is ordered. Zach Schlicting. No update.

5 Adjournment

The meeting adjourned at approximately 11:00am.

Colorado Court of Appeals
2 East 14th Avenue
Denver CO 80203 United States



COLORADO BAR ASSOCTRUST ESTATE
1290 BROADWAY
SUITE 1700
DENVER CO 80203

127-1014

To: Colorado Bar AssocTrust Estate

Subject: Service of documents in 2019CA199.

You are being served with documents filed electronically through the Colorado Courts E-Filing system. Please review the following details concerning this service.

- Court Location: Court of Appeals
- Case Number: 2019CA199

- Filing ID: N/A
- Filed Document Title(s):
 - INVITATION FOR AMICUS BRIEF
 - Attachments to Pleading
- Submitted on Date/Time: Mon Jan 27 18:30:09 MST 2020
- Submitted by Authorizing Organization:
- Submitted by Authorizing Attorney: Colorado Court of Appeals

If you have a question about the above listed case, please contact the court. Information for all Colorado court locations is listed on the Colorado Judicial Branch website <http://www.courts.state.co.us/Index.cfm>.

Colorado Court of Appeals 2 East 14th Avenue Denver, CO 80203	DATE FILED: January 27, 2020
Fremont County 2017PR30084	
In the Matter of the Estate of Gerardo Trevino, Deceased, Appellant: Esteban Trevino, v. Appellee: Victoria Trevino, in her capacity as personal representative.	Court of Appeals Case Number: 2019CA199
INVITATION FOR AMICUS BRIEF	

This case presents the following uncontroverted facts:

- During his life, the decedent opened a certificate of deposit account that was payable on death (POD) to his son, the named beneficiary.
- Also during his life, the decedent and his wife obtained a loan from a bank. As collateral for the loan, the decedent pledged his POD account. The wife did not own or have any rights in this account, which was the only collateral given for the loan.
- The pledge agreement stipulated that no beneficiary “gets any rights in the Collateral in the event of Debtor’s death or incapacity until the obligations secured hereby are paid in full.” The pledge agreement did not list death of either co-obligor as an event of default.
- Upon decedent’s death, the wife was appointed as the personal representative (PR) of the Estate.

- The wife, as PR, then directed the bank to use the POD account to pay off the loan.
- At no point was the loan in default.

Given this factual background, the issue presented for appeal is one of first impression in Colorado: Did the trial court err in finding that the PR's direction to the bank to use the POD account to pay off the loan was proper and reasonable? The son, as the appellant, is the only party to file a brief in this Court.

The Court on its own motion invites the following organizations to file an amicus curiae brief in compliance with C.A.R. 29 on or before April 28, 2020:

The Colorado Bar Association Amicus Brief Committee
1290 Broadway
Suite 1700
Denver, CO 80203

The Colorado Bar Association Trust & Estate Section
1290 Broadway
Suite 1700
Denver, CO 80203

If these organizations intend to file an amicus brief, the Court respectfully requests that it file notice of their intent on or before February 28, 2020. Upon notification that amici will submit a brief, the Clerk of Court must facilitate access to the electronic record.

If an amicus brief is filed, the appellant may file a response within twenty-one days of that filing. The trial court's order is attached as an Appendix to this Invitation.

BY THE COURT:

Fox , J.

Berger, J.

Lipinsky, J.

DISTRICT COURT, COUNTY OF FREMONT, STATE OF COLORADO 136 JUSTICE CENTER ROAD, SUITE 103 CANON CITY, CO 81212 (719) 269-0100	DATE FILED: January 27, 2020 DATE FILED: December 13, 2018 CASE NUMBER: 2017PR30084
In the Matter of the Estate of: GERARDO TREVINO Deceased	Δ COURT USE ONLY Δ Case Number: 17PR30084
FINDINGS, CONCLUSIONS AND ORDERS	

This case comes before the District Court for the 11th Judicial District pursuant to a Petition for Formal Probate of Will, Removal of Personal Representative and Formal Appointment of Successor filed by Esteban ("Tony") Trevino, son of the decedent. A hearing on the Petition was held on December 12, 2018. The spouse of the decedent, Victoria Trevino appeared pro se. Tony Trevino appeared and was represented by Holder & Associates. This Court has considered the petition, the evidence presented during the hearing, and pertinent portions of the Court file. The Court hereby enters the following findings, conclusions and orders.

FACTS

The decedent died on April 7, 2017 domiciled in Fremont County, Colorado. The decedent's spouse was appointed as the Personal Representative of the Estate on August 10, 2018. The decedent's will dated October 4, 2016 was admitted into probate by the spouse. A notice to creditors was published indicating a deadline of December 18, 2017 for creditors to file any claims against the Estate.

On March 15, 2018, Tony Trevino filed the subject Petition, which alleged that

the decedent's spouse had unduly influenced the decedent into making a new will replacing his will signed in 2010. In addition, a day prior to the hearing, his attorneys filed a trial brief with new allegations regarding the alleged misuse of a Wells Fargo Certificate of Deposit ("CD") to pay off a personal loan taken out from Wells Fargo by the decedent and his spouse on September 27, 2016. The Wells Fargo CD was held in the decedent's name and collateralized the personal loan in a pledge agreement with Wells Fargo. Tony was listed as the beneficiary of the CD upon the decedent's death. Tony is seeking damages in the amount of \$71,711.81 plus interest under a theory of breach of fiduciary duty by the Personal Representative. He contends that she breached her duty by authorizing Wells Fargo to use \$71,711.81 of the proceeds of the CD to pay off the personal loan rather than using assets of the estate to do so.

During the hearing it was apparent that there exists a great deal of animosity between the decedent's adult children and his spouse.

VALIDITY OF THE DECEDENT'S OCTOBER 4, 2016 WILL

The decedent's October 4, 2016 Will was prepared by his law firm Fredrickson Johnson & Belveal, LLC. During the hearing the only evidence presented on the issue of undue influence consisted of the testimony of Tony and his sister Ann. Both testified that their father was unduly influenced by his spouse and that he was afraid of her. Ann testified that her father had a "clear mind to make decisions except when it came to Victoria." There was no other creditable evidence presented to establish that the decedent was unduly influenced or otherwise incompetent to sign the Will, which had been prepared at his direction by his attorneys.

The Court finds and concludes that the Petitioner (Tony) has failed to meet his

burden of proof. The October 4, 2016 Will is declared valid.

USE OF THE PROCEEDS OF THE CD TO PAY OFF THE LOAN

The facts are undisputed that the decedent opened in his name a Certificate of Deposit with Wells Fargo with the decedent's son Tony listed as the beneficiary with survivor benefits; that on September 27, 2016 the decedent and his spouse took out a \$80,000 personal loan from Wells Fargo and signed a pledge agreement pledging the decedent's CD as collateral for the personal loan; that the language of the pledge agreement stated in paragraph 4(b)(vii) **"that no joint owner, beneficiary, surviving spouse or representative of Debtor's estate gets any rights in the Collateral in the event of Debtor's death or incapacity until the obligations secured hereby are paid in full."**

It is also undisputed that on February 28, 2018 a letter was sent to Wells Fargo by the Personal Representative's law firm directing them to use the proceeds of the CD to pay off the personal loan and send the balance of the proceeds (\$27,246.52) to Tony, which they did; that the amended inventory of the estate indicated the gross value of the estate was \$69,516.61 with only \$2,415.61 in liquid assets (cash); that the balance due on the Wells Fargo loan was \$77,212.03.

The Court finds and concludes that the estate did not have the ability to pay off the Wells Fargo loan using estate funds. The Court also finds and concludes that the Personal Representative acted reasonably, after advice of counsel, to instruct Wells Fargo to take the action they did, which was clearly authorized by the language of the pledge agreement.

The Court also notes that there is a question whether Tony's 'claim' against the

Personal Representative was timely filed since it was filed several months after the expiration in the notice to creditors. However, this issue was not raised by the parties, so is not necessary to deal with it at this time.

CONCLUSION

The Court finds in favor of the Personal Representative and against Tony. The Court DENIES the Petition for Formal Probate of Will, Removal of Personal Representative and Formal Appointment of Successor filed by Esteban ('Tony') Trevino.

Entered this 13th day of December 2018.

BY THE COURT: .

Stephen A. Groome

Stephen A. Groome
District Court Judge

Colorado Court of Appeals
2 East 14th Avenue
Denver CO 80203 United States



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BY THE COURT:

Stephen A. Groome

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District Court Judge