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Lawyers, others take sides of efficacy of Denver probate court

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At 9 o'clock on a weekday morning, the doors to Denver probate court offices are locked.

So are the offices of the judge, her clerk and the magistrate who helps the judge manage about 2,500 yearly cases ranging from disputed estates and trusts to guardian appointments and mental-illness commitments.

To cope with a shrinking staff, the Denver court has limited public access to five hours a day. A note on the judge's door informs everyone of a two-hour window on "Mondays only" to call the court and schedule a hearing.

Like courts across Colorado, Judge C. Jean Stewart's court has been obliged to function with fewer people and less money.

But in interviews, former employees allege this court also suffers from a failure to require key staff members to actually work a full week in court. Critics of the judge also say she can be capricious and biased on the bench.

"What I found so difficult to grasp, this was a court of law, it was hard for me to understand how people could work from home. Their presence was required," said Caroline Cammack, a Denver probate court employee who was fired last year in a dispute over her job duties and who has sued the court. "Some days there was almost no one in the court."



Others defend Stewart, describing her as the best in Colorado at reaching fair outcomes in complicated and emotional cases. A retention commission unanimously recommended her, citing a survey that showed overwhelming support from lawyers and non-lawyers alike.

In interviews with former employees and an examination of court records, The Denver Post found:

- Turnover has become a chronic problem. In the past 18 months, five people have either been fired or left a court that employs 11 people, counting the judge.
- The judge permitted Lee Cole, her court administrator, and Sarah Solano, her division clerk, to work from home one day a week, and an office supervisor to work half her hours at home. Former employees say Solano and Cole were often absent other days.
- Cole replaced a magistrate who also served as administrator and who estimates she spent three-fourths of her time hearing probate cases as the magistrate. Cole now earns \$97,000 a year as a full-time administrator; the magistrate's hours have been cut to 10 per week.
- Cole charged \$700.50 to the court's credit card for an expense listed as "employee recognition." Cammack says he took them to a Colorado Rockies game at taxpayer expense.

Everything affected

Former employees and others who depend on the court for services say turnover, reduced magistrate hours and restricted public access have affected everything from monitoring court-appointed guardians to getting a simple order signed.

“It’s harder and harder and harder for us to plan, because we don’t have the accessibility of the court,” said a Denver lawyer who asked for anonymity because he regularly appears in probate court. “I’ve just closed a conservatorship. It’s been sitting there for weeks. The clients are calling us, ‘When am I getting my . . . money?’ “

Former employees remember days when as few as three people showed up for work at the court. Absenteeism “affected every aspect of the court’s business,” Cammack said. “Signing orders, getting petitions to withdraw funds, the court could not operate smoothly when these people were gone. Not all of us were authorized to sign those kinds of things.”

Forty percent of the staff was authorized to work from home at least one day a week, she said, and nearly everyone was authorized to work four 10-hour days.

Those practices differ dramatically from other Colorado courts with much larger staffs to share the workload.

Little telecommuting

In Denver District Court, none of the 80 employees in the clerk’s office telecommute. Neither do any district court employees in Jefferson County. In the Arapahoe district, just two of 182 nonjudicial employees telecommute — from other court locations, not from home — and a small percentage work four-day weeks, administrator Laurie McKager said.

In the Adams district, “we don’t have any telecommuting unless it’s extraordinary circumstances,” administrator Melinda Taylor said. Four-day weeks? “We don’t do that.”

Cole said, on advice of counsel, he cannot comment because of Cammack’s pending lawsuit. The State Court Administrator’s Office said Stewart, who faces a retention vote next month, is forbidden by a state ethics code to engage in political or campaign activities, and Solano is a witness in the lawsuit.

The office noted that state personnel policies encourage telecommuting and flexible work schedules “wherever appropriate.”

In response to the lawsuit, the Denver probate court has denied Cammack’s allegations, calling them “frivolous and groundless” and “brought for improper purposes.”

Citing the lawsuit, the state court administrator’s office declined to identify who, in the wake of Cammack’s departure, is reviewing guardian and conservator reports at the Denver probate court, or how often they get reviewed.

Guardians are appointed to assist people who can no longer make decisions about their own health, and conservators manage money for incapacitated people.

In 2006, a state audit found 57 percent of guardians and conservators were not filing reports required by law about people they were appointed to protect, and Colorado courts inadequately reviewed reports that were filed. This year The Post reported that many guardians in Denver continued to file no reports, that some abuses went undetected for years and that the roster of wards protected by the court included dead people.

Probate courts judge emotional cases, appointing guardians and conservators for people who have lost the ability to make decisions for themselves, hearing petitions to commit people with mental illnesses, and settling family feuds over wills and estates.

In Colorado, Denver's probate court is unique, separated from all the Denver courts that hear criminal and civil cases. Elsewhere, probate cases are part of district courts' overall responsibilities.

Stewart has served 15 years as the probate judge in Denver. She is among 134 Colorado judges and justices facing retention votes this November. The Colorado Office of Judicial Performance Evaluation — which surveys people who have appeared before judges, interviews the judges and watches them work — unanimously recommended keeping Stewart on the bench for six more years.

“Judge Stewart approaches her many responsibilities with a great deal of professionalism and commitment,” a 10-member commission in Denver wrote.

The commission commended her for studying changes in estate planning and probate law, teaching colleagues and lawyers about its intricacies, and submitting articles locally and nationally in her areas of expertise.

She “received high ratings from both lawyers and non-lawyers in virtually every category, particularly in the areas of knowledge of the law, communication skills, and professional demeanor,” the commission said.

High retention figures

The Denver commission is headed by Daniel Recht, a prominent criminal defense and First Amendment lawyer.

He said its recommendation began with a finding that 90 percent of lawyers and 88 percent of non-lawyers responding to the survey recommended retaining Stewart. “That’s a significant figure,” he said.

Several commissioners watched Stewart in court hearings.

“We then interviewed the judge, who it seemed to us approached her responsibilities with a great deal of professionalism and commitment,” Recht said. “And we frankly were impressed with the thoroughness of her self-evaluation. Often judges don’t take the self-evaluation as thoroughly as they might.”

Critics of the commission’s recommendation cite the relatively small survey response — 42 lawyers and 42 non-lawyers — and the fact that it surveys only participants in closed cases. As a result, people whose cases have dragged on for years are not surveyed.

One open case concerns a mother who, for 25 years, has alone raised a son with cerebral palsy and the mental age of a grade-schooler.

She was the last client of Patricia Finley, a lawyer who retired and launched an Internet appeal to “vote no” on Stewart.

Two years ago, Stewart took the child support the father was paying to her client, saying the money “should be ‘saved’ for this young man’s future,” Finley said. “She simply did not care how the mother was supposed to find the money to pay for ongoing medical bills, medical insurance, food, clothing and shelter for this profoundly disabled young man.”

Despite a Denver magistrate’s ruling in May to return the money to the mother, Stewart still holds about \$20,000 in child support in her court, Finley said. Meanwhile, the mother “took out a second mortgage on her house and is one paycheck away from foreclosure,” she said. “It’s put them pretty close to desperation.”

After 15 years in Denver probate court, Suzanne Jeansonne is angry, too.

She said more than \$250,000 has been drained from a family trust in the five years since her husband’s mother complained in a letter to Stewart about his nursing-home care.

“That’s where my nightmare started,” she said.

Her husband, Chris, a National Guard soldier, was struck by a truck on an interstate 15 years ago. He survived, but “in a minimally conscious state” with a catastrophic brain injury, Jeansonne said.

She said she provided 13 evaluations from doctors and hospitals in two states to show her husband was not neglected and is unable to recover from his injuries.

Yet the judge appointed a guardian ad litem to investigate, who brought in a case manager, who hired a lawyer, she said. By 2007, she said, the case had become so stressful for her and her children that she stepped down as her husband’s guardian. A professional guardian replaced her.

Finally, Stewart “took control of funds meant to support my entire family,” she said, and put a bank in charge of a family support trust established after the crash.

Her husband is 46 now. His nursing-home care is covered by the federal government because he was a soldier in uniform at the time he was struck. He is tube-fed, unable to sit up or speak, “with no purposeful movement,” she said.

Yet more than \$9,000 a month is being spent, she said, for music, massage and physical therapists, private caregivers who sit with him and a guardian. And if she asks why, “I look greedy,” she said. “Me and my spoiled kids.”

Kim Goldberger, a senior judge who often serves as a probate mediator in Denver, calls the long-running disputes anomalies in a court that has decided thousands of other cases thoughtfully and efficiently.

Among Colorado judges hearing probate cases, Stewart is particularly careful to protect the rights of minors and to read the contents of estate-related documents before a hearing.

“She tries to get it right. Who is the best person to do this job?” he asked. “And she reads the documents. She’s studious when it comes to that.”

Disagreements

Goldberger also described Stewart as scrupulously fair in her handling of probate cases.

Harry Arkin, a Denver lawyer who has practiced for 53 years, disagrees with that assessment.

He said Stewart opened an investigation of his niece, the conservator for a brother who lives on \$600 a month, after he was late filing a document on his niece’s behalf. The case was closed only after the guardian ad litem found nothing wrong, asked to be removed and declined to charge a fee, he said.

“I don’t feel Judge Stewart is a competent judge, because of her arbitrary decisions, her personal bias against people she believes have offended her,” Arkin said. “There are attorneys she likes and attorneys she doesn’t like.”

John Licht, a veteran probate lawyer, commends Stewart and her staff for their efforts to maintain court services with fewer people and limited hours.

He is less complimentary of her work on the bench.

In a case involving a woman who willed a small estate to two colleges, Stewart chastised him in writing when he objected to a challenge that another court had already dismissed, ruling that he “is EXPRESSLY DENIED attorney fees and personal representative fees” for a “frivolous and meritless” maneuver.

“I think it was arbitrary and gratuitous,” Licht said. “If she would have looked through the files, she would have known I was taking no pay.”

Others call Stewart the best judge in her field.

Marco Chayet, a Denver probate lawyer who responded to the retention survey, said he gave the judge a “very positive” review.

“She is very committed to protecting those people who are incapacitated and needing protection,” he said. “It would be a great loss to lose her.”

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