

**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**

October 19, 2017 at 10:00 a.m.

Location:

**COLORADO BAR ASSOCIATION
9th Floor, Terrace Conference Room (Please check the board)
1900 Grant Street
Denver, Colorado 80203-4309
(303) 860-1112**

**If you would like to call in to the meeting, please dial 1-855-392-2520 and put in Access Code
5052474# - please mute your phone using *6**

AGENDA

1. Welcome - Introductions
2. Review of Minutes from last meeting/Approval
3. Chair's Report
4. Updates/Reports
 - a. Probate Bench Book – Jamie Roth
 - b. Colorado Transfer or Deposit of Estate Planning Documents Act (if needed)
 - c. Elder Law Section update (if needed) – Tom Rodriguez, Liaison
 - d. LPC questions and procedures (if needed) - Tammy Conover
5. Presentation on Bankruptcy and Trust Estate Issues by Tim Swanson, Esq.
6. Reminder: 1st week of December the Trial and Procedure Committee of the Colorado Bar has a holiday party at the University Club. We usually have two speakers; one confirmed speaker is Anne Gushurst who will discuss issues in representing the elderly in divorce cases.
7. Adjournment

NEXT MEETING: November 16, 2017 at 10:00 a.m.

REMINDER: Join the Committee through CBA Membership Department; E-mail membership@cobar.org All notices and updates are sent through the CBA

**PROBATE TRIAL AND PROCEDURE COMMITTEE MEETING
TRUST AND ESTATE SECTION AND ELDER LAW SECTION
COLORADO BAR ASSOCIATION**

SEPTEMBER 14, 2017 MINUTES

1. Opening and Introductions

Tim Bounds called the meeting to order at 10:00 a.m. In attendance were: Tim Bounds, Lindsay Andrew, Paige Armstrong, Marco Chayet, Gary Clextan, Kelly Dickson-Cooper, Spencer Crona, Laurence Gendelman, Sarah Golombeck, Marcie McMinimee, Zachary Schlichting, Melissa Schwartz, Douglas Traeger, Nathan Williams, Chris Brock, David Tanaton, and William Carew.

2. Minutes of the August Meeting

The minutes of the August 2017 meeting were reviewed and unanimously approved.

3. Chair's Report and Updates

Tim Bounds filled in for Aaron Evans this month.

4. Updates from Sections and Reports

Marcie McMinimee updated the Committee on the current Rules and Forms which are currently posted for public comment. Revised Rule 16/62 comments are open until November. To post or view comments, e-mail Marcie or to the Supreme Court website and navigate to: Committees/Adopted-Pending Rules/Probate. Comments are open until November.

Jamie Roth updated the Committee on the probate Bench Books being drafted. Currently the protected proceedings and administration of estates are being finalized and should be submitted to the Committee for review soon. Tom Rodriguez is preparing a list/table of topics so that members can volunteer for specific topics.

Tim Bounds updated on the status of the Deposit of Original Documents subcommittee. The subcommittee is drafting a response memo to the Secretary of State's memo on suggested revisions. The biggest request from the SOS is for attorneys and other "custodians" of original documents to destroy them prior to filing electronic versions with the SOS. Tim anticipates that Judicial will weigh in on this proposal when Judicial, SOS, and Jeremy Schupbach meet in October to review the proposed statute and the SOS's memo.

There was no report from the Elder Law Section or LPC.

5. **Bench Reports**

Sarah Golombeck gave an update from the bench on a protected proceeding she was involved in in Denver Probate Court.

6. **New Business**

There was no report on proposed CRCP Rule 17.

There was no report on the *Brookoff* case.

There was no report on the remote notarization and electronic wills subcommittee.

There was no report on the UTC Alternative Dispute Resolution provisions.

There was no report on the Cost/Compensation Act. This matter is on hold and can be taken off of the agenda.

There was no report on the collection of estates under C.R.S. § 15-12-703 versus a replevin action.

There was no report on the inclusion of trust settlements under C.R.S. §§ 15-12-1101, 1102. This issue is also being addressed in the proposed UTC/CTC.

7. **Adjournment**

The meeting was adjourned at 11:00 a.m.

Respectfully submitted,

Tim Bounds, Secretary



Timothy M. Swanson

Attorney

Tim's practice focuses primarily on commercial bankruptcy, creditors' rights, and commercial litigation. Tim brings creative problem solving to difficult insolvency scenarios with an emphasis on obtaining practical and cost driven results. Tim has been named a Rising Star in the areas of creditor/debtor law by the Super Lawyers publication Illinois, Colorado, and Kansas/Missouri.

Tim has extensive experience with Chapter 7 and 11 matters, drafting and arguing a multitude of motions, objections, appellate briefs, and other pleadings along with handling contested bankruptcy court proceedings and appellate proceedings. Tim pursues and negotiates a variety of collection, litigation and/or settlement strategies with each insolvency matter he handles. Tim has represented numerous participants in bankruptcy proceedings including secured creditors, trade creditors, landlords, tenants, debtors, creditors' committees, trustees, asset purchasers, equity holders, and various other interested parties.

Tim regularly assists lending clients in a variety of matters involving workouts, creditors' rights (foreclosure, guaranty, replevin etc.) and loan documentation. Tim serves as regional workout counsel to the trustee of a large loan portfolio. Additionally, Tim serves as national bankruptcy counsel to numerous commercial landlords and property owners. A significant portion of Tim's practice focuses on advising strategic asset purchasers of distressed assets. Tim has appeared on behalf of clients in distressed situations in Missouri, Illinois, Kansas, New York, Delaware, California, Wyoming, Colorado, and Wisconsin.

Outside the office, Tim can be found enjoying the outdoors in Colorado. Tim is an avid golfer and fan of all things athletic. Tim regularly competes in triathlons (sprint, olympic, half and full Ironman distance) and marathons. Additionally, Tim is easily found rooting on the Kansas Jayhawks and the Denver Broncos.

Representative bankruptcy experience

- *Arnold v. Arnold (In re Arnold)*, 2016 Bankr. LEXIS 794 (B.A.P. 10th Cir. Mar. 15, 2016). Successfully defended an appeal of an attorneys' fee award before the Tenth Circuit Bankruptcy Appellate Panel that affirmed all aspects of the Bankruptcy Court's order granting attorneys' fees based upon the Colorado Civil Theft Statute.
- *In re Midway Gold US Inc.* Represented purchaser of assets with respect to its strategic acquisition of gold mines and related assets in a complex § 363 sale.
- *In re Gas City, Ltd.* Represented secured mortgage lender in a \$300M Chapter 11 case, from motions to lift stay to navigation through completion of two complex §363 sales, including negotiation among secured parties, DIP lender and the debtor regarding sale proceeds, breakup fee allocation, sale objections, sale confirmation and sale proceeds allocation litigation.

Sections

Business
Trial

Areas of concentration

Bankruptcy
Commercial litigation

Education and credentials

Northwestern University, Master of
Laws in Taxation
University of Kansas, J.D.
University of Kansas, B.A.

Affiliations

American Bankruptcy Institute
American Bar Association,
Bankruptcy Committee, Young
Lawyers Division, Former Vice Chair
Chicago Bar Association
Colorado Bar Association
Bankruptcy Subsection, Co-Chair
Risk Management Association,
Emerging Credit Leaders (Rocky
Mountain Chapter), 2015-present
Turnaround Management Association
(Chicago Midwest Chapter)

Admitted

Colorado
Illinois
Kansas
Missouri

Recognitions

American Bankruptcy Institute
Medal of Excellence Winner

- *In re Dickinson Theatres, Inc.* Lead associate on a team of attorneys representing a Chapter 11 debtor that operated a chain of movie theatres. Drafted and argued all first day motions. Assisted with plan disclosure, plan solicitation, and subsequent confirmation. Assisted with the prosecution of the debtor's motion to sever and reject a single lease subject to a master lease agreement with landlord finance company.
- *In re Damon Pursell Construction Company.* Successfully assisted in the defense of multiple appeals to the 8th Circuit B.A.P. of a summary judgment order, entered in favor of a bank client, resolving a priority fight with a competing equipment lender.
- *In re JDS Hospitality, LLC.* Represented national hotel franchisor in protection of its trademark rights in the Chapter 11 bankruptcy case of franchisee.
- *In re Pagosa Partners II, Inc.* Represented secured lender with respect to all aspects of protecting its collateral in SARE case including opposing confirmation of Chapter 11 plan.
- *In re CAM Trucking, LLC.* Represented secured party with respect to its statutory lien rights in specific trucking assets of an operating trucking company as against the debtor's lender.
- *In re Peabody Energy Corporation.* Represented Native American tribe with respect to its rights as a creditor in the largest coal company bankruptcy ever filed.
- Defended numerous commercial parties in a variety of adversary proceedings including fraudulent transfer actions, preference actions, various avoidance actions, and other related proceedings: *In re Eastman Kodak Company*; *In re Lehman Brothers Holdings, Inc.*; *In re Lamar Construction Company*; *In re Eastern Livestock Co., LLC*; *In re American Title Services Company*; *In re CCI Funding, LLC.*
- Successfully prosecuted, negotiated, and resolved numerous cure objections on behalf of commercial landlords and other commercial counterparties along with related administrative expense claims in numerous large bankruptcy cases: *In re RadioShack Corporation*; *In re Emerald Oil Inc.*; *In re Hancock Fabrics, Inc.*; *In re Draw Another Circle, LLC*; *In re American Title Services Company*; *In re Novinda Corp.*; *In re Gas Compressor Consultants*; *In re Rural/Metro Corporation*; *In re Escalera Resources Co.*
- Representation of subordinated judgment creditor in connection with objecting to treatment of claim under plan of reorganization in a \$9M Chapter 11 case.
- Secured favorable settlement, on behalf of principal of a Chapter 7 debtor, of potential insider claims by Chapter 7 trustee.

Representative creditors' rights experience

- Represented a commercial real estate development company with its appointment as receiver for several multiple multi-function commercial properties including hotels and golf courses.
- Represented a receiver in connection with its successful sale - free and clear of liens, claims, and interests - of substantially all receivership assets over the objections of interested parties in the first sale of its kind under Colorado law.
- Pursued and negotiated a variety of collection strategies against a judgment debtor who owed a bank client in excess of \$4.5M while simultaneously pursuing a co-debtor in Chapter 11 for claims in excess of \$7.5M.
- Represented commercial landlord in successful prosecution of contested claims against tenant and guarantors of lease eventually securing a collection of 100 cents on the dollar of total judgment amount.
- Representation of numerous secured lenders in a variety of out-of-court workout strategies and judicial commercial foreclosure proceedings throughout Colorado, Illinois, Kansas and Missouri state courts.

Articles and presentations

- Speaker, with the Hon. Howard R. Tallman (Bankr. D. Colo.), at the Bankruptcy Case Law Update to the Colorado Bar Association sponsored by the Bankruptcy Subsection (Fall 2016).
- Speaker, with the Hon. Elizabeth B. Brown (Bankr. D. Colo.), at the Bankruptcy Case Law Update to the Colorado Bar Association sponsored by the Bankruptcy Subsection (Spring 2015).
- Bankruptcy & Estate Planning: A primer on fundamental bankruptcy principles and examination of selected intersections between estate planning and bankruptcy (1 hour long presentation to Colorado estate planning practitioners).
- Author of "*The Devil is in the Details*", an article published by the Business Section of the Colorado Bar Association, detailing the highly publicized issues relating to the release of security interests in the General Motors bankruptcy cases (Winter 2015).

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Star 2016 - 2017
Illinois Super Lawyer, Rising Star 2012
Kansas Super Lawyers, Rising Star 2013

