**ELECTRONIC WILLS SUBCOMMITTEE MEETING**

**Minutes of October 7, 2020 Meeting**

**PARTICIPANTS**

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| **By Phone:** |
| Pete Bullard |
| Hillary Hammond |
| Joe Hodges |
| Stan Kent |
| Michael Kirtland |
| Michael Stiff |
| Herb Tucker |
| Gordon Williams |

**MINUTES**

This meeting was held telephonically on October 7, 2020 at 12:30 p.m.

There will be not meeting on November 4, 2020.

* The E-Wills Committee discussed Frank Hill’s proposed suggestion that the example notarization form in Section 8 of the Colorado Uniform Electronic Wills Act (“CUEWA”) tracked the notarization that Colorado adopted under RULONA three years ago. See C.R.S. § 24-21-516 RULONA. (See example below).

**Signed**, sworn to (or affirmed), and acknowledged before me by (name of individual making statement), testator, and **signed** and sworn to (or affirmed) before me by (name of individual making statement) and (name of individual making statement), witnesses on (date) .

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature of notarial officer

Stamp

(Title of office)

My commission expires: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

* The E-Wills Committee discussed that there may need to be a conforming amendment to C.R.S. § 15-11-504 (Self-proved Will), which currently provides:

**Subscribed**, sworn to and acknowledged before me by \_\_\_\_\_\_\_\_\_\_\_\_\_\_, the testator and **subscribed** and sworn to before by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, this \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_.

The conforming amendment would remove the word “subscribed” and instead insert “signed” as referenced above.

* The E-Wills Committee discussed Letty’s presentation on September 18th to the Colorado Committee on Uniform State Laws (“CCUSL”). CCUSL agreed to carry the Colorado E-Wills Act as proposed by the Committee. We have been advised by Andy White that the CUEWA has gone to Legislative Drafting Committee. Andy also confirmed that he has forwarded the Summary and CUEWA to Legislative Policy Committee (LPC). The LPC will meet on November 10, 2020 for a vote on the CUEWA. Stan confirmed that there should not be a problem with LPC approving a uniform act.
* Stan advised that the Co-Chairs of this Committee can expect a draft Bill in approximately 30 days which can then be reviewed by our Committee. Stan also indicated that the draft Bill would go from the Colorado Uniform Law Commission sponsor to Chicago for review by the Uniform Law Commission with a redline of any Colorado revisions to the uniform act.
* At SRC, Andy indicated that there may a be a temporary adjournment and postponement of the Legislative Session until Spring. Once the Legislature meets, the CUEWA Bill will then go through committees, whereby two of our Committee members may need to testify. Everyone agreed that Letty did such an outstanding job on September 18th and given her historical involvement with remote notarization, she should testify in support of the CUEWA. Herb will also make himself available to testify if needed. Herb will discuss with Letty selection of other members of the E-Wills Committee who may be good candidates to testify in support of the Bill.
* The E-Wills Committee discussed the State of Utah passing the Uniform Electronic Wills Act (HB 6001) with no revisions to the uniform act. Utah is the first state to adopt the uniform act.
* Stan and Gordon discussed their conversation with Susie Walsh and Tierney Berry, who are Co-Chairs of the Uniform Law Commission Drafting Committee for E-Wills. They confirmed that it was the intent of the Uniform Law Commission Sub-Committee on E-Wills not to include the word “electronic” in Section 11 of the Act, but instead simply use the term “will”. Gordon thought the exclusion was deliberate to give the term a broader context and application.
* The E-Wills Committee looked at definitions and conforming amendments. Regarding the following definitions the E-Wills Committee agreed that:
  + Section 2(1) “Electronic”. This definition in the CUEWA is the same as the counterpart definitions in the earlier Acts and, therefore, no conforming amendment is necessary
  + Section 2(2) “Electronic Presence”. This definition in the CUEWA is unique and, therefore, no conforming amendment is necessary.
  + Section 2(3) “Electronic Will”. This definition in the CUEWA is unique and, therefore, no conforming amendment is necessary.
  + Section 2(4) “Record”. This definition in the CUEWA is the same as the counterpart definitions in the earlier Acts and, therefore, no conforming amendment is necessary.
  + Section 2 (5) “Sign”. This definition in the CUEWA is unique and, therefore, no conforming amendment is necessary.
  + Section 2 (6) “State”. This definition in the CUEWA is the same as the counterpart definitions in earlier Acts and, therefore, no conforming amendment is necessary.
  + Section 2 (7) “Will”. This definition in the CUEWA is unique and, therefore, no conforming amendment is necessary. Stan suggested a reference to RULONA C.R.S. § 24-21-514.5(2)(b)(II) (as a result of Senate Bill 20-096) which provides a notary public shall not use a remote notarization system to notarize (II) a will, codicil, document purporting to be a will or a codicil or any acknowledgement required under C.R.S. § 15-11-502 or 15-11-504.
  + Regarding conforming amendments, Gordon raised whether the E-Wills Committee should include a conforming amendment to C.R.S. § 15-11-501 regarding only persons over 18 would be permitted to execute an E-Will. This led to a discussion whether we need conforming amendments to C.R.S. § 15-11-502 (Execution), as well as C.R.S. § 15-11-504 (Self-proved Electronic Will) and C.R.S. § 15-11-507 (Revocation).
  + Mike raised a concern that if we start amending the Probate Code to include or exclude E-Wills, it might create ambiguity between the new act and existing probate law.
  + Mike pointed out that Section 3 of the uniform act has a provision that states that “An electronic will is a will for all purposes of the law of this state. The law of this state applicable to wills and principles of equity apply to an electronic will, except as modified by this act.” Because of this provision and the UEWA, it was decided by the Committee that modification of the above referenced Probate Code sections is unnecessary and, therefore, there should be no conforming amendments to those sections.