

New Lawyer's Subcommittee
Trust & Estates Section of the CBA
Agenda for April 19, 2018
CBA Offices – 9th Floor-Terrace Room

1. Welcome and Introductions
2. Review and Approval of Minutes from March 15, 2018 Meeting
3. Guest Speaker: Mark Masters will be guiding a discussion the mechanics of being an estate planner.
4. Announcements
5. Client Conundrums
6. Adjourn

On-going announcements/volunteer opportunities:

- Get an Ambassador to Super Thursday! Be paired with a senior attorney who will help you navigate Super Thursday and introduce you around. Email Lauren at lauren@dacunhalaw.com
- Write an article for the Colorado Lawyer or T&E Council Notes. Email Dave Kirch DKirch@dwkpc.net for ideas or to submit an article.
- Join the CBA's Legislative Policy Committee. Email Jeremy Schupbach jschupbach@cobar.org to join.

**New Lawyer's Subcommittee
Trust & Estates Section of the CBA
Minutes for March 15, 2018
CBA Offices – 9th Floor-Terrace Room**

1. Welcome and Introductions

Attendees:

- Lisa Willcox
- Lauren Da Cunha
- Dan McKenzie
- Molly
- Bette Heller
- Corina Gerety
- Gina Trevey
- Mark Masters
- Alison Leary
- Laurie
- Brad Larson
- Vanessa Johnston
- Jeff Verretta

On Phone:

- Dual Schneider
- Bob Herschter
- Erin Eastman

2. Review and Approval of Minutes from February 15, 2017 Meeting

3. Guest Speaker: Vanessa Johnston, End of Life Doula

New Options in End of Life Care

- Emotional support for people in end of life and their family
- Doula-Greek origins, used to mean slave—caregiver for family

I. What is a Doula?

- A. Caregivers during Life Milestones
- B. Birth Doula - concept introduced in 1970's
 - Nonmedical—emotional support; no medical training
 - Use of birth doulas up—positive results from use
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- C. Death Doula – concept came from hospice care
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- II. Death Positive Movement
 - A. EOL Doula
 - B. Advanced Medical Directives, green burials, etc.
 - C. Website: Orderofthegooddeath.com
 - D. Seven Stones cemetery: discoversevenstones.com
 - Make death less scary
 - Practically about what want to happen and telling people what want to happen-advanced directives
 - Environmentally friendly burials—advancing field
 - Community oriented funeral homes
 - From Here to Eternity by Caitlin Doughty (mortician)
 - Take some of the fear/anxiety away and think about what they want
 - Not everyone has to do traditional funeral and open viewing
 - 7 stones cemetery
 - Different shades of green burial—other options to explore
 - Inevitable human milestone—make more meaningful and less scary—is fear and denial best way to approach something that is unavoidable?
 - Vanessa thinks no—think about ahead of time and be prepared and know how you feel about it
 - Estate planning is important part of this—make sure family taken care of, feel good about that
- III. International End of Life Doula Association
 - A. INELDA.org
 - B. Online directory—can find people, not a ton out there yet
 - C. Doula approach
 - 1. Life Review
 - Conversation based—and can use software when communication difficult from disease
 - What has your life been about? Help towards making meaning
 - Deep, active listening—explore meaning through that
 - People will talk to someone who is active listener, especially if not related—and may have deep need to do that
 - 2. Vigil Planning
 - Vision of a good death—what does that mean to you?
 - What would make it less unpleasant?
 - Want to be in home, surrounded by love ones, pets nearby
 - Figure this out before can't say these wishes anymore
 - Don't realize have a choice—if don't have control of body, appreciate having control of environment
 - Bed by window, just certain people visit, aromatherapy
 - Active dying stage

- Couple of hours-12 days (timeframe)
- Who is allowed in room
- Make sure optimum for person dying
- Give respite for caregiver—take care of their needs, since can't do it 24/7
 - Team approach would be helpful for this aspect—hope to get to one day
- 3. Legacy Project
- Expressing a life and preserving the past
 - Physical object that can integrate?
 - Shift focus—while yes a loss, shift focus to life lived, and celebrate that
 - Visitors write memory during vigil
 - Favorite recipe for great cook
 - Or after pass away, make recipe together
 - Get together later to hike favorite hike
 - Etc.
- Hospice:
 - End of life palliative care beforehand—no cure/treatment; make comfortable and may go on for long time
 - in last 6 months of life, hospice care—5 person team with 20-25 patients, see once every 2 weeks
 - Doula sees one person for 1-2 hours every week
 - Spend time and find out wishes, find out what want in place
 - Supplement work of chaplain and social worker, a little more customized and personal
 - INELDA encourage volunteer and paid—doesn't want to become a wealthy person service—all deserve comfort in death
 - 11th hour—work with homeless people who may not have loved ones around them
- Empathy while still do work you need to do
 - Deep active listening
 - Focus and listen to them—without fear, without personal agenda and not letting own emotions in
 - Then turn to important work do as estate planner
 - Takes work—need to go back if get unfocused, and not valued in our culture
 - Find people in their struggle—if people have it all figured out, and told everyone—not as necessary maybe
 - Story about walking along side someone, not trying to convince/explain anything
 - See them, hear them, walk with them

IV. Who might benefit from an EOL Doula?

- A. Palliative or hospice care patients
- B. Family in need of respite care
- C. Anyone looking to create meaning at the end of life
 - As part of training, went through end of life review, and how want to be remembered—what are you doing now to live life in alignment with that?

V. Q & A

- When bring in end of life doula?
 - Not many want to do work until they want to
 - 6 months is good time, but maybe sooner
 - ALS patient—palliative care
 - Hired as assistant, and learned about ELD and offered service
 - Ended up on hospice 2 years later
 - 5; 2 years of death could bring in ELD
- When is it too late?
 - Can always be comforted
 - May not be able to full scope of work, but can talk about fears/sit with them, etc.
- Is this appropriate for children?
 - Life review—maybe could still do this
 - But if have terminal diagnosis, could benefit
- Pods/Tree burial—just a concept, not actually exist
 - But maybe?
 - Closest have—alkaline hydrolysis—like what nature does, but really sped up
 - Add chemicals that occur naturally in soil—and speed things up
 - Way to dispose of what's left—not very much left
 - Environmental impact of these different alternatives?
 - Still figuring it out
- Adult children of parent dying—might be ones coming to us
 - Still willing to meet with people who are hesitant to do this?
 - Yes—get sense of if would help—explain one on one can help sometimes
- Privately paid and volunteer with hospice
 - Prefer paid—word of mouth and no real structure for this
 - What is cost?
 - \$30/hour; some flexibility in that
 - How many hours? (average)
 - 4 hours, 2 days a week with ALS patient—but more caregiving there
 - 1 hour once a week with COPD patient—exhausting
 - Early stage Alzheimer's—2 hours once a week
 - Organizing and serving as memory—support for her
- Life Review—memorialize any of that?
 - More about the speaking?
 - Waiver—can record what they say—important to remember and don't want to be lost
 - Its both—act and talking and recording for future memorial
- Connection with someone—there with family members during early griefs—how does that connection help them?
 - Only walk full path once before since so new
 - Read memorial that wife wrote: Know story, give voice to words, not mine but close to it—she didn't have to be right in it in that moment because so emotional
- How assess quality of ELD considering?
 - Certification very lengthy through INELDA

- Surveys about service as finishing from family sent into organization—will be record of those
- What could we do better as lawyers?
 - Listening—pay attention to body language and dynamics in room
 - If seem anxious—be aware of this that might not say
 - Documents that could be improved?
 - Just to have them, made aware of what need/what options have; have in place ahead of time.
 - Advanced Medical Directive
 - Compassionate choices—new option for people, be aware of new laws
 - Bring that up?—so new, won't know how it will be interpreted—might put self in middle of litigation
- Should we be bringing up End of Life Doula as option that may want?
 - Why not? Worse can say is no
 - We need to get word out
- People have been serving in these roles, but becoming profession
 - Because communities and families changing
- Disposition of Last Remains—not exclusive, just suggested language in Orange Book/Statute
 - Most people don't want people to spend a lot of money on them, etc.
 - Funeral Celebrants—less than \$1000
- Work exclusively with family after death on legacy project?
 - She knows people better at that type of work than her
 - Her work is more for helping dying person—primarily serve them vs. family, because sometimes those wishes are at odds
 - Bereavement specialists
- Recording?
 - Don't do a lot of actual recording—listen and write notes later
 - Ask if ok with recording if going to do it
 - Legacy project if want to do video for later—for every birthday for example
- Can email with further questions: vanessajohnston@gmail.com

4. Announcements

- Estate Planning Retreat—save the date! June 7-9
 - Two topics that are done with us in mind—introduction to planning with retirement assets; top ten tricks for estate administration
 - Plenary sessions—2017 Tax Act Ted Atlas; Review of New Colorado Trust Code—probably passed by then, may not be effective yet
 - First night is party—get for price of admission, food station and open bar, DJ
- Ambassador and would like one—let Lauren know
 - Senior attorney to introduce you to other attorneys and can introduce you to other attorneys, suggest meetings to go to on Super Thursday
 - Can turn into formal/informal mentorship
- Writing Article for Colorado Lawyer?—can email Dave Kirsch if willing to write but don't have idea write now—more time than clients, get name out there, show have knowledge in area
 - T&E Council Notes too

- If have interest in being involved in legislation that affects our area
 - Jeremy Schupbach—legislative policy committee—can show ropes and

5. Client Conundrums

- Client that wants more flexibility in when treatment withdrawn
 - As attorney—we're not doctors and we
 - Getting involved in what treatment should be in document, good way to be ignored
 - MPOAs—doctor stop reading here—rest is commentary for agent
 - Values history questionnaire—not signed, witnessed, notarized—facilitate discussion—can't put it all down in static piece of paper
 - Not in document but in discussion have with agent
 - Often discourage Living Will because not often used
 - Clients have heard of—so need to know what it does and what it doesn't do
- Often clients don't discuss with agent—but need to give them tools on what principal would want to happen in those circumstances
 - Try to facilitate those conversations—tell clients to take time to have discussions, probably can't pay you to do so
- Phil Cruise—wrote book—what we want now may be different than what we want when have dementia, who we are may be different
 - Made to be disclosed to third parties—family need to know what wishes are
 - Need to educate our clients
- Bette—took living will from NY form
 - Has very general things in it
 - Don't know how will react when time comes
 - As long as you can make a valid decision, you make your own decisions
 - Only pops up if you are unable to do so
 - Older get, opinions change
 - Tell clients to talk to who naming in MPOA and have discussions and tell them what you are thinking
 - Stepping into shoes to tell them
 - Steer away from 5 Wishes—too specific
 - If have specific opinions—write down as wishes in letter that is attached, but not part of it
 - Letter of instructions—not tie down to what should/shouldn't pay for, but write in letter
 - Hard to imagine when young that will be happy with circumstances when older, but do adjust
- Doctors don't like super specific documents
 - The forms in hospital are what doctor needs—who makes decisions for you?
 - Don't like to interfere with doctor's medical decision
 - Not doctor making decisions—decide the threshold—then need to know who making decision, not making decisions for you
- New Orange Book Form
 - Adapt old one making changes because medical community used to seeing it, but usually not even implemented!

- Even doctors cannot predict what is going to be your terminable episode
 - Won't make determination that terminable because won't know—when imminent—2-3 days
 - Really need MPOA which has more flexibility, and that decision maker
- Elective Shares: when choose to use, and how work with plans in place
 - Vesting schedule—statutory minimum—up to 50% of augmented estate after 10 years of marriage
 - Composition of augmented estate
 - Gifts that richer spouse gave to poorer spouse; joint tenancy assets
 - Once you go through computation, might look really different than what think might be
 - If surviving spouse has assets—look at value of your business, because find out what you are worth too
 - Complicated to determine
 - Laurie Hunter—she should give presentation, she really understands it
 - Worksheet included in most of her lectures of how to determine if entitled to receive anything
 - Spouse can invade trust assets?
 - If irrevocable to third party during life, part of computation
 - Revocable living trust—ambulatory until death
 - Elect against the will—can elect against rev trust as well, Mark thinks
 - Public policy—not leave spouse destitute—statutory successor to dower and curtesy
 - Only spouse—and pretermitted children have some rights
 - Intestate statutes—get certain amounts based on if prior children, etc.
 - Not electing against will though
 - Explaining to children of first spouse to die—they don't have rights, and surviving spouse can spend it!
 - Make sure clients understand this—Dad or Mom don't have to leave anything to kids
- Subsequent marriages and working to solve elective share issue:
 - Execute postnuptial if haven't made one before marriage?
 - Reluctant to do it if didn't before marriage, Bette has found
 - Mark always brings it up—they don't always take him up, maybe 1/3 does
 - Document that brought it up
 - Can recommend set up trust for spouse and children, and protect children with third party trustee that can monitor what spouse doing...
- Use life insurance to make those specific gifts to previous children, etc. to avoid making specific gifts that might use up all the estate if spend all your money, etc.
 - Always ask for list of assets before start talking to them
 - Unless have that list, can't address their needs—need to know what dealing with and context

- Creative ideas—buy annuities, get money but have to wait—no trustee that have to deal with them, etc.
 - Think outside the box
 - Family business—one-two involved and others aren't
 - Life insurance to grow pot to make it more equal
 - Advancements—tap while alive, can put in some language—add back in the unpaid amount of loan and then divide equally from that; or say this advancement on that inheritance
 - Parent keep running list of what paid back and what isn't—need to explain that can only do what provide documentation for
 - If don't have this, that's when litigation can occur
- Study Session—call in number on CBA website
- If have suggestion for presenter/topic that would like to hear about, let Lauren know!
- If you have conundrums—network at Super Thursday and can email/call those people you meet and they will give their opinion—if they know you they will take your call!

6. Adjourn- 5:00 PM

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