

**CBA TRUST AND ESTATE SECTION  
STATUTORY REVISIONS COMMITTEE  
AGENDA**

**April 19, 2018**

- 1. Introductions**
- 2. Approval of March 15, 2018 Minutes**
- 3. Announcements**
- 4. SRC Approved Proposals**
  - a. Active Matters - Work to Finalize Required**
    - (i) Colorado Digital Preservation of Abandoned Estate Planning Documents Act (formerly Deposit of Original Documents) Subcommittee (Timothy Bounds, Co-Chair, and Peter W. Bullard, Co-Chair)**
    - (ii) Public Administrator Subcommittee (Melissa R. Schwartz, Chair)**
    - (iii) UTC Subcommittee (Dennis N. Whitmer, Chair)**
  - b. Inactive Matters Approved by SRC but Not Moving Forward for Various Reasons**

**None.**
- 5. Legislative Report – Jeremy Schupbach**
- 6. Unapproved Matters under Consideration by SRC - Reports from Subcommittees**
  - a. Uniform Directed Trust Act Subcommittee (Kevin Millard, Co-Chair, and Kelly Cooper, Co-Chair)**
  - b. Legislation Review Joint Subcommittee (Michael D. Holder, Chair)**
  - c. Advance Legislative Response Team (Spencer J. Crona, Chair)**

- d.     **ADR Legislation (C. Jean Stewart, Chair)**
- e.     **Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act**
- f.     **Uniform Fiduciary Income and Principal Act**
- 7.     **Inactive Matters**
  - a.     **Proposed Amendment to Comply with IRC 1.643(a)(3) (Eugene P. Zuspann, Chair)**
- 8.     **Report from Elder Law Section – Arlene Barringer/Mallory Hasbrook**
- 9.     **Report from Other Sections of the Bar**
- 10.    **New Matters**
  - a.     **Child Support in Probate – Patricia Mellen and Jaime Schuler**
- 11.    **Passed Proposals for Inclusion in Omnibus Bill or Stand Alone Legislation**
  - a.     **Bankruptcy/Inherited IRAs (approved in 2015-2016)**
  - b.     **Changes to the Uniform Power of Appointment Act (approved in 2015-2016)**
  - c.     **Disclosure of Fiduciary Fees, §§ 15-10-602 and 15-12-705, C.R.S. (approved in 2015-2016)**

**CBA TRUST AND ESTATE SECTION  
STATUTORY REVISIONS COMMITTEE  
MINUTES**

**March 15, 2018**

**1. Welcome and Introduction**

Chair Leia Urserly called the meeting to order at 1:38 p.m. Members present introduced themselves. Attending on the phone were Joe Hodges, Nora Roth and Michelle Mieras.

**2. Approval of Minutes**

The minutes of the February 2018 meeting were unanimously approved.

**3. Announcements**

Lauren da Cunha announced that the new Lawyers Group had a presentation scheduled today on end-of-life issues. Anyone interested should attend.

Kelly Cooper announced that nominations for Executive Council are being accepted and should be emailed to her by the end of the day.

Mike Holder announced that the next meeting for the Colorado Supreme Court Advisory Committee on the Rules of Probate Procedure is scheduled for June 27, 2018. He also acknowledged the passing of Stephen Hawking on March 14, 2018.

**4. SRC Approved Proposals**

**a. Colorado Digital Preservation of Abandoned Estate Planning Documents Act (formerly Deposit of Original Documents) Subcommittee – Pete Bullard and Tim Bounds (Co-Chairs)**

Co-Chair Pete Bullard reported that the proposed legislation is now entitled “Colorado Digital Preservation of Abandoned Estate Planning Documents Act.” He indicated the draft remains in a state of flux but that it could be brought to the Committee for a vote as early as April 2018.

**b. Public Administrator Subcommittee – (Melissa Schwartz – Chair)**

Melissa Schwartz reported that SB 165 continues to move forward without issue.

**c. UTC Subcommittee – (Darla Daniel, Co-Chair)**

Jeremy Schupbach report that SB 180 is out of the Senate and on its way to the House. There were two minor amendments so far but both were agreeable and not an issue. Kelly Cooper thanked everyone who had taken time to testify so far.

**5. Legislative Update – Jeremy Schupbach**

The Family Law Section continues to work on HB 1004 (concerning preservation of family with disabled parents). Title 15 will be included but its application will be limited to minor children.

The State of Colorado will have to identify private funds for the system and registration required by HB 1182 (concerning an advanced directive registry). If the bill passes, registration will still be optional.

HB 1261 and 1262 (concerning arbitration) contains mandatory provisions so we still need to monitor these bills.

SB 56 (concerning jurisdiction of county courts) is still in the works. The increase for filing threshold to \$35,000.00 would include attorney fees so it remains controversial for multiple sections.

Remote Notary continues to be an issue. It sounds like there will be issues in the House.

SB 165 (concerning Public Administrator) and SB 180 (concerning CTC) - see above.

**6. Unapproved Matters Under Consideration by SRC & Subcommittee Reports**

**a. Uniform Directed Trust Act – (Kelly Dickson Cooper and Kevin Millard, Co-Chairs)**

Kelly Cooper reported that the Subcommittee is starting to consider conforming changes. She anticipates the Subcommittee's work will be ready to present in the fall.

**b. Legislative Review Joint Subcommittee (Mike Holder – Chair)**

No report.

**c. Advance Legislative Response Team – (Spencer Crona, Chair)**

Spencer Crona further reported HB 1182 (concerning an advanced directive registry). The bill would require private funding for the registry. The Colorado Department of Public Health and Environment is supposed to promulgate rules regarding access to the database by "qualified individuals," which is supposed to be HIPAA compliant; at this point, attorney would not be included in that definition. They are hoping to be a

part of the conversation but the process is moving fast; the CBA Legislative Policy Committee will likely have to consider next week. Michael Kirkland indicated that is likely a good idea but the bill is poorly written. For example, it is not clear how revoked documents will be handled. The Committee unanimously voted to oppose unless amended.

**d. ADR Legislation – (Jean Stewart, Chair)**

Jean Stewart reported via email that the Subcommittee is working on draft provisions for presentation to the Orange Book Committee. Once that process is complete, the Subcommittee would consider what legislative effort(s) would appropriate to ensure that ADR provisions in documents are respected. The Committee expressed a desire to have the Subcommittee appear and provide additional information on goals, etc. Leia Ursery will contact Jean about this preference.

**e. Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act**

There is no official Subcommittee for on this matter but there is group working on behalf of the CBA to review the proposed Act. Specifically, they are considering what would be the required changes before meeting with the various stakeholders and there will likely be multiple meetings over the summer. The group has until November 2018 to return feedback to the Uniform Law Commission. The group currently meets on Super Thursday between 11:30 a.m. and 1:00 p.m. See Catherine Seal and Brooke Brestel for more information.

**7. Report from Elder Law Section – (Arlene Barringer/Mallory Hasbrook)**

Mallory Hasbrook indicated that HB 1182 (concerning an advanced directive registry) was the primary focus of today's conversation.

**8. Report from Other Sections**

There were no reports from other sections of the bar.

**9. New Matters**

Stan Kent reported that the Uniform Fiduciary Income and Principal Act would be promulgated in the fall. The draft is currently on its second reading. There are positive changes but we need a Subcommittee to review. At this time, the following expressed interested in participating in the review: Stan Kent, Russell Gamble, Georgine Kryda, Peggy Gardner, Walt Kelly and Jonathan Haskell.

Leia Ursery adjourned the meeting at 2:33 p.m.

Respectfully submitted,  
Leia G. Ursery

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## **Pat Mellen Law LLC**

[www.patmellenlaw.com](http://www.patmellenlaw.com)

### **Child Support in Probate Discussion Points**

**February 25, 2018**

1. Child support is calculated according to statute – with shared custody falling under Worksheet B per CRS 14-10-115(10)(b).
2. Worksheet B is based on assumptions of two living parents, and includes offsets for maintenance, custodial overnights and other costs paid by one parent or the other.
3. Absent specific language to the contrary, maintenance does NOT survive the death of the paying former spouse.

(2)(a) Unless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future maintenance is terminated upon the earlier of:

(I) The death of either party;

Colo. Rev. Stat. Ann. § 14-10-122

4. Child support does survive the death of a parent obligated to support a child:

(3) Unless otherwise agreed in writing or expressly provided in the decree, provisions for the support of a child are terminated by emancipation of the child **but not by the death of a parent obligated to support the child.** When a parent obligated to pay support dies, the amount of support may be modified, revoked, or commuted to a lump-sum payment, **to the extent just and appropriate in the circumstances.**

Colo. Rev. Stat. Ann. § 14-10-122

**(Issue – is this language sufficient to prevent double-dipping where probate and non-probate instruments already provide financial guarantees for the support of the child?)**

5. Both parents are obligated to support the child.

In light of the fact that both a custodial and noncustodial parent are obliged to support a minor child....

*Abrams v. Connolly*, 781 P.2d 651, 657 (Colo. 1989)

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6. Child support may be modified in response substantial and continuing change in circumstances.

... the provisions of any decree respecting child support may be modified only as to installments accruing subsequent to the filing of the motion for modification and only upon a showing of changed circumstances that are substantial and continuing or on the ground that the order does not contain a provision regarding medical support, such as insurance coverage, payment for medical insurance deductibles and copayments, or unreimbursed medical expenses.

Colo. Rev. Stat. Ann. § 14-10-122(1)(a)

7. The question becomes how to calculate the correct amount of support based on the difference in custody overnights and any other adjustments no longer paid by the deceased parent, such as insurance.

In the interest of assisting the court in determining an appropriate level of child support, the statutory scheme contains a schedule of basic child support obligations, § 14-10-115(10)(b), 6B C.R.S. (1987), which schedule constitutes “a rebuttable presumption for the establishment or modification of the amount of child support.” § 14-10-115(3)(a), 6B C.R.S. (1987).

*Abrams v. Connolly*, 781 P.2d 651, 655 (Colo. 1989)

**(Issue – Judges are resistant to recalculating child support because there is no direction as to how to impute income to a deceased parent in order to recalculate a revised Worksheet B?)**

8. Child support obligations do not have to be litigated in the dissolution case.

...the child's right to support can be litigated and resolved in an action separate and apart from a dissolution proceeding. See § 14-10-115(1), 6B C.R.S. (1987) (court authorized to order parents to pay reasonable child support in a proceeding for child support without regard to whether dissolution petition is filed); *Scheer v. District Court*, 147 Colo. 265, 363 P.2d 1059 (1961) (pendency of divorce action did not preclude proceeding for child support under Reciprocal Support Act, the court acknowledging that question of child support can be litigated separate and apart from divorce proceeding).

*Abrams v. Connolly*, 781 P.2d 651, 656 (Colo. 1989)

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9. Enforcement of child support payments is through the judgment process.

(c) In any action or proceeding in any court of this state in which child support, maintenance when combined with child support, or maintenance is ordered, a payment becomes a final money judgment, referred to in this section as a support judgment, when it is due and not paid. Such payment shall not be retroactively modified except pursuant to paragraph (a) of this subsection (1) and may be enforced as other judgments without further action by the court; except that an existing child support order with respect to child support payable by the obligor may be modified retroactively to the time that a mutually agreed upon change of physical custody occurs pursuant to subsection (5) of this section. A support judgment is entitled to full faith and credit and may be enforced in any court of this state or any other state.

In order to enforce a support judgment, the obligee shall file with the court that issued the order a verified entry of support judgment specifying the period of time that the support judgment covers and the total amount of the support judgment for that period. The obligee or the delegate child support enforcement unit shall not be required to wait fourteen days to execute on such support judgment. A verified entry of support judgment is not required to be signed by an attorney. A verified entry of support judgment may be used to enforce a support judgment for debt entered pursuant to section 14-14-104. The filing of a verified entry of support judgment shall revive all individual support judgments that have arisen during the period of time specified in the entry of support judgment and that have not been satisfied, pursuant to rule 54(h) of the Colorado rules of civil procedure, without the requirement of a separate motion, notice, or hearing. Notwithstanding the provisions of this paragraph (c), no court order for support judgment nor verified entry of support judgment shall be required in order for the county and state child support enforcement units to certify past-due amounts of child support to the internal revenue service or to the department of revenue for purposes of intercepting a federal or state tax refund or lottery winnings.

Colo. Rev. Stat. Ann. § 14-10-122

10. The “claim” process is routinely used to perfect the judgment as a debt for child support, both past due and future amounts. C.R.S. § 15-12-801 et. seq.

**(Issue – the judgment “amount” is the ordered child support payment, not the deceased parent’s contribution before Worksheet B adjustments, and what if it’s the non-paying parent who dies?)**



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11. Child support is a priority claim in the probate.

(g) Any child support obligations of the decedent that were due and unpaid at death in accordance with a valid court order or agreement of record in which the decedent was a party, and any future child support obligations of the decedent as determined by the court;

Colo. Rev. Stat. Ann. § 15-12-805

12. A claim based on child support past due at the parent's death would have a statute of limitations of one year. C.R.S. § 15-12-803(1)(a)(III).
13. A claim based on future child support that becomes due at the time of the parent's death would have a statute of limitations of four months. C.R.S. § 15-12-803(2)(b).
14. The Personal Representative has first right of review and refusal of any creditor claim, which would send the child support issue to litigation.

(1) The personal representative may mail a notice to any claimant stating that the claim has been disallowed. If the personal representative fails to mail notice to a claimant of action on his or her claim within sixty-three days after the time for original presentation of the claim has expired, the claim shall be deemed to be allowed. After any claim has been deemed to be allowed or disallowed, the personal representative may change the status of the allowance or disallowance of the claim by notice to the claimant; except that the personal representative may not change a disallowance of a claim after the time for the claimant to file a petition for allowance or to commence a proceeding on the claim has run and the claim has been barred. Every claim that is disallowed in whole or in part by the personal representative is barred so far as not allowed unless the claimant files a petition for allowance in the court or commences a proceeding against the personal representative not later than sixty-three days after the mailing of the notice of disallowance or partial allowance if the notice warns the claimant of the impending bar.

Colo. Rev. Stat. Ann. § 15-12-806 (West)

**(Issue – what happens to the child's welfare if there is no enforcement mechanism for child support during the pendency of a possibly denied claim against the estate.)**

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15. An option would be for the custodial adult to request the family allowance.

(1) In addition to the right to exempt property, the decedent's surviving spouse and **minor children who the decedent was obligated to support and children who were in fact being supported by the decedent** are entitled to a reasonable allowance in money out of the estate for their maintenance during the period of administration, which allowance may not continue for longer than one year if the estate is inadequate to discharge allowed claims. The allowance may be paid as a lump sum or in periodic installments. It is payable to the surviving spouse, if living, for the use of the surviving spouse and minor and dependent children; otherwise to the children, or persons having their care and custody. If a minor child or dependent child is not living with the surviving spouse, the allowance may be made partially to the child or his or her guardian or other person having the child's care and custody, and partially to the spouse, as their needs may appear. The family allowance is exempt from and has priority over all claims except claims for the costs and expenses of administration, and reasonable funeral and burial, interment, or cremation expenses, which shall be paid in the priority and manner set forth in section 15-12-805.

Colo. Rev. Stat. Ann. § 15-11-404 (West)

16. The family allowance also passes through the claim process controlled by the Personal Representative.

**(Issue – so the child is still left without any support while this claim process is litigated.)**

17. Challenges by the Personal Representative to payment of child support or the family allowance often are related to the use of the payment for the benefit of the child, which is addressed by the UDMA.

There is a further statutory presumption that the custodial parent will spend his or her “total child support obligation directly on the children.” § 14-10-115(14)(a), 6B C.R.S. (1987). A corollary of this latter presumption is the proposition, consistent with Colorado case law, that the custodial parent will utilize the noncustodial parent's support obligation in providing for the \*656 needs of a minor child. *See Brown v. Brown*, 183 Colo. 356, 516 P.2d 1129 (1973) (custodial mother entitled to child support payments only when children are actually living with her and supported by her). These provisions make clear that a child support order is calculated to serve the best interests of the child and not to create a windfall for a parent.

*Abrams v. Connolly*, 781 P.2d 651, 655–56 (Colo. 1989)

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18. A process exists within the UDMA to resolve challenges to the rebuttable presumption that the support is being spent for the benefit of the child.

(b) Upon request of the noncustodial parent, the court may order the custodial parent to submit an annual update of financial information using the approved standardized child support forms, as specified in subsection (4) of this section, including information on the actual expenses relating to the children of the marriage for whom support has been ordered. The court shall not order the custodial parent to update the financial information pursuant to this paragraph (b) in circumstances where the noncustodial parent has failed to exercise parenting time rights or when child support payments are in arrears or where there is documented evidence of domestic violence, child abuse, or a violation of a protection order on the part of the noncustodial parent. The court may order the noncustodial parent to pay the costs involved in preparing an update to the financial information. If the noncustodial parent claims, based upon the information in the updated form, that the custodial parent is not spending the child support for the benefit of the children, the court may refer the parties to a mediator to resolve the differences. If there are costs for such mediation, the court shall order that the party requesting the mediation pay such costs.

Colo. Rev. Stat. Ann. § 14-10-115

**(Issue – How to educate probate counsel and enforce support in the interim when PR's object to the payments.)**

19. The child is also entitled to receive the deceased parent's Social Security benefits. Benefits can only be received from one parent or the other. If the child already receives benefits because of a disabled parent you can choose the higher amount.