

**Meeting of Elder Law Section of the CBA
September 17, 2009**

Co-Chairs:	Marco Chayet	Denver	303-355-8500
	Catherine Seal	Colorado Springs	719-448-0734
Secretary:	Tom Rodriguez	Louisville	303-604-6030
Treasurer:	Tammy Conover	Denver	303-757-4342
Council Members:	Shari Caton	Denver	303-832-1600
	Christina Brigham	Denver	303-877-1949
	Richard Miskin	Englewood	303-228-2288
Liaison Coordinator:	John Campbell	Denver	303-290-7497
CBA Liaison:	Amy Sreenen	Denver	303-824-5311
Representative to CBA Board of Governors	John Campbell	Denver	303-290-7497
Uniform Trust Code Committee	Eric Solem	Englewood	303-761-4900
Medicaid Legislation Committee	John Campbell	Denver	303-290-7497

Acronym Key:

ELS = Elder Law Section

EC = Executive Council

T&E = Trust and Estates Section

SRC = Statutory Revisions Committee

DPC = Denver Probate Court

PoA = Power of Attorney

The Executive Council Meeting of the Colorado Bar Association Elder Law Section was called to order at 8:32 A.M.

Present: Chuck Connell, Christina Brigham, Marco Chayet, Catherine Seal, Rich Miskin, Michael Valdez, Shari Caton, Marcie McMinimee, Amy Sreenen, Tammy Conover, John Campbell, Frank Slaninger and Tom Rodriguez.

Email from Carl Glatstein – Carve time out October meeting to discuss DORA fiduciary regulation. Requested by Saul Larsen, Policy Analyst at DORA, who is preparing the Report that will go to DORA for sunrise review. The Report will recommend whether legislation is

required. Should ELS take a position on whether regulation of fiduciaries is a good idea? Have meeting at the October EC Meeting at 8:30 a.m. Michael Valdez will try to get some advance information about what DORA is looking for at this meeting.

4th at-large EC Council member nominations. By-law change to allow 4th at-large member of EC. Idea – Attorneys who are new to the practice of law. Young lawyers. Motion for Section – amend by-laws from 3 to 4 at-large EC members. 2-year term. 4th member criteria - have to be licensed to practice for 5 years or less. The position shall remain vacant until filled if no one meets criteria. Vote on nominations at October meeting once by-laws have been approved by Section today and then the CBA Board of Governors.

How elder law can take a more active role with SRC? Marcie McMinimnee now on T&E council, will discuss with them. Will discuss issue with T&E and SRC prior to October meeting.

Decanting statute – John Campbell sent out an email with concerns about new statute. Prepared from a tax planning perspective, not a Medicaid planning perspective. Lobby for language that puts public benefit concerns on equal footing with tax planning. John will appear at SRC on this issue which is on their agenda. John will present ELS' position. Approval of the statute might be on SRC's agenda for a vote today.

Hobbs opinion. 10th Circuit Court of Appeals. New Mexico. Involves a disability trust. Sole benefit rule and whether distributions not for the sole benefit of a beneficiary create ineligibility for Medicaid. Troubling decision. Eliminates avenue to bring suit under § 1983. Eric Solem will give a presentation on the Hobbs case at the next Colorado NAELA meeting. Hobbs decision posted on the website. Also, there will be a decision group about this case, and what to do about it, at the Elder Law Retreat.

Collection agencies specializing in decedent's estates. New problem. Will discuss at November meeting.

The Executive Council meeting ended at 9:05 A.M.

Call to Order and call for review and approval of the August Minutes

The meeting was called to order by Marco Chayet at 9:13 A.M.

Introductions followed, and the sign-in sheet was circulated. Those attending in person or by phone were:

Michael Valdez	Tom Rodriguez
Christina Brigham	Tammy Conover
Marco Chayet	Frank Baysore
Chuck Connell	Frank Slaninger
Eric Solem	Dave Bernhart

Dirk Costin	Brandon Fields
Tamera Waltemath	Crispin Sargent
Anne Grasee	Rose Zapor
Keira Rawlings	John Campbell
Marcie McMinimee	Catherine Silburn
Kristine Callahan	Shari Caton
Ayodele Labode	Martha Ridgway
Carl Glatstein	W. Eric Kuhn
Spencer Crona	Sarah Golombek
Jay Fox	Amy Sreenen
Michele Luwonn	Marilyn Henning
Richard Mishkin	Michael Kirtland
Roseann Murray	Catherine Seal
Sarah Golombek	Thomas Linn
Pamela Dombrowski-Wilson	Steven Strandberg
Melissa Sugar	Dennis Valentine

2. **Treasurer's Report** – Tammy Conover – The Section has \$10,795. Have money to spend on the Retreat. We need to determine a dollar amount. Retreat has a lot of sponsors. Need more attendees.

3. **Old Business**

- a. Committee Reports (Chairperson of the committee may report any current matters.) Our current committees are:
- i. Civic and Community Affairs: Carl Glatstein – Passed
 - ii. CLE and Publications Committee: Jennifer Gormley – Send any ideas for CLEs or articles. - Passed
 - iii. ADR: Rose Zapor/Martha Ridgway – Joint group meeting today. Preparing ADR vision statement today. Next month – presenting at the ELS CLE on the use of ADR in elder law cases. October 30th – third annual ADR conference. DPC – pilot project – promoting elder mediation.
 - iv. Medicaid Legislation: John Campbell – See notes on Legislative affairs - below
 - v. Probate Compensation and Expense Recovery Committee: Marcie McMinimee – Statute has been mostly completed. Meeting today at 11:00 a.m. to make any final changes/refinements. Would like

to get statute in front of ELS. Plan to get to legislature at upcoming session. Today committee is looking at the necessity for revoking old statutes. C.R.S. § 15-14-417 will get repealed (except for subpart (5)) and other decedent estate and trust statutes. Consolidate all compensation issues into one area.

- vi. Winter Retreat: Susie Germany/Tammy Conover/Tom Rodriguez – Elder law retreat. Lots of sponsors at this point. Encourage full firm participation. Do not have to be a lawyer to go.
- vii. Creditors Claims in Conservatorships: Marcie McMinimee – Start as a virtual committee. Table until fee statute resolved.
- viii. Powers of Attorney Abuse: Tom Rodriguez – Discussed general outlines of expected efforts over coming year. Discussing amendments to new PoA act. Setting a threshold for co-agents to be involved in large transactions. Notification to agents of duties and responsibilities in form - required for financial institutions to accept PoA.
- ix. Uniform Parentage Act: Rose Zapor. NEW – Not discussed.
- x. Professional Fiduciary Regulation: Carl Glatstein – NEW – Aside from October meeting with Saul Larsen; not discussed.
- xi. Legislative affairs – Michael Valdez – Scheduled a meeting with Uniform Commissioners on October 6 at the Capitol. Meeting on the front end of these legislative issues so that ELS and other sections can have input from the outset....Meeting at Capitol on hospice and palliative care. Mike Kirkland presented and did a great job....Rep. Beth McCann interested in preventing people with disabilities from going over federal poverty guidelines by having their trusts and thus becoming ineligible for Medicaid. Look at amending 15-14-412.7. Rep. McCann holding meetings to discuss. ELS should send someone to the meeting. Comments that this new bill appears to be a budget bill that does not help disabled people. Email Michael and Marco if available to meet with Rep. McCann.....Trying to convince the Governor to avoid \$7.1 million in cuts to Aid to Needy and Disabled Program. Asking CBA to advocate to keep these funds intact. Disability Law Section reforming to advocate about this issue.

b. Liaison Reports –

- i. Trust and Estate Council/Statutory Revisions Committee Liaison: Marcie McMinimee – First meeting last month.
 - ii. AARP Liaison: Elizabeth Tulloch and Dennis Valentine – Passed.
 - iii. Department of Health Care Policy and Finance Liaison: John Campbell – Working on agenda for trying to seek amendment for federal law regarding pooled and income trusts. Removing doubt whether you can funds these trusts without a transfer penalty. Discuss with Charlie Sabbitino at the Retreat. Might want to add to proposed amendment something that preserves 1983 remedy despite recent Hobbs case.
 - iv. CBA Legislative Policy Committee Liaison: John Campbell – See notes from Michael Valdez, above
 - v. NAELA Colorado – Marcie O’Brien/Catherine Seal – Shari Caton reported that there was a brief meeting on Tuesday. Paul Mitchell discussed an issue involving a petition for single transaction could be used to gift to an agent. Judge Stewart issued a blanket ruling that she would not allow gifting under these circumstances. Agent wanted to get the court’s blessing for self-dealing considerations.
 - vi. Denver Triad: Rocky Williams/Rose Zapor – Oct 1 and 9 – upcoming Senior Resource Days.
- c. Other old business
 - i. Databank ready to receive orders. Four submitted. Email to Shari Caton at caton@poskuscatonklein.com. Website still under construction.
 - ii. Joint Program with DBA inter-professional issue. Stalled.
 - iii. Alzheimer’s memory walk – September 19th - Team name - CBA Elder Law Section. Info to signup is posted on our website. Not limited to Section members or lawyers. **We need people to sign up. Go online. Give donation if cannot attend.**

4. New Business and Announcements

- a. Hot Topics Discussion -
 - i. Hobbs ruling (posted on website, discussed in EC notes) – Complicated matter involving a disability trust. New Mexico court

ordered distributions out of the trust which were considered not for the sole benefit of the child. Child's mother being paid \$2200/moth to take care of child. Filed an action in state court to review. Stay. Went to federal court. Trust not being administered for sole benefit of the child. Countable resource. Child kicked off Medicaid. Ruling at 10th circuit – federal statute not binding on State. Court discussed Keith case. Colorado case litigated by Bernie Poskus. 10th Circuit said that the state does not need to have any trust at all. Believed to be a poorly analyzed case. Going to file a petition for rehearing en banc, but limited chances for success. Creates a conflict in the Circuits. Penn case that differs. Implications for sole benefit issues. State of Colorado wrote the Amicus brief. Will probably see a new attack on disability trusts in Colorado based on this ruling.

- ii. Michele Luwonn. Advance directives – HR 3200 § 1233 - Payments to physicians for counseling on en of life planning. Good proposal.
- iii. Proposal to change number of at-large members from 3 to 4. New position – 2-year term. Must be in practice for 5-years or less. Motion to amend by-laws to allow. Motion passed.
- iv. Statutes that need to be brought to the attention of ELS – Decanting statute. John Campbell reports statute affects trust law. Allow an existing trust the ability to distribute a beneficiary's share into another trust rather than to the beneficiary directly. New statutes to permit decanting. Idea is attractive from a Medicaid planning perspective. Concern in proposed statute. Statutory bias toward tax planning. Provision that would prohibit decanting from one trust to another unless the new trust had a right of right of withdrawal. Medicaid would treat this as an available resource. John will attend SRC today to voice concerns over this issue an to propose amendments to the statute.
- v. Sandy Franklin – Probate Coordinator for the State. Try to help probate judges and staff to be consistent. Creating a monitoring program. Hiring two people to monitor and audit conservatorship reports. Creating a risk factor to highlight cases that should require more monitoring.
- vi. DORA sunrise review. (See EC Notes) Saul Larson will come to EC meeting at 8:30. Meeting for lawyer-members of the ELS. Eventually, ELS will want to take a position on this issue. Sandy Franklin met with Mr. Larsen. Report will be published Nov 17.

Two issues: 1-Should there be a certification for professional fiduciaries to work in the community? 2-Should there be a certification of their fees? Citizen application to DORA triggered this investigation.

- b. Colorado Lawyer articles - keep them coming. Contact John Campbell, Jennifer Gormley, or the Co-Chairs with any ideas.
- c. CLEs and Programs
Topics and Speakers: Please continue to let the Co-Chairs know your ideas for possible speakers and topics.

Upcoming programs include: (Forward any to Tom, Marco or Cate)

- Oct 1-3 Elder Law Section's Elder Law Retreat (CBA – in Breckenridge)
- Oct 27 Estate administration – For Paralegals (IPE – Denver)
- Oct 30 Third-annual ADR conference

The Section Meeting ended at 10:10 A.M.

The CLE portion of the meeting began shortly thereafter. The speaker was Lorin Chevlier and the topic was Colorado's New Home Care Licensure Regulations. Materials are available on the Section's website.