

**Meeting of Elder Law Section of the CBA
October 15, 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 Mishkin	Englewood	303-228-2288
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

Frank Slaninger Honorary 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 8:10 A.M.

Fourth at-large EC member voting today. One of the nominees asked if there would be voting by email. By-laws say voting by mail or in person. Interpret word "mail" to include email. Motion to allow voting by email – passed. Allow until the end of next week, Friday 5:00 p.m. Email blast will go out tomorrow. No one supported voting by proxy voting.

Young Lawyers Division happy hour has a meeting on 11/6 starting at 4:30 where all sections will be present. All EC members should try to be there.

Michael Valdez – meeting on Medicaid income trust. Determined more of an educational issue rather than legal issue. Eric Solem suggested that skimming the money off on a quarterly basis might be a violating federal statute. Working on education programs. Will get together in early November to discuss putting together a video. Decided to form a subcommittee to start working on the educational video. Sheet for subcommittee will be passed around at ELS meeting - Income trust fraud prevention committee.

Marcie McMinimee spoke with T&E Council as discussed at last meeting. T&E and ELS are now on the same page about those issues.

Open up communication on a more official level with T&E. Marco met with Steve Brainerd to discuss. Proposed developing professional or aspiration standard for members of T&E and ELS in the positions of leadership.

Marcie M. attended a recent Adult Protection Services (APS) meeting in Denver. Discussing the budget cuts in APS. No cuts for child protective services, but major cuts in protection of elder protection. Equitable? APS not at the table in budget cut discussions. Should we do anything? Denver City Council is the entity making decisions. Michael mentioned that at the state level, the CBA Disability Section concerned about the cuts to AND program.

The Executive Council meeting ended at 8:32 A.M.

Heard from Saul Larsen from DORA.

Lawyer-only meeting about professional fiduciary regulation issues.

Saul is conducting a Sunrise Review for DORA. Process - DORA only has 120 days to do review and is guided by statutory criteria. First, is it necessary to protect the public? Second, is competency compromised? Third, is cost worthwhile?

This Review started with a family member serving as trustee of a family trust. Problems led to complaint by beneficiary.

Saul's report is a recommendation, not a mandate to the legislature. Regardless of recommendation, legislature could still run a bill. Report will be out 11/20/09 and will be good for two legislative sessions. Sunrise Review is a prerequisite to run a bill.

Saul has not found a lot of competency problems with professional fiduciaries. He's looking at a lot of fraud issues. What can be done to mitigate the fraud issues? One of the biggest concerns is fees. Ideas to address fiduciary fees: caps on fees, develop guideline for fees, percentage cap based on value of estate, etc.

It was raised whether we need to educate judges about managing professional fiduciaries. It was proposed that utilizing bonds more to solve the problem in better ways than trying to address fees through new guidelines.

Proposal only looks at professional fiduciaries, not family members serving as fiduciaries, but could include anyone seeking compensation as fiduciaries.

Contact Saul Larson if would like to discuss this issue with him or ask questions.

Saul.larsen@dora.state.co.us.

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

The meeting was called to order by Marco Chayet at 9:05 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	Donald Alspaugh
Marco Chayet	Frank Baysore
Chuck Connell	John Campbell
Shari Caton	Dave Bernhart
Dirk Costin	Eric Kuhn
Susie Germany	Cody Christian
Wayne Stewart	Rose Zapor
Elizabeth Tulloch	Roseann Murray
Marcie McMinimee	Jeffrey Lamb
Mary Catherine Rabbitt	Barbara Hahn
Ayodele Labode	Michael Kirtland
Carl Glatstein	James Evans
Dennis Valentine	Anne-Marie Schwarz
John Holt	Amy Sreenen
David Steinhoff	Claire Dineen
Richard Mishkin	Kirsten Wander
Masayo Quick	Catherine Seal
Sarah Golombek	Arthur Partridge
Carl Stevens	Rhonda Crossen
Anne Grasee	Bart Cox
Crispin Sargent	Ellen Aires- Trujillo
Mark Kiken	Debbie Reinberg
Karen Buchanan	John Rymers
Arlene Barringer	Kristine Callahan

The Section was honored by the attendance of President of CBA, Dave Johnson to provide a state of the bar address.

Dave Johnson has been getting around the state to regional bar associations and other CBA Sections.

Economy has been number one topic. People tend to not seek out the legal advice they need and lawyers feel it in their practices.

CBA's goal is for the bad economy to have no impact on the CBA's services to CBA members.

CBA developed economic task force focused on helping its members during these tough times. Started with a survey to see what was needed. Responses: Good affordable CLEs, helping new lawyers get by and find jobs. Found that established lawyers in some fields doing well. However, less established attorneys and attorneys in real estate or transactional areas struggling.

Good CLE programs developed recently to address these problems and allow lawyers to retool in different practice areas at inexpensive prices.

CBA has spent \$80,000 so far on subsidizing these efforts and has up to another \$180,000 devotes.

CBA offers dues assistances for its members. If have troubles, can contact CBA, which will offer reductions or payment plans. CBA have had about 200 requests so far.

\$17,000+ attorney membership range for the CBA currently. Lawyers see the benefit of belonging to state, local and specialty bar associations.

CBA budget was 3% cut, but did not cut staff or salaries. CBA cut down on staff attendance at programs. Currently, CBA on target to make budget. Have a comfortable reserve that will keep them from raising dues for the next few years.

Other than CBA members, second more important resource is the CBA staff. Take advantage of the staff. Can get help with Casemaker, etc. Membership guide for CBA, has all the staff listed.

As opposed to other state bars, CBA membership is not required for attorney registration. CBA does not have to deal with disciplinary issues, but CBA gets to take political positions. CBA is considered a cutting edge bar nationwide.

Legislative policy committee of CBA. Michael Valdez guides through maze of legislative sessions. CBA asked to decide whether the CBA supports, opposes or is neutral on legislation. Primary goal in CBA deciding to take a position on proposed legislation: will the proposed legislation address the practice of law, administration of justice and/or impact on CBA members. Upcoming session: national uniform law commissioners passed a number of new laws that will be coming, including Uniform Collaborative Law Act, Uniform Real Property Transfer Act,

Uniform Business Organizations Act. Revisions to other uniform laws including modifications to Uniform Probate Code and law on disclaimers.

Budget issues will dominate judicial districts and will impact these districts. How do we give feedback to judges? How do we give constructive feedback to magistrates? Pro bono work is critical for the justice system at this time.

Lifblood of CBA is the sections and committees.

CBA has a program for family domestic violence issues including its impacts the elderly. Kath Shane is contact at CBA.

CBA Lawyers helping Lawyers with stress management, mental health problems, addiction problems. It is confidential and free. John Holt is your resource for this service.

2. **Treasurer's Report** – Tammy Conover – The Section has \$10,920.33. Does not include \$3,000 outstanding checks to Memory Walk and for Elder Law Retreat.
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.
 - iii. ADR: Martha Ridgway – Joint meeting coming up. Pilot mediation project with DPC.
 - iv. Medicaid Legislation: John Campbell – Meeting at Retreat re Hobbs. Discussing seeking amendments to federal laws.
 - v. Probate Compensation and Expense Recovery Committee: Marcie McMinimee – New statute going to SRC today.
 - vi. Winter Retreat: Susie Germany/Tammy Conover/Tom Rodriguez – Retreat was a huge success. In spring we will reform committee to begin working on next year's Retreat.
 - vii. Creditors Claims in Conservatorships: Marcie McMinimee – passed.

- viii. Powers of Attorney Abuse: Tom Rodriguez – Working on acknowledgement form for bank’s to provide agents to use a PoA at the particular bank. Developing form now. Goal, a form that will be useful to criminally (and civilly) prosecute rogue agents.
 - ix. Professional Fiduciary Regulation: Carl Glatstein – NEW – passed.
 - x. Uniform Beneficiary Deeds Statute Committee: Carl Stevens/Dave Steinhoff – passed.
 - xi. Income trust fraud prevention committee: NEW
- b. Liaison Reports –
- i. Trust and Estate Council: Marcie McMinimee – Discussed Orange Book Committee – Working on a new statutory PoA form. Rules & Forms Committee working on a simplified Conservator’s Report – will need court approval to use.
 - ii. Statutory Revisions Committee Liaison: Marcie McMinimee – Fee statute passed. There will be some minor amendments and clean up of other related statutes. One amendment was to add “the terms of the governing instrument” as one of the factors in considering reasonableness, so for instance if instrument says the PR can charge the hourly rate they charge in the usual or regular profession. Beneficiary designation agreements – Beth Bryant met with the sponsor and suggested revisions will be made this month. Uniform Disclaimer of Property Interest – Real estate is looking at it; there will be changes to allow unequal joint tenancies.
 - iii. Legislative issues – Michael Valdez – 1) Carl Stevens – Transfer on death re beneficiary deeds. Uniform law commissioners pushing. We may want to oppose. 2) Advance medical directives. Mike Kirtland. Process of drafting the bill based on our recommendations. 3) Rep McCann – legislation to prevent people from going over federal poverty guidelines. Signup sheet passed around to work on making a video to assist on creation of income trust
 - iv. AARP Liaison: Elizabeth Tulloch and Dennis Valentine – Passed.
 - v. Department of Health Care Policy and Finance Liaison: John Campbell – Dept is changing the screening tool.

- vi. CBA Legislative Policy Committee Liaison: John Campbell – Decanting statute. Spoke with T&E about concerns we raised last month. T&E is not inclined to make changes.
 - vii. NAELA Colorado – Marcie O’Brien/Catherine Seal – Sponsored keynote speaker at Retreat, Charles Sabbitino, head of NAELA.
 - viii. Denver Triad: Rocky Williams/Rose Zapor – Co-sponsoring event with Better Business Bureau.
- 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. New form – Cate Seal has proposed Sandy Franklin – Request for review of fiduciaries contact under power of attorney.

4. **New Business and Announcements**

- a. Hot Topics Discussion -
- i. Ballots on new EC position. See EC notes for more detail.
 - ii. Young Lawyers Division - happy hour on November 6. Sections to attend.
 - iii. Dept. letter – duration of one year – directive – not automatically consider use of adaptive equipment to be a qualifying item.
 - iv. Address by Robin Rosenfeld, Chair of ADR Section of CBA. Come to Statewide ADR conference.
- 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 27 Estate administration – For Paralegals (IPE – Denver)

Oct 30 Third-annual ADR conference

Dec 11 Annual Trust and Estate Law Update (CBA)

The minutes from the September meeting were approved.

The Section Meeting ended at 10:08 A.M.

The CLE portion of the meeting began shortly thereafter. The speakers were Michael Kirtland, Debbie Reinberg and John Rymers and the topic was Intergenerational Conflict Management. Materials are available on the Section's website.