

**Meeting of Elder Law Section of the CBA
April 16, 2008**

Co-Chairs:	Susie Germany	Denver	303-454-3711
	Marco Chayet	Denver	303-355-8500
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
Liaison Coordinator:	John Campbell	Denver	303-290-7497
CBA Liaison:	Erica Driver	Denver	303-860-1115
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

The Executive Council Meeting of the Colorado Bar Association Elder Law Section was called to order at 8:16 A.M. Miscellaneous matters were discussed.

Confusion on dates for Winter Elder Law Retreat. It will be the first weekend in October at a different location – now in Breckenridge at the Great Divide Lodge.

Legislation updates from Michael Valdez:

- SB 09-111 - Notary Public Bill. In great shape. Bad stuff out of Bill.
- HB 09-1198 – Bill signing ceremony last Thursday, April 9, 2009.
- HB 09-1287 – Uniform Probate Code updates. (UPC 2.5) Will need to form study group next year.
- HB 09-1286 – Uniform Parentage Act – Will need to start study group over the summer. Study group will need to be across various Sections of the CBA, including Elder Law.
- HB 09-1191 – Ahlborne – Moving forward despite our comments that this is a non-fix.
- Legislature may have special session to address all the pending bills, particularly state budget issues, which has been the primary focus lately.

- HB 09-1334 – Ted Towe – District Attorneys Counsel. Addresses recent Colorado Supreme Court decision Roberts case, which District Attorneys believe was wrongly decided. New Bill tries to fix the issues with bringing aggregate theft charges. Michael will ask Ted Towe for a memo explaining Roberts and the new Bill. Questions were raised about how this impacts elder law? Working with DAs on prosecuting elder abuse and financial exploitation cases, so supporting this Bill might be worthwhile. Tabled until we get Towe’s memo.

John Campbell mentioned the memo from CMS on pooled trust. It is still out there. What will HCPF do about this? Eric Solem and Rita Blackwood met with Governor’s office this week to discussed. HCPF chose not attend meeting.

Tammy mentioned issue with Medicaid. If provision in a trust can be terminated for any reason, Medicaid views it as an available asset. In Tammy’s case, daughter was a beneficiary of a irrevocable trust and also POA for dad applying for Medicaid. Medicaid was denied because the trust was considered an available asset for dad on a theory that daughter (dad’s POA) could access the trust for dad.

New Uniform Power of Attorney Act. (UPPOA) – John DeBryan proposed luncheon with Business Section, Real Estate, Trust & Estates and Elder Law to discuss impact of new Act.

The Executive Council meeting ended at 8:45 A.M.

Call to Order and call for review and approval of the March 19, 2009 Minutes

The meeting was called to order by Susie Germany at 9:03 A.M.

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

Michael Valdez	Dennis Valentine
Christina Brigham	Tammy Conover
Marco Chayet	Frank Baysore
Chuck Connell	Marcie Carroll
Anne Grasee	Dave Bernhart
Dirk Costin	Tom Rodriguez
Susie Germany	Mary Catherine Rabbitt
Rebecca Shandrlick	Rose Zapor
Elizabeth Tulloch	Justin Dituri
Marcie	John Rymers
McMinimee	
Jerome Reinan	Tamera Waltemath
Cripin Sargent	Rachel Ellis
John Rymers	Debbie Reinberg
Rocky Williams	John Campbell

Eileen Muench	Erica Driver	
Michelle Luwonn	Dolores	Martinez
	Hernandez	
Carl Stevens	Brandon Fields	
Jeffrey Lamb	Catherine Seal	
Lincoln Anderson	Amy Sreenen	
Eric Kuhn	Jordana Griff	
Todd Kastetter	Eric Kuhn	

The minutes from the March 19, 2009 meeting were approved.

2. **Treasurer's Report** – Tammy Conover – The Section has \$7,371.06. \$250 for Meals on Wheels outstanding. CO NAELA approved \$250 matching Section for Meals on Wheels donation.
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 – Senior Law Day Scheduled for June 27th at the Marriott Renaissance in Stapleton. Firming up keynote speaker. AG's office has been asked to speak about consumer theft and impact on Seniors.
 - ii. CLE and Publications Committee: Jennifer Gormley – Send any ideas. Guardianship CLE Basics coming up soon.
 - iii. ADR: Rose Zapor – Brochure approved by ADR group and now getting it printed. Martha Ridgway on NPR in Boulder talking about elder mediation. NPR Morning Edition – national segment this last month. Judge Stewart will pass out new brochure. John Rymers and Rose did a presentation to the court. Next month is elder law month and mediation month.
 - iv. Medicaid Legislation: John Campbell – Back on. Proactive role. Just getting started. Meeting at 1:00 today in Terrace Room. Request through Rep. Acree. Can we set up a set of separate medical assistance benefits? Incentives that would allow people to create more assets and still qualify for Medicaid, and, in return, have a higher co-pay for Medicaid services. May need to lobby state congresspersons and national NAELA. Separate transfer penalty for transfers into a D(4)(a) D(4)(b) or D(4)(c) trusts.

- v. Probate Compensation and Expense Recovery Committee: Marco Chayet/Marcie McMinimee – New draft statute circulated. Recent changes on process and procedure. Which rules are going to be changed in protective proceedings? Refined process in new statute. First determination about order entered - if someone thinks that they helped obtain that order benefited an estate, they must submit request for fees within 15 days. If pass that threshold, then reasonableness of fees considered. Further tweaked and discussed factors in determining reasonableness of fees. New factor proposed regarding the life expectancy and needs of the respondent. Concerns expressed regarding who has standing to bring this issue. Could an heir of the estate of a protected person object to fees on the basis of expectancy from protected person's estate?
- vi. Winter Retreat: Susie Germany – Still in Vail on first weekend. Meeting today at 11:00.
- vii. Creditors Claims in Conservatorships: Marcie McMinimee – Still trying to find a time for a meeting. Marcie will schedule a virtual meeting for people to attend by phone. May take over 11:00 time once fees committee is finished.
- viii. Powers of Attorney Abuse: Tom Rodriguez – On the verge of having a new “So now you are an agent” brochure. Mentions requirements under new UPPOA. Drafted by Cate Seal. Were trying to coordinate a ceremonial signing of HB-1998 (even though already signed by Ritter). Two tracks: 1) Best practices/education; and 2) Legislature. The latter is moving slowly.
- ix. Memory Walk Committee – Michelle Luwonn – Contact Michelle if interested in joining this new committee.

b. Liaison Reports –

- i. Trust and Estate Council/Statutory Revisions Committee Liaison: Marcie McMinimee – Passed.
- ii. AARP Liaison: Elizabeth Tulloch and Dennis Valentine – Nothing new that directly integrates with Section.
- iii. Department of Health Care Policy and Finance Liaison: John Campbell – See above under committee reports.

- iv. CBA Legislative Policy Committee Liaison: John Campbell – Focused on state budget right now.
 - v. NAELA Colorado – Marcie O’Brien/Cate Seal – Quarterly meetings by phone planned. Marcie compiled an email list. Contact Marcie if interested.
 - vi. Denver TRIAD – May 8th Alzheimer’s symposium. June 8th Salute to Seniors.
- c. Other old business
- i. Databank ready to receive orders. Four submitted and Tom needs to get on the website. Email others to.
 - ii. Legislative update – Michael Valdez – See EC notes. Also, HB 09-1260 – Beneficiary designations. HB09-1191 – Alborne – Non-fix for Alborne. Will probably drive litigation. Lots on issues with state budget taking precedence in the legislature.
 - iii. Professional fiduciary regulation – DORA not backing down on charter requirement. DORA wants to lump professional fiduciaries into the larger group and not willing at this point to carve out exceptions for solo fiduciaries. We will need to form a study group/ new committee on this issue.

4. **New Business and Announcements**

- a. Hot Topics Discussion -
 - i. **At the December 2008 Section meeting, it was agreed that the Section would take an active role in supporting the Alzheimer’s Association Memory Walk. The 2009 walk is to be held September 19th. Packets, including information templates for you to send to your clients, referral sources, associates and friends, were provided at the December meeting. If you would like to participate in this initiative and request a Packet or you would like further information on Memory Walk, please contact DeAnn Garrison, Alzheimer’s Association, 303-813-1669,**
 - ii. NCCUSAL – draft statute for Colorado to authorize advance directives. A lot of emotion and agenda brought to the issue.

Uniform law commission is starting a study committee. Cate Seal has been appointed by ABA as advisor to committee.

- iii. Training on April 30th on POMS. Sponsored by pooled trust. Contact Eric Solem if interested.
- iv. Class action suit – Health Care Availability Act. Requires nursing homes to have insurance. Nursing homes are not following through and insurance commissioner not enforcing. Lawsuit filed to require enforcement. Moving for certification of class soon. Class will include everyone who is disabled in a nursing home and receives Medicare or Medicaid benefits. Injunction-class, not seeing damages. Also, if clients injured in Sava facility (27 facilities in Colorado) bringing an aggregate lawsuit. Contact Jay Reinen 303-894-0383. Jay's working with Attorneys John Holland and Kathleen Mullen.
- v. General lack of awareness in insurance community on issues impacting seniors. How do we (elder law practitioners) address?
- 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. New program on May 22, 2009 on impact of UPPOA/HB 09-1198. Linda Whitton presenting. Cate Seal also presenting.

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

- April 23 Guardianships and Conservatorships: The Basics – Denver (or live webcast) (CBA)
- April 30 POMS Training (CBA)
- May 1 Bench-Bar Retreat in Boulder (Breakout section on probate at 3:00 p.m.) (Boulder County Bar)
- May 14 Guardianship and Conservatorships: The Basics – Video replay – Colorado Springs, Grand Junction, Denver (CBA)
- May 22 Uniform Power of Attorney Act – Denver (CBA)

June 11-13 Trust & Estate Section's Estate Planning Retreat (Snowmass)

Oct 1-3 Elder Law Section's Elder Law Retreat (Breckenridge)

The Section Meeting ended at 9:54 a.m.

The CLE portion of the meeting began shortly thereafter. The speaker was John J. Campbell, JD, CELA, MSCC, and the topic was Medicare Set-Aside Arrangements in Workers' Compensation & Liability Settlements. Materials are available on the Section's website.