

**Meeting of Elder Law Section of the CBA
November 19, 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
	Sarah Golombek	Englewood	303-761-4900
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

NCCUSL = National Conference of Commissioners on Uniform State Laws

HCPF = Department of Health Care Policy and Financing

The Executive Council Meeting of the Colorado Bar Association Elder Law Section was called to order at 8:25 A.M.

Carl Stevens reported on NCCUSL's new Uniform Beneficiary Deeds Act. NCCUSL is asking states to adopt. Elder law, Real Estate & T&E Sections approved a committee to review. Report submitted by Real Estate Section. Real Estate portion of committee identified a number of problems, including the likelihood of a fiscal note. Want to take a position of opposing the new uniform act. Could require revocation of a beneficiary deed to qualify for Medicaid.

Looking at tweaking the current act and may slip in the probate omnibus bill. HCPF could still proceed with estate recovery but use locating a probate to trigger estate recovery. Should we vote to retain our beneficiary deed statute, and oppose the uniform act? Bring to ELS for a vote.

Patron member applications. Need to be processed and implemented. 341 elder law members right now. Shari Caton will handle review of applications and making recommendations to EC on allowing. Sarah Golombek will help Shari. Shari and Sarah also will develop guidelines and standards for patron members. Also, remind each month that non-members who would like to continue attending need to join as a patron members. 3 patron members currently. 3 associate members, i.e., paralegals, court staff, etc., and must have attorney sponsor. 8 student members currently.

Michael Valdez reported on ballot initiatives on the horizon for 2010:

First, Initiative #10, statutory change to reduce government charges. For example, reduce motor vehicle registration fees and reduce income taxes to \$2 or less. Would cost the state \$1.6 billion.

Second, Initiative #12, constitutional change. 10-year maximum on debrucing/raising taxes. Debrucing is retaining that money under TABOR. Estimated that passage would impact schools the most.

Third, Initiative #21, state of any other gov't entity cannot enter into COP projects. No more COPs. If you had a COP out there would have to pay it off.

A group looking mounting a legal challenge to these initiatives because they did not comply with the petition process. These initiatives could be really problematic.

Saul Larson's report from DORA coming out soon.

Annual Elder Law Update. Tammy Conover and Cate Seal working on.

ELS databank. Trying to get agency decisions on Medicaid determinations. Marco will contact chair of administrative law section. Suggest that we consider submitting a Freedom of Information Act request. Paul Mitchell did such a request before to obtain these agency decisions. Shari looking at forming a subcommittee to look at this issue.

The Executive Council meeting ended at 9:08 A.M.

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

The meeting was called to order by Marco Chayet at 9:12 A.M.

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

Jennifer Gormley	Tom Rodriguez
Christina Brigham	Tammy Conover
Marco Chayet	Frank Baysore
Chuck Connell	Frank Slaninger
Shari Caton	Dave Bernhart
Dirk Costin	Brandon Fields
Susie Germany	Cody Christian
Wayne Stewart	Rose Zapor
Clara Brown Scaffer	Barbara Hahn
Marcie McMinimee	Patrick Curnalia
Mary Catherine Rabbitt	Kathryn Miller
Claire Dineen	Jordana Griff
Lisa Eastin	Roseann Murray
Marilyn Henning	Jeff Lamb
John Holt	Amy Sreenen
Kristine Callahan	Jerome Reinan
Richard Mishkin	Steven Strandberg
Dennis Valentine	Eileen Muench
Sarah Golombek	Eric Kuhn
Carl Stevens	Arlene Barringer
Melissa Sugar	Anne Marie-Schwartz
John Rymers	Mark Kiken
Keira Rawlings	Anne Grasee
Crispin Sargent	Elliot Gelfand
Tamara Bershok	Debbie Reinberg
Susan Oh	

2. **Treasurer's Report** – Tammy Conover – The Section has \$10,404. Still haven't paid all of the money owed for the 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. Upcoming articles include: Elder Mediation by Barbara Hahn. Article submitted by Rose Zapor as a part II to Barbara's article. Colorado Medicaid Home and Community Based Services in least restricted environment by Val

Corzine. In drafting stages, articles on 1.14 and guardian ad litem. Also, elder law and family law CLE in planning stages.

- iii. ADR: Martha Ridgway – Marco met with chair of ADR and T&E Sections. Looking at a pilot mediation project. Interest from DPC. Debbie Reinberg reported further. Created a vision statement: [Our vision is a community in which mediation and other forms of alternative dispute resolution provide viable, if not preferred, methods to resolve disputes associated with elder law, probate. And trust and estate matters.] Now working on a mission statement.
- iv. Medicaid Legislation: John Campbell – passed.
- v. Probate Compensation and Expense Recovery Committee: Marcie McMinimee – Approved by SRC then by T&E last month. Taken to LPC. Initial comment that they want to see more flexibility for judges on whether the judge wants a hearing or not. Unknown effective date. Legislative drafting will determine.
- vi. Winter Retreat: Susie Germany/Tammy Conover/Tom Rodriguez – Going to reconvene to start working on next year's retreat.
- vii. Creditors Claims in Conservatorships: Marcie McMinimee – Putting it off until after the first of the year.
- viii. Powers of Attorney Abuse: Tom Rodriguez – Acknowledgment form drafted and will be discussed further at today's meeting. Goal of having a final copy. Then, can discuss implementation.
- ix. Uniform Beneficiary Deeds Statute Committee: Carl Stevens/Dave Steinhoff – See EC Notes.

b. Liaison Reports –

- i. Trust and Estate Council/Statutory Revisions Committee Liaison: Marcie McMinimee – SRC - Majority of discussion dealt with decanting statute. Going to vote on it this month. Beneficiary designation agreement - A few changes that the sponsors have agreed to make. Agreed to centralize recording of agreements with Secretary of State's office, rather than counties. T&E – Rules & Forms. Get together every other month. Working on a short form conservator's report. John DeBryun reported on some uniform laws – uniform collaborative law act. Coming together in

a settlement conference. Lawyers who participate in collaborative mediation are barred for going to court with their clients. Coming with a response to a separate ethics opinion – says it is unethical for an attorney to get out on their grounds because contrary to agreement with client.

- ii. AARP Liaison: Elizabeth Tulloch and Dennis Valentine – Been involved with federal health care legislation.
 - iii. Department of Health Care Policy and Finance Liaison: John Campbell – Shari Caton mentioned to check the HCPF website for new regulations stemming from budget constraints.
 - iv. CBA Legislative Policy Committee Liaison: John Campbell – passed.
 - v. Legislative Issues: Michael Valdez – See EC Notes.
 - vi. NAELA Colorado – Marcie O’Brien/Catherine Seal – Passed
 - vii. Denver Triad: Rocky Williams/Rose Zapor – Passed
- c. Other old business
- i. Databank ready to receive orders. Four submitted. Email to Shari Caton at caton@poskuscatonklein.com and Tammy Conover at tconover@steenrodlaw.com. Website still under construction. Selected opinions from the Denver Probate Court can be found at: <http://www.denverprobatecourt.org/selectedopinions.htm>
 - ii. Sarah Golombek is the new EC member.

4. **New Business and Announcements**

- a. Hot Topics Discussion -
 - i. OHome Care – Susan Oh present with therapy dog to talk about dog therapy for Seniors.
 - ii. Uniform Real Property Transfer on Death Act. See EC notes. Recommending that we keep current statute and reject the uniform act. Real Estate adopted the report with this recommendation. Recommendation to retain current act. Some in minor amendments may be added. Put up for a vote and it passed unanimously.

- iii. Patron members. Want those who attend regularly to officially join. See EC Notes.
- iv. Accessing Medicaid administrative opinions. See EC Notes.

- 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)

- Dec 12 Annual Trust and Estate Law Update (CBA)
- Dec 18 The Probate Process From Start to Finish (NBI)

The minutes from the November meeting were approved.

The Section Meeting ended at 10:05 A.M.

The CLE portion of the meeting began shortly thereafter. The speakers were Charles Hamlin and Jan Lammers and the topic was Compassion and Choices. Materials are available on the Section's website.