

**Meeting of Elder Law Section of the CBA
October 19, 2006**

Co-Chairs:	Marcie McMinimee	Denver	303-534-5100
	John Campbell	Denver	303-290-7497
Secretary:	Frank Slaninger	Denver	303-758-5200
Treasurer:	Marco Chayet	Denver	303-355-8500
Council Members:	Bert Myrin	Aspen	970-925-8645
	Michele Lawonn	Denver	303-751-7012
	Elizabeth Tulloch	Denver	303-388-3500
Liaison Coordinator:	John Campbell	Denver	303-290-7497
CBA Liaison:	Gretchen Eoff	Denver	303-860-1115
Representative to CBA Board of Governors	Marcie McMinimee	Denver	303-534-5100
Uniform Trust Code Committee	Eric Solem	Englewood	303-761-4900

The Executive Council Meeting of the Colorado Bar Association Elder Law Section was called to order at 8:15 A.M. Matters discussed included oversight of committees, patron members, coordination with Trust and Estate Section, and articles for the Colorado Lawyer.

1. Call to Order: The meeting was called to order by Marcie McMinimee at 9:11 a.m.

There was a short address by Nancy Ford from “SMART” (Society of Mortgage Appraisers, Realtors, and Title Professionals). She is working on consumer education about and protection against mortgage fraud, particularly against the elderly who are increasingly targeted. She works with Mason Finks, Director of Fraud Prevention in the 18th Judicial District. She networks for solutions and holds workshops for groups who need to know “what fraud looks like.” We need to provide training, support, expertise, and education to seniors. Mortgage fraud in Denver is second only to Atlanta. The FBI has set up a special task force in Denver to deal with it. Fraud comes by word of mouth, knocks on the door, phone, mail, and the Internet. Seniors need to read all documents carefully and have help reviewing them carefully.

Nancy said a new criminal statute dealing with mortgage fraud becomes effective January 1, 2007. Proposed and new Georgia legislation are being examined to see if they could be used in Colorado. The Montbello and Green Valley Ranch areas have a high volume of problems.

The problem arises when a “cartel” of lenders, appraisers, realtors, and title companies finds homes, buys them, sells them at a \$200,000 price, the owners can’t make the payments, the cartel buys them back for \$200,000 and offers them for sale the next day for \$425,000 with an enticing ARM (adjustable rate mortgage). The ARM goes up, the owners can’t pay, foreclosures follows, children don’t go to school, school officials see people sleeping in sleeping bags on the floor, and the houses are offered for sale again, this time for \$625,000.

SMART is seeking input and development of emergency templates for attorneys in various case situations.

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

Ellen Alires-Trujillo	Michael Kirtland
John Berman	Sue Kokinos
Richard Bowers	Dolores Kopel
John Campbell	Michele Lawonn
Billie Castle	Thomas Linn
Mindy Chapman	Marcie McMinimee
Charles Connell	Cuthbert Myrin, Jr.
W. Kirk Costin	Kathleen Negri
Marvin Dansky	Arthur Partridge
Gretchen Eoff	Linda Phillips
Aaron L. Evans	J. Elaine Procter
James Evans	Catherine Silburn
Lew L. Gaiter, Jr.	Frank Slaninger
Nancy Germany	Courtney Smith
M. Carl Glatstein	R. Eric Solem
Jennifer Gormley	Melissa Sugar
Susan Halloran	Elizabeth Tulloch
K. Gabriel Heiser	Dennis Valentine
Richard Kautt	Tamra Waltermath

Call for review and approval of the August , 2006 Minutes. They were approved.

Call for review and approval of the September, 2006 Minutes. With two amendments, changing “Public Administrator” to “Special Administrator” in two places on page 2, the minutes were approved, as amended.

2. OLD BUSINESS

- a. Advance Directive Task Force –Michael Kirtland said the meeting time is set for 3:30 PM on “Super Thursdays” once a month at the CBA offices, and the Task Force will meet today. The matter is back in the subcommittee’s hands. SRC (Statutory Revisions Committee) wants it to proceed by legislation. There are no sponsors yet. It’s doubtful it could get into 2007 legislation, except as a late bill.
- b. Office of Public Guardian – update and meeting – Val Corzine – passed.
- c. Colorado Lawyer Articles – ideas -. Michele Lawonn suggested an article on real estate, repairing titles and deeds. Jennifer Gormley said John Gleason was preparing an article about attorney incapacity, when should an attorney take down his/her shingle. Eric Solem said he and Joe Epstein want to write an article describing how to negotiate Medicaid “liens.” An article on public administrators may be prepared by Marcie McMinimee and Melissa Sugar. Ellen Aires-Trujillo said Colorado Legal Services attorney Jose Vasquez might be willing to address our group. Marvin Dansky said there was a lot of talk at the last NAELA convention about senior credit problems, especially senior credit card problems, and the new bankruptcy laws, and perhaps John Berman could address our group on this issue.
- d. November, 2006 CLE speaker – Julie Gefke will speak on the new identification rules for Medicaid applications.
- e. Today – Karen Buchanan, RN, BSN, RG, CMC of Colorado Elder Care Solutions, will address our Section on “(Senior) Care Management.”

3. NEW BUSINESS AND ANNOUNCEMENTS

- a. TOPICS AND SPEAKERS: Please continue to let the Co-Chairs know your ideas for possible speakers and topics. The names and email addresses for the Co-Chairs are: Marcie McMinimee (mmcminimee@steenrodllaw.com) and John Campbell (jcampbell@jccelderlaw.com)
- b. CLEs and PROGRAMS
 - Dying in America – Bioethics Evening Seminar – October 30, 2006
 - Guardian and Conservator program – November 4, 2006
 - Nuts and Bolts of Medicaid Planning – November 27, 2006
 - Hot Topics in Estate Planning – November 10, 2006
 - The Probate Process from Start to Finish - December 18, 2006
 - Advanced Probate: Information, Ideas, and Legal Updates – December, 19, 2006

- What to Do in Denver When You're Dead or Divorced – December, 2006 (the program will include: acronyms used by estate and trust lawyers; discussion of when a trust is property, its valuation, and creation of new trusts; issues involving dead executors; luncheon ethics talk; drafting and litigating marital agreements; technology update; and annual case law update).
 - Ideas for speakers – see 2 (c), above.
- c. December meeting date – to avoid holiday schedules, we will hold our December, 2006 meeting one week early, on December 14, 2006. We may try to have a reception following the meeting.

4. HOT TOPICS DISCUSSION –

- A. Audit on Oversight of Probate Cases –In the materials passed out today, see Sue Lindsay's article "Audit Finds Lax Monitoring of Court-Appointed Guardians," Rocky Mountain News, Wednesday, September 27, 2006, page 12A. The asserted goal is to improve court review, set review procedures, determine needed improvements, institute options to insure reasonable fees, and insure consistent reasonable fees. Also, be sure the appointed persons are qualified, are advising the protected persons of their rights, are using e-filing as much as reasonable, etc. Mike Kirtland said the survey was politically motivated by a legislator who wants to impose maximum limits of \$56/hour. Courtney Smith (Benefits Payee Services, Inc.) attended a meeting in California discussing similar issues. The Los Angeles Times newspaper went through several files and picked out and slammed three professional fiduciaries. They also found problems on the websites of individuals relating horror stories and warning of the dangers of having professional fiduciaries take over duties as guardians and conservators.

She warned us to expect to see TV ads urging persons to sue guardians and conservators.

Carl Glatstein said a report will come out in 2-3 weeks. The Colorado State Judicial Department is interested and needs to be involved. The Fiduciary Abuse Committee (a Statutory Revisions Committee chaired by Bob Steenrod) will also review it. The audit group came from Texas where courts handle things differently. The Office of State Auditor ("OSA") hired the accounting firm of Clifton Gunderson to do the office. To download a copy, go to: www.leg.state.co.us/OSA/coauditor1.nsf and hit "enter." Then, type in "oversight of probate" and hit "enter," which will bring up the report. Some abuses do exist. Reporters are not looking for balance. They want what's readable. Some types of fees must change. We must get ahead of this and be ready to respond to it. This topic provided a very good discussion.

Kathleen Negri heard a similar report on NPR (National Public Radio) “Talk of the Nation.” There were recitals of family horror stories. There was no mention of the use of elder law attorneys or anyone to assist in planning or doing the planning.

- B. The Uniform Mediation Act may come to Colorado. Cindy Savage and O. Russell Murray are looking into it, as are several CBA sections and committees and other organizations. Murray said there was legislative inquiry in December, 2005. A national group drafting uniform laws lobbies to have them passed as laws in as many states as possible. In Colorado all members of this group are legislators. The legislators will wait while it is discussed by the CBA to determine whether Colorado needs the Uniform Mediation Act in addition to the present Dispute Resolution Act, C.R.S. §13-22-101 et seq.
- C. **No on 40** - \$90,000 was contributed by 27 out of 28 CBA Sections.

5. COMMITTEE REPORTS

Chairperson of the committee may report any current matters. In the future, the committee chair will be prepared to report or give our Co-Chairs a report in advance, report on what’s alive, etc.

- A. Treasurer’s Report - Marco Chayet – passed.
- B. Civic and Community Affairs Committee – Carl Glatstein – Passed.
- C. Trust and Estate Council Liaison – Billie Castle – Passed.
- D. Liaison to AARP – legislative actions – Elizabeth Tulloch –passed.
- E. Department of Health Care Policy & Financing Liaison – John Campbell - passed.
- F. Guardianship Standards – Marco Chayet - passed.
- G. CBA Legislative Policy Committee Liaison – Michele Lawonn – passed.
- H. Advanced Medical Directives Joint Task Force Committee – Michael Kirtland – discussed at this meeting.
- I. Guardianship Jurisdiction Act Committee –Kate Seal – passed.
- J. CLE and publications committee – Jennifer Gormley – passed.
- K. Liaison Coordinator – John Campbell – passed.

- L. Statutory Revisions Committee Liaisons – Marcie McMinimee and Carl Glatstein – passed.
- M. Public Guardianship – Val Corzine – passed.
- N. Uniform Trust Committee – Eric Solem – he’s trying to create action.

That ended our business meeting on October 20, 2006.

SPEAKER

Our speaker today was Karen Buchanan, RN, BSN, RG, and CMC, with Colorado Elder Care Solutions. Her topic was “Care Management.”

Geriatric care managers can help. There are almost no limits to what they can do.

Misconceptions exist, e.g., that the field of care management is ungoverned and that the services of care management are costly and unnecessary. This was addressed and proven not to be true. In fact there is an organization that does demand a standard of practice. This organization is The National Association of Professional Geriatric Care Managers. Membership requires a degree in nursing, social work, gerontology or a related field in addition to two years of supervised experience and two letters of recommendation. Certification is one of the ways in which this organization is working towards consistency in the care management field. Their web site is www.caremanager.org and will allow you to find a member care manager anywhere in the country.

In addressing the misconception of services not being needed, Karen described a situation in which she worked with an elderly gentleman who was called “Dr. Bob.” He had been a community leader, his wife died, he had no children or relatives except a niece who lived in another city. His wife’s sudden death had been a significant loss, leaving him alone. This started his cognitive decline.

She described her assessment process and how this helps her to identify the individual needs of each person. Her assessment included an evaluation of their physical status, cognitive, environmental, and psycho-social status. With this client while completing his physical assessment she found that his toenails were 4 inches long. She reported gaining great insight into her client’s ability to assess his own care needs and need for support with activities of daily living through this simple process. In this specific situation she set up companion care to provide meals, assistance with care needs, and socialization. She reported that her approach was not to push her care plan onto her clients but to find out what their identified needs were, for example, a home cooked meal, a drive to the store, setting up medications, doctor visits in the home, cleaning the home, and to meet that need by utilizing community resources.

The need for this level of support is great with adult children often times living miles away. They are uncomfortable with the role reversal which puts them in the position of caring for their parents. Additionally, they are unsure where to turn for help or what the community resources are. Care Management can help.

Assisted living services can provide care, medications, help with all activities of daily living, but these facilities have limited staff to closely monitor their residents. Care Managers can work closely with the client within settings and communicate with the staff and the physicians to ensure the client's needs are met.

An important step is to identify the needs. The care manager completes a thorough assessment and then an action plan to meet the individual's needs. They work towards these goals by improving nutrition, arranging for physical therapy when needed for strengthening, avoiding medication errors, reducing high risk situations within the home, and enlarging the senior's social life.

Preventing falls and hospitalization is very important. 75% of emergency room visits for persons over 75 years of age are due to falls. A 2003 study described some of the most frequent causes of hospitalization to be: congestive heart failure (#1); pneumonia (#2); stroke (#7); fluid and electrolyte imbalance (#10); urinary tract infection (#12); and hip fracture (#13). She discussed ways that a nurse care manager's ongoing assessment and intervention could prevent or minimize hospitalization and falls.

Care managers can help your clients. They can confer with the client and the family, provide added support, fill the role of the "bad guy" if needed. They are aware of the needs for estate planning and make referrals. Through work with the family they can decrease stress and improve communication.

Care managers can help the attorneys by allowing them to focus on their work rather than conflict resolution within the family. Additionally, they obtain needed documents from physicians, talk to the clients about powers of attorney for financial matters and health care, watch for signs of exploitation and need for a guardian. They can serve as a great witness if needed because they are taking notes and maintaining records. She suggested that if you see these signs, your clients may benefit from care management services. "CARE" (Cognitive decline Alone (living alone), at Risk for falls, and Exploitation).

One question addressed Medicaid in Colorado. Medicaid for assisted living is "optional" in Colorado. The impact of this is that the payment is very low and there are only a few Medicaid assisted living facilities in the Denver area.

Fees for care management nurses vary but typically run between \$85-\$110/hour. Billing for travel time is handled differently by each company, but Karen bills ½ hour flat for travel time for each visit to help minimize the costs to her clients.

The meeting ended at 10:51 A.M.

October 20, 2006 Minutes

NOTES:

Colorado Lawyer, September, 2006, page 15:

“Specifically, the Board of Governors (“BOG”) and Executive Council...Recognized the contributions and activities of the Elder Law Section and Intellectual Property Section by granting seats on the BOG to those sections.”

Page 17: Availability of Legal Services Committee presented the Jacob V. Schaetzel Award to Carl Glatstein of Glatstein and O’Brien, LLP.

Page 19: **“The Colorado Network to End Financial Exploitation of the Elderly.** The Family Violence Program, in collaboration with the CBA’s Elder Law Committee, Colorado Department of Human Services – Adult Protection Services, ElderWatch, Legal Center for People with Disabilities, and University of Denver (“DU”) Sturm College of Law, received an ABA Partnerships in Law and Aging Program grant to create a network of professionals to develop multidisciplinary, multifaceted prevention and intervention strategies and protocols to reduce financial exploitation of the elderly by family and associates in Colorado. The Network conducted two training sessions, Seventeenth J.D. (Adams and Broomfield (Counties) and Boulder County. Approximately 100 professionals (mostly civil law lawyers) attended each training session.”

On November 8, 2006 the Association of Trial Lawyers of America changed its name to the American Association for Justice.

Eric Solem’s case, *Monez v. Reinertson*, 140 P.3d 242 (Colo.App. 2006) is included with the November, 2006 materials. It held that the claimants had established a private right of action under a federal statute providing for a fair hearing; that the claimants could seek injunctive relief and had established a claim for procedural process violation; and claimants were not required to exhaust their administrative remedies.

IDENTITY THEFT – the theft is real, but winning damages is elusive. Courts throw out suits against companies for negligent handling of personal data. See, e.g., *Bell v. Acxiom Corp.*, No.4:06CV00485-WRW (E. D. Ark. 10/03/06) and *Key v. DSW*, No. 2:06-cv-459 (S.D. Ohio 09/27/06).The cases are dismissed because no one was able to demonstrate damages stemming from the theft of their personal data. Even if you can prove damages, how can you prove that the damages you suffered were from a specific theft? It’s impossible to prove causation because data companies are reluctant to inform individuals when their private data has been stolen. Some help may be coming. Some states now mandate that companies notify individuals if their data is stolen and offer remedies like credit monitoring. Several bills have been proposed to create a federal standard for what constitutes identity crime and allow courts to presume causation between the theft of personal data and the exploitation of that data for financial gain.