

**Meeting of Elder Law Section of the CBA
September 20, 2007**

Co-Chairs:	John Campbell	Denver	303-290-7497
	Nancy Germany	Denver	303-454-3711
Secretary:	Frank Slaninger	Denver	303-758-5200
Treasurer:	Marco Chayet	Denver	303-355-8500
Council Members:	Bert Myrin	Aspen	970-925-8645
	Elizabeth Tulloch	Denver	303-388-3500
	K. Gabriel Heiser	Boulder	303-447-6855
Liaison Coordinator:	John Campbell	Denver	303-290-7497
CBA Liaison:	Gretchen Eoff	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

1. Executive Council Call to Order The Executive Council meeting of the Colorado Bar Association Elder Law Section was called to order shortly after 8:15 A.M. John Campbell called for a volunteer to take the minutes. Frank Slaninger was traveling today so Bert Myrin volunteered to take the minutes.

2. Old Business Board of Governors report - John J. Campbell

3. New Business and Announcements

- a. A proposal to form a joint subcommittee with the Family Law and ADR sections to work with the Colorado Council of Mediators to develop ADR programs related to issues in Elder Law and elder care was discussed, authorized and supported with a unanimous vote by the Executive Council. If there is interest at the general meetings, a subcommittee will be formed.
- b. A proposal regarding amendments to by-laws to extend the term of co-chairs for one year as “co-chair emeritus” to allow for full two-year service of co-chairs on COBAR Board of Governors was discussed. The concern is that the Board of Governors is a two year commitment while the Elder Law Section changes co-chairs every year. John Campbell’s understanding is that the section chairs that are on the Board of Governors have the opportunity to throw their hat in the ring for the executive council of the Board of Governors and this opportunity could benefit the Elder Law section. Mike Valdez noted that it is a huge advantage to have continuity on the Board of Governors. The Board of Governors has two general meetings annually and if there is a hot issue they will add a third annual meeting. It takes one or two meetings just to figure out what is going on so with a one year term for our co-chair, the opportunity to figure out what is going on and participate is limited. Their was consensus among the Executive Council to learn more about having one

person from the Elder Law Section serve a two year term on the Board of Governors. Gretchen will look into the requirements of joining the executive council of the Board of Governors and if it requires a member from our section at the co-chair level or above. With this information, we will continue the discussion next month.

c. There are two pieces of legislation that people have been reviewing over the past year:

i. The first involves Part 5 - Fiduciary Oversight, Removal, Sanctions and Contempt. Marcie McMinimee mentioned that Judge Stewart's comments provided no substantive changes. Kevin Millard provided a red lined handout of Part 5 for the Elder Law meeting today. Marcie McMinimee said that this is not the first time this is before SRC and that it has been tabled a number of times.

Marcie McMinimee noted that at SRC last month they asked that we have a delegate that could report to SRC on the Elder Law meetings. John Campbell confirmed that there will be someone at SRC today from the Elder Law Section. Going forward if we have a full time liaison to SRC, that person should review the SRC minutes. This liaison would then be added to the Committee Reports section of the agenda for the Elder Law meetings. John Campbell thanked Marcie McMinimee for volunteering for the liaison position. Marcie McMinimee said that after her experience last month with the Trusts and Estates Council, SRC and the Estate Planning Retreat committee, she felt that they wanted to involve the Elder Law Section and felt really good about being on the same page about the future. Additionally, Gretchen Eoff will distribute the SRC minutes as an attachment to the Executive Council agenda for Elder Law.

Marcie mentioned that she was asked to be on the committee that is planning the next estate planning retreat. Please contact Marcie with ideas for topics suited for a discussion format. There is a meeting today to work on these ideas.

Marcie said there will be a Protective Proceedings Task Force public hearing on Friday, September 28th and felt it would be a good idea if the Elder Law Section took a position on the lack of continuity in the courts and how this makes it difficult to advise clients with such inconsistencies around the state. Carl Glatstein plans to attend this. Mike Valdes thought it would be helpful for the Elder Law Section to email a link to the announcement for this meeting to our membership. John Campbell indicated that there would be at least three members from the Elder Law Section going to the public hearing on the 28th.

Marco Chayet provided an update on the Rule 6 subcommittee regarding a new computation of time for notice. Other members of that subcommittee include Kelly Cooper, Mark Darling, Spencer Corona and Aaron Evans but Marco feels he is the one member that represents the Elder Law Section. Marco conveyed that the others wanted to make certain that Elder Law is involved in the subcommittee. They are proposing that only petitions can be set on the non-appearance deadline.

Motions won't be allowed on the non-appearance docket. There was a brief discussion about motions not needing a hearing with the exception of Denver Probate where a hearing is required for motions. The proposal also includes counting holidays and weekends to clarify how to calculate time. Marco Chayet has a goal to provide something by the end of 2007. John Campbell requested that Marco be added to the general meeting agenda to provide a monthly update to the Section.

1. General Meeting Call to Order and call for review and approval of August 16, 2007 Minutes --- the meeting was called to order by John Campbell at 9:05 a.m.

The sign in sheet was circulated. Those attending in person or by phone were:

Donald Alspaugh	Thomas Linn
David Bernhart Jr.	Paul Linton
Diana Blair	Corinne Magid
Marion Brewer	Marcie McMinimee
John Campbell	Mark Merric
Marco Chayet	Paul Mitchell
Charles Connell	Bert Myrin Jr.
Tammy Conover	Jon Nicholls
Aaron Evans	Elizabeth Paul
James Evans	Masayo Quick
Jay Fox	Holly Rebstock
Nancy Germany	Thomas Rodriguez
M. Carl Glatstein	Catherine Seal
Sarah Golombek	Rebecca Shandrick
John Griebel	Eric Solem
Susan Halloran	Wayne Stewart
K. Gabriel Heiser	Elizabeth Tulloch
Ann Kiley	Dennis Valentine
Michael Kirtland	Nancy Wallace
Michele Lawonn	Tamra Waltemath
John Licht	

Near the end of the meeting the minutes from the August 16, 2007 meeting were approved unanimously with no changes.

2. Treasurer's Report

3. Old Business

a. Committee Reports (Chairperson of the committee may report any current matters). Our current committees are:

- i. Civic and Community Affairs Committee: Carl Glatstein relayed that Sean Bell is continuing along with the Senior Law Handbook. There are some new chapters and some new authors however if you are interested in either a new chapter or a new author, please contact Carl Glatstein or Sean Bell. Current plans include breaking the public benefits chapter into multiple chapters that would cover SSDI and VA benefits. Currently the brochures come from the CBA on the 9th floor while the Senior Law Handbook is under CLE from the 3rd floor. There is movement toward coordinating the brochures with the handbook so they line up better.
- ii. Guardianship Standards: Marco Chayet conveyed that Judge Stewart is working on a handbook that will be provided to appointees with directions of what they need to do as appointees. This will include a checklist. Because the Elder Law Section has worked for about two years on these standards it would seem appropriate to share our work with Judge Stewart. State Judicial is behind this and will eventually fund the printing. Marcie McMinimee shared that they are also talking about updating the video and having notebooks for people to review. Marcie McMinimee said there was discussion of licensing or registration for fiduciaries. Other states have something along these lines and it is all up for further study.
- iii. Guardianship Jurisdiction Act Committee: Catherine Seal shared a PowerPoint presentation with the section. This presentation as prepared by Dave English to summarize the uniform act and there is a copy of the current version in the materials today. The comments will help you understand how the committee reached their decisions. One goal was to find a way to handle interstate issues such as when a Florida guardian visits Colorado with their mother and the mother slips and falls, do we need to initiate a guardianship in Colorado. One of the key concepts here is that the "home state" generally has primary jurisdiction with a subsidiary rule that provides for a "significant connection" state. Michael Valdez indicated there is legislative support for this legislation if it is supported by the Elder Law Section and the Colorado Bar Association. John Campbell noted that this act has been on the Elder Law Section website for a month and it is on the agenda for the section to consider endorsing today. A motion was made to approve and endorse the act as it was presented today. The motion was seconded. Eric Solem commented that Section 104 regarding communication between courts says that the court shall or may make a record of the communication. If we adopt this, we should decide what the choices are. Eric suggested studying this and voting at the next meeting. Catharine Seal said that Elder Law can vote prior to Trusts and Estates because Elder Law was the section that sent Catherine to put this together. John Campbell suggested that we endorse the act in spirit and have the committee come back with a

final version for a vote. The motion was amended to endorse this in spirit and bring it to SRC's attention that this is ripe. The second was amended as well and there was a vote for unanimous support in favor of the spirit of the act.

- iv. CLE and publications committee: Jennifer Gormley – not present. John Campbell indicated that there is a general call for articles for The Colorado Lawyer. Please connect with either Jennifer or John and they will make sure you are paired with an editor.
- v. Advanced Medical Directives Joint Task Force: Michael Kirtland said that this is ready for a vote from those present today. The plan is to take the most recent version to the 2008 legislative session beginning in January. They are not soliciting sponsors yet but there are individuals in the legislature that have sponsored this in the past and have conveyed their interest in sponsoring it again. Please let Michael know of any typos. Michael Kirkland noted that the most significant outcome of the committee is that there is no form so everyone can use their own forms. Michael Kirkland plans to attend the Trust and Estates Orange Book Committee today to start working on a form. The Orange Book form will not be part of the statute. Chuck Connell thanked the committee for working so hard on the committee. John Campbell also thanked the committee and asked the section for a motion. The motion was made, seconded and unanimously passed.
- vi. Public Guardianship: Val Corzine - not present.
- vii. Fiduciary Misconduct: Marcie McMinimee presented a redlined copy of Part 5 that is separate from the stapled portion of the materials. The redline copy contains the latest changes derived from a meeting on Tuesday along with changes from Kevin Millard. Included in this is the ability of the court to ask for information from a fiduciary and the ability for the court to order a fiduciary to account or provide information. This also provides for occasions when a fiduciary doesn't handle things appropriately, their removal, an investigation and appointment of someone to replace the fiduciary along with a surcharge, contempt and sanctions. There are also more due process provisions for the fiduciary and some provisions were made more consistent with 15-12-808. Marcie mentioned that a critical issue is determining when a court has jurisdiction over trustees. Part 5 is intended to be jurisdiction neutral. John Campbell inquired if any future changes are anticipated. Marcie noted that the judges are happy but typically when going through SRC, phrasing and punctuation will change. John Campbell said this looks substantially the same as was previously presented to us and Marcie concurred. John Campbell called for a motion noting that we have had an opportunity to review this for a month. Michelle Lawonn made a motion to table this. The motion died on the table for lack of a second. A motion was made to put it to a vote for approval to the section as reflected in the redline copy. The motion was seconded followed by unanimous approval. Marcie McMinimee said she will add something to clarify that "nothing herein confers such jurisdiction."

John Campbell asked if anyone saw anything on the agenda with burning importance.

It was suggested to watch the newspapers for what the state plans to do about medical care for those that are not covered. Watch for public hearings to provide input on five proposed plans.

Eric Solem mentioned that the post eligibility transfer policy for spouses has not changed but changes are possible because there is something coming from CMS. The concern is about the transfer of the house. Eric moved to continue this discussion until October.

John Campbell made a request to the Section to sign up to volunteer for the ADR subcommittee. For details see number 3, New Business, section A of The Executive Council minutes above.

The business meeting ended at 10:15 A.M.

Wayne Stewart provided a gracious introduction of Mark Merric as the CLE speaker for today. The CLE materials included a PowerPoint presentation. A handout of the presentation containing extremely detailed talking points was provided to everyone in attendance. The CLE ended at 11:15 A.M.

Carl Glatstein made a request for Law Line 9 volunteers on October 24th.