

**Council of the Trust and Estate Section
of the Colorado Bar Association
Notice of and Agenda for the October 19, 2017 Meeting**

To: Council Members
Trust and Estate Section of the Colorado Bar Association

From: Josie M. Faix
Balson & Faix LLP
7400 E. Caley Ave., #300
Centennial, Colorado 80111
Telephone: (720) 974.6350
Josie@balsonfaix.com

Notice of Meeting

The third meeting of the 2017-2018 Council of the Trust and Estate Section of the Colorado Bar Association will be held:

Date and time: ***Thursday, October 19, 2017, 3:00 p.m.****
Place: Colorado Bar Association
1900 Grant Street, Suite 900
Denver, Colorado 80203

* or as close as possible to 15 minutes after the end of the Statutory Revisions Committee meeting, if that meeting runs past 3:00 p.m.

Call-In Instructions

Call-in instructions are as follows: 1.855.392.2520
Access Code: 2627690#

Minutes of Previous Meeting, Financial Reports & Attachments

1. Minutes of the September 14, 2017 meeting of the Council
2. Trust and Estate Section Financial Reports as of September 2017
3. T&E Section Bylaws, and redline
4. Proposed CRPC 1.5
5. Comments to proposed CRPC 1.5

Matters Likely to be Voted Upon

Please review the Statutory Revisions Committee website at <http://www.cobar.org/For-Members/CBA-Sections/Trust-and-Estate/Statutory-Revisions-Subcommittee-Homepage> for proposals that may be brought the Statutory Revisions Committee and Council.

Trust and Estate Section Council Agenda
October 19, 2017

In an attempt to adhere to the allotted meeting duration of one (1) hour and thirty (30) minutes, the Chair will exercise its prerogative to limit the time for any report or discussion on a topic to ten (10) minutes. This conforms to Robert's Rules of Order.

1. Review/approval of Minutes of the September 14, 2017 meeting of the Council
2. Chair's Report and Administrative Matters (Kelly Dickson Cooper). Kelly will specifically discuss the new flat fee rule in proposed CRPC 1.5 from the subcommittee of the CO Supreme Court Rules of Professional Conduct committee. See attached draft and comments.
3. Secretary/Treasurer's report (Josie M. Faix)
4. Tax Section Liaison (Georgine M. Kryda)
5. Elder Law Section Liaison (Patrick R. Thiessen)
6. Real Estate Section Liaison (David W. Kirch)
7. Statutory Revisions Committee (Leia G. Ursery/Tim Bounds)
8. Legislative Liaison (Stephen M. Brainerd)
9. Council Notes (Julia G. McVey/Josie M. Faix)
10. CLE/Estate Planning Retreat (Leia G. Ursery)
11. Orange Book Forms Committee (Elizabeth T. Meck/Kim Raemdonck)
12. Rules and Forms Committee (Jarod Balson)
13. Civic and Community Affairs Joint Committee of the Elder Law Section (Sandra Sigler)
14. Diversity Committee (Melissa R. Schwartz)
15. Probate Trial and Procedure Committee (Aaron Evans)
16. Colorado Estate Planning Handbook (David K. Johns/Constance B. Wood/Julia G. McVey)
17. Green Book (David K. Johns)
18. New T&E Lawyers Committee (Lauren da Cunha/Alison Leary)

19. The Colorado Lawyer (David W. Kirch/Constance D. Smith)
20. Communications Representative (Mark D. Masters)
21. Board of Governors Representative (Melissa R. Schwartz)
22. Ambassador Program (Melissa R. Schwartz)
23. GAL Subcommittee (David W. Kirch)
24. Miscellaneous/FYI
25. Adjournment

Council of the Trust and Estate Section of the Colorado Bar Association

Minutes of the September 2017 Meeting

Council met on Thursday, September 14, 2017, at the Colorado Bar Association offices, 1900 Grant Street, Denver, Colorado. The meeting was called to order at approximately 3:30 p.m.

The following members of Council were present or participated by phone and constituted a quorum:

Kelly Dickson Cooper, Chair
Leia G. Ursery, Vice Chair
Josie M. Faix, Secretary/Treasurer
Darla Daniel, Immediate Past Chair
Zachary D. Schlichting, Second Year Member
Nicole Brown, Second Year Member
Peter W. Bullard, First Year Member
Timothy Bounds, First Year Member

Also in attendance were: Georgine M. Kryda (Tax Section Liaison); Steve Brainerd (Legislative Liaison); Sandra Sigler (Civic and Community Affairs Joint Committee of the Elder Law and T&E Sections); Elizabeth Meck; Kyle Brenton; Jennifer Spitz; Stan Kent; Vince O'Brien (CLE); Susan Hoyt (CLE); Elizabeth Akalin (CBA); Melissa Schwartz.

1. Approval of Minutes of Prior Meeting

The Minutes of the August 17, 2017 Council meeting were approved unanimously.

2. Chair's Report, Administrative Matters (Kelly Dickson Cooper)

Kelly briefly discussed the best practices document. Kelly is going to look at making an amendment and will report next month. Listserv issues continue, and Gene updated council to explain the problems, and how they are working on them. The section summit is September 28 at CBA from 2-5, RSVP to Melissa Nicoletti. Everyone is welcome to attend, and we want T&E represented. The play book will be discussed.

At this point in the meeting, Council diverged from the agenda, and heard from Vince O'Brien, executive director of CLE, to discuss our section's contribution to CLE. We are reviewing the T&E contribution for the Retreat; both the amount and understanding what the contribution is used for and the impact of reducing the amount.

Vince told Council he was a T&E lawyer, and explained he was accustomed to a different model of CLE in MN, which is where he lived before moving to CO. He believes it is very unique to have a retreat in the mountains, and a great opportunity for the section. There is a partnership between CBA/CLE and the T&E section that is critical through the whole year, not just the retreat. He passed out a financial report for the Retreat, and discussed the financial aspects of the event. CLE loses money on the Retreat. But members like the Retreat, and it is successful. Kelly explained that our section is in the red, and we are trying to understand our finances in more detail.

Vince offered to return \$2500 back to the section. Vince feels that the Retreat is worth it, and wants the partnership between CLE and T&E to continue. Vince discussed the finances for CBA/CLE, as they are also in the red. They had to let employees go, and revamp some of the organization, and now on a better track financially. And there will be a move for the organization from the current building. CBA is the main tenant, and CLE is the a subleasee. Darla asked if he knows where the office will go, and Vince described the group looking at the issue. They are hiring a broker next week. Kelly said that if we don't contribute to the Retreat, the cost for members will go up. The T&E section has a 1,000 members, and only a small number attend the retreat, and we need to think of the section as a whole. So we struggle with how much to spend on this one event. Vince suggested a metro Denver one-day event, that might serve more members. Perhaps a different model of education that might get more attendees. Darla asked logistically how it would work. He said that it would be one large venue. He described a possible structure for the classes, to reach more lawyers, and keep the Retreat. Kelly pointed out that the section does a lot already with CLE. Leia said that it might be more efficient if we consolidated our classes, and get broader attendance. Vince mentioned a new lawyer panel, with folks practicing in T&E for less than 10 years. When he did it in MN, lot of new lawyers attended. Kelly asked if other sections lose money on Retreats, but Vince wasn't sure. He said that the retreat is fine, perhaps raise prices a bit and it will be OK. Real estate and family law retreats makes money, but for the elder law retreat, he wasn't sure. Employment law is brand new. Kelly asked how much sections are charging to attend their retreats. T&E is lower than most. Vince thought increase to \$415.

Jennifer explained that not everyone's getting notices for CLEs- we continue to struggle with communicating the programming to the section. Kelly said it's been a consistent problem. Vince said they are purchasing a new email marketing system, INFORM, to better reach out members. INFORM should allow for better communication to the members through email. Leia said that Elizabeth should send out emails to section members directly. It's a hard issue to manage, but they are working on it. Leia asked if we can do an "in case you missed it" email that tells folks about the last two lunches and explains how they can be watched.

3. Secretary/Treasurer's Report (Josie M. Faix)

Josie discussed the T&E Section dinner, and received affirmation that Maggianos is a fine choice. Council agreed to raise the price from \$35 to \$40 per person, to assist with reducing the cost of the dinner. Council also agreed to invite Connie Wood's two children to the dinner as well. All agreed the budget will be an ongoing issue this year, and there are many options in solving the issue.

4. Tax Section Liaison (Georgine M. Kryda)

Georgine reported the tax section executive council will meet Sept 28 and will vote on CTC, and no questions or problems are anticipated.

5. Elder Law Section Liaison (Patrick R. Thiessen)

Patrick indicated the new "Uniform Guardianship and Protective Proceeding Act" may have more time for review, even perhaps a few years. The Elder Law Retreat was successful, and the guest speaker was amazing (he was). Their Retreat will be in Vail for the next two years.

6. Real Estate Section Liaison (David W. Kirch)

No report.

7. Statutory Revisions Committee (Leia G. Ursery/Tim Bounds)

Leia was happy to report not much happening. The unclaimed property act might be coming back. She will attend the ULC meeting and report back.

8. Legislative Liaison (Stephen M. Brainerd/Jeremy Schupbach - CBA)

Steve said the new uniform guardianship act may not be as easy a process, or have as much time as we had hoped. He is worried the same folks who pushed SB 26 will push this bill too. There may be more prodding on this act, and we should accept the possibility the section will have to react quickly if the legislature takes it up. Steve worried that bill sponsors will decide to bypass the CBA, or come out of left field to prod it forward. The amount of notice is unknown. Not only ULC can run it. It is a HUGE act, and not something we can get through in a few months. Kelly said that she thinks it will get a fiscal note for some of the provisions. She thinks judicial will not like the amount of changes contained in the act. May be possible to get a delayed effective date for a year so we can tinker with it. Darla asked if remote notary is coming back, or wait to see what the SOS working group will do. Steve thinks they will wait. Sen Gardner is one of two commissioners that Jeremy handed the CTC, and asked for support, and they were thrilled to be approached. But depending on what happens in Chicago, might not be a ULC bill. We still want Sen. Gardner to advance the bill if not ULC, but that's a delicate line. Jeremy and Steve have the authority to make the decision on how to run the bill if not run by ULC.

9. Council Notes (Julia G. McVey/Josie M. Faix)

Josie reported that they are working on the Fall 2017 edition. They are always looking for good articles, and plan to ask presenters from the T&E and Elder Law Retreat to consider writing something based on their presentation.

10. CLE/Estate Planning Retreat (Leia G. Ursery/Vincent O'Brien)

Leia reported that she has been very busy planning CLEs. Lunches planned through November, and some for the spring. The fall update brochure went out, focused on estate planning. She only need one or two more topics for the spring update. She is also lining up Retreat speakers. The retreat is in Beaver Creek in 2018, June 7-9.

11. Orange Book Forms Committee (Elizabeth T. Meck/Kim Raemdonck)

Elizabeth reported to Kelly that the Committee is continuing its work on the Pre-Marital/Marital Agreement form. They have a new subcommittee formed to review forms related to retirement benefits. The committee is looking for speakers with experience using the Orange Book forms, at all levels of practice, to speak at the Dec 8 CLE.

12. Rules & Forms Committee (Jarod Balson)

Casey reported that Jarod Balson will be the new committee chair, with Laurence Gendelman as the secretary. Casey said there is no official policy for JDF forms, but there is a new box on forms that must be checked to indicate if the form has been altered. We may see it on all forms. It was the compromise between locking the form, allowing for no customization. So now we see the check box options. She is looking for confirmation that the new box will be the policy going forward. She thought it may be jarring, and is looking for feedback from practitioners. Checking the box can mean anything - any level of changes. Feedback welcome and should be directed to Casey. For the current Rule 16/proposed Rule 62 forms for petition and order, the committee decided that until the new rules are passed, they will take another look, and if they are OK, those will not back to R&F. Stan discussed his experience with the check the box. Kelly said this issue should be raised in Probate and Procedures. Kelly got an order from Denver that said that if the estate is administratively closed, the PR is not off the hook.

13. Civic and Community Affairs Joint Committee of the Elder Law and T&E Sections (Sandra Sigler)

The next Senior Law Day is in Boulder on September 23, and it's the last big one for the year. Sandra discussed the need for more funding for the handbook going forward. Now, both "hard" and "soft" costs must be covered. John Fielder wants to place a color ad in the next edition, which means three other color pages must be sold. She's confident they can raise the money for the next edition. Sandra asked that people reach out to her if they have any contacts that may be able to help.

14. Diversity Committee (Melissa R. Schwartz)

Melissa invited everyone to a coffee event on October 13th, at Maddie's on Evans and Downing. The committee is now doing minutes and an agenda for each month (thanks to law clerk, Brian Davis), and they will have a page on the CBA website. She and Sumi Lee went to CU for a coffee event with the new elder law society.

15. Probate Trial and Procedure Committee (Aaron Evans)

Tim Bounds reported the committee met and discussed Rules 8.8, 16/62, and believes the comment period is until the end of the year (maybe). Jamie gave an update on the bench book for decedent's estates and protective proceedings. They are also looking at other topics. The committee had no position on the proposed unclaimed property act.

16. *Colorado Estate Planning Handbook* (David K. Johns/Constance B. Wood/Julia G. McVey)

No report.

17. *Green Book* (David K. Johns)

No report, but Susie said they might have the earliest Green Book every this year!

18. New T & E Lawyers Committee (Lauren da Cunha/Alison Leary)

The committee will be looking at RUFADA, medical power of attorney basics, and estate planning in divorce. They are working to plan more social events, and attract new law students and T&E ambassadors.

19. Colorado Lawyer (David W. Kirch/Constance D. Smith)

David said he is looking for articles. Louisa Ritsick is working on one regarding intellectual property, based on her CLE at the Retreat this past summer. Another possible topic involves powers of appointment. There was discussion regarding articles about the CTC, from both litigation and planning perspectives. Melissa agreed to do an article about public administrators, gives bar members details on what Pas actually do.

20. Media Liaison (Mark D. Masters)

Mark gave a description as to what this job entails. Often reporters called, but those have dropped off. Once in a while he'll get a radio/TV call, but that about it, and it's rare. Kelly described changing the position to a Communications Representative position to help on-board new lawyers. Mark agreed to stay on with the new title. Melissa asked Mark to attend the section summit, and get a form for new members to receive a "welcome" email or letter. Mark was not sure he could attend, but agreed to help out.

21. Board of Governors Representative (Melissa R. Schwartz)

No report - they meet in October.

22. Ambassador Coordinator (Melissa R. Schwartz)

Melissa is always looking for members to volunteer as an Ambassador, and if you are interested, you should contact Melissa directly.

23. GAL Subcommittee (David W. Kirch)

David reported there was not much feedback from judicial regarding proposed Rule 17. Hopes it will pass by the end of the year.

24. Miscellaneous/FYI

None.

25. Adjournment

The meeting was adjourned at or about 4:41 p.m.

Respectfully submitted,

Josie M. Faix

COMMENT

Reasonableness of Fee and Expenses

[1] Paragraph (a) requires that lawyers charge fees that are reasonable under the circumstances. The factors specified in (1) through (8) are not exclusive. Nor will each factor be relevant in each instance. Paragraph (a) also requires that expenses for which the client will be charged must be reasonable. A lawyer may seek reimbursement for the cost of services performed in-house, such as copying, or for other expenses incurred in-house, such as telephone charges, either by charging a reasonable amount to which the client has agreed in advance or by charging an amount that reasonably reflects the cost incurred by the lawyer.

Basis or Rate of Fee

[2] When the lawyer has regularly represented a client, they ordinarily will have evolved an understanding concerning the basis or rate of the fee and the expenses for which the client will be responsible. In a new client-lawyer relationship, the basis or rate of the fee must be promptly communicated in writing to the client. When the lawyer has regularly represented a client, they ordinarily will have reached an understanding concerning the basis or rate of the fee; but, when there has been a change from their previous understanding, the basis or rate of the fee should be promptly communicated in writing. All contingent fee arrangements must be in writing, regardless of whether the client-lawyer relationship is new or established. See C.R.C.P., Ch. 23.3, Rule 1. When providing legal services pursuant to a flat fee, a lawyer must provide the basis of the flat fee in writing for all funds received in advance pursuant to paragraph (i). A written communication must disclose the basis or rate of the lawyer's fees, but it need not take the form of a formal engagement letter or agreement, and it need not be signed by the client. Moreover, it is not necessary to recite all the factors that underlie the basis of the fee, but only those that are directly involved in its computation. It is sufficient, for example, to state that the basic rate is an hourly charge or a fixed amount or an estimated amount, to identify the factors that may be taken into account in finally fixing the fee, or to furnish the client with a simple memorandum or the lawyer's customary fee schedule. When developments occur during the representation that render an earlier disclosure substantially inaccurate, a revised written disclosure should be provided to the client.

[3] Contingent fees, like any other fees, are subject to the reasonableness standard of paragraph (a) of this Rule. In determining whether a particular contingent fee is reasonable, or whether it is reasonable to charge any form of contingent fee, a lawyer must consider the factors that are relevant under the circumstances. Applicable law may impose limitations on contingent fees, such as a ceiling on the percentage allowable, or may require a lawyer to offer clients an alternative basis for the fee. Applicable law also may apply to situations other than a contingent fee, for example, government regulations regarding fees in certain tax matters.

[3A] Repealed.

Terms of Payment

[4] A lawyer may require advance payment of a fee, but is obliged to return any unearned portion. See Rule 1.16(d). A lawyer may accept property in payment for services, such as an ownership interest in an enterprise, providing this does not involve

acquisition of a proprietary interest in the cause of action or subject matter of the litigation contrary to Rule 1.8(i). However, a fee paid in property instead of money may be subject to the requirements of Rule 1.8(a) because such fees often have the essential qualities of a business transaction with the client.

[5] An agreement may not be made whose terms might induce the lawyer improperly to curtail services for the client or perform them in a way contrary to the client's interest. For example, a lawyer should not enter into an agreement whereby services are to be provided only up to a stated amount when it is foreseeable that more extensive services probably will be required, unless the situation is adequately explained to the client. Otherwise, the client might have to bargain for further assistance in the midst of a proceeding or transaction. However, it is proper to define the extent of services in light of the client's ability to pay. A lawyer should not exploit a fee arrangement based primarily on hourly charges by using wasteful procedures.

[6] No Colorado comment.

Division of Fee

[7] A division of fee is a single billing to a client covering the fee of two or more lawyers who are not in the same firm. A division of fee facilitates association of more than one lawyer in a matter in which neither alone could serve the client as well, and most often is used when the fee is contingent and the division is between a referring lawyer and a trial specialist. Paragraph (e) permits the lawyers to divide a fee either on the basis of the proportion of services they render or if each lawyer assumes responsibility for the representation as a whole. In addition, the client must agree to the arrangement, including the share that each lawyer is to receive, and the agreement must be confirmed in writing. Contingent fee agreements must be in a writing signed by the client and must otherwise comply with paragraph (c) of this Rule. Joint responsibility for the representation entails financial and ethical responsibility for the representation as if the lawyers were associated in a partnership. A lawyer should refer a matter only to a lawyer who the referring lawyer reasonably believes is competent to handle the matter. See Rule 1.1.

[8] Paragraph (e) does not prohibit or regulate division of fees to be received in the future for work done when lawyers were previously associated in a law firm.

Disputes over Fees

[9] If a procedure has been established for resolution of fee disputes, such as an arbitration or mediation procedure established by the bar, the lawyer must comply with the procedure when it is mandatory, and, even when it is voluntary, the lawyer should conscientiously consider submitting to it. Law may prescribe a procedure for determining a lawyer's fee, for example, in representation of an executor or administrator, a class or a person entitled to a reasonable fee as part of the measure of damages. The lawyer entitled to such a fee and a lawyer representing another party concerned with the fee should comply with the prescribed procedure.

Advances of Unearned Fees and Engagement Retainer Fees

[10] The analysis of when a lawyer may treat advances of unearned fees as property of the lawyer must begin with the principle that the lawyer must hold in trust all fees paid by the client until there is a basis on which to conclude that the lawyer has earned the fee; otherwise the funds must remain in the lawyer's trust account because they are not the lawyer's property.

[11] To make a determination of when an advance fee is earned, the written statement of the basis or rate of the fee, when required by Rule 1.5(b), should include a description of the benefit or service that justifies the lawyer's earning the fee, the amount of the advance unearned fee, as well as a statement describing when the fee is earned. In flat fee agreements, the lawyer must describe when or how portions of the flat fee are earned under paragraph (i)(3) unless none of the fee is earned until all of the services have been provided. Whether a lawyer has conferred a sufficient benefit to earn a portion of the advance fee will depend on the circumstances of the particular case. If a portion of an advanced flat fee has been earned pursuant to a written agreement and transferred out of trust, after which the client disputes that it was earned, the lawyer is not required to return the funds to trust. See Rule 1.15A(c). The circumstances under which a fee is earned should be evaluated under an objective standard of reasonableness. Rule 1.5(a).

Rule 1.5(f) Does Not Prohibit Flat Fees

[12] Advances of unearned fees are those funds the client pays for specified legal services that the lawyer has agreed to perform in the future. Pursuant to Rule 1.15, the lawyer must deposit an advance of unearned fees in the lawyer's trust account. The funds may be earned only as the lawyer performs specified legal services or confers benefits on the client as provided for in the written statement of the basis of the fee, if a written statement is required by paragraph (b). Paragraph (i) requires advanced payment under a flat fee agreement to be in writing. See also Restatement (Third) of the Law Governing Lawyers §§ 34, 38 (1998). Rule 1.5 does not prevent a lawyer from entering into these types of arrangements.

[13] For example, the lawyer and client may agree that portions of the advance of unearned fees are deemed earned at the lawyer's hourly rate and become the lawyer's property as and when the lawyer provides legal services.

[14] Alternatively, the lawyer and client may agree to an advance flat fee that will be earned in whole or in part based upon the lawyer's completion of specific tasks or the occurrence of specific events, regardless of the precise amount of the lawyer's time involved. For instance, in a criminal defense matter, a lawyer and client may agree that the lawyer earns portions of the advance flat fee upon the lawyer's entry of appearance, initial advisement, review of discovery, preliminary hearing, pretrial conference, disposition hearing, motions hearing, trial, and sentencing. Similarly, in a trusts and estates matter, a lawyer and client may agree that the lawyer earns portions of the flat fee upon client consultation, legal research, completing the initial draft of testamentary documents, further client consultation, and completing the final documents.

[15] The portions of the advanced flat fee earned as each such event occurs need not be in equal amounts. However, the fees attributed to each event should reflect a reasonable estimate of the proportionate value of the legal services the lawyer provides in completing each designated event to the anticipated legal services to be provided on the entire matter.

[16] " An 'engagement retainer fee' is a fee paid, apart from any other compensation, to ensure that a lawyer will be available for the client if required. An engagement retainer must be distinguished from a flat fee constituting the entire payment for a lawyer's service in a matter and from an advance payment from which fees will be subtracted. A fee is an engagement retainer only if the lawyer is to be additionally compensated for

actual work, if any, performed." Restatement (Third) of the Law Governing Lawyers § 34 Comment e. An engagement retainer fee agreement must comply with Rule 1.5(a), (b), and (g), and should expressly include the amount of the engagement retainer fee, describe the service or benefit that justifies the lawyer's earning the engagement retainer fee, and state that the engagement retainer fee is earned upon receipt. As defined above, an engagement retainer fee will be earned upon receipt because the lawyer provides an immediate benefit to the client, such as forgoing other business opportunities by making the lawyer's services available for a given period of time to the exclusion of other clients or potential clients, or by giving priority to the client's work over other matters.

[17] Because an engagement retainer fee is earned at the time it is received, it must not be commingled with client property. However, it may be subject to refund to the client in the event of changed circumstances.

[18] It is unethical for a lawyer to fail to return unearned fees, to charge an excessive fee, or to characterize any lawyer's fee as nonrefundable. Lawyer's fees are always subject to refund if either excessive or unearned. If all or some portion of a lawyer's fee becomes subject to refund, then the amount to be refunded should be paid directly to the client if there is no further legal work to be performed or if the lawyer's employment is terminated. In the alternative, if there is an ongoing client-lawyer relationship and there is further work to be done, it may be deposited in the lawyer's trust account, to be withdrawn from the trust account as it is earned.

Colorado Bar Association

Trust & Estate

For the Three Months Ending September 30, 2017

		September	YTD	Budget	Variance	%	Last FY
Beginning balance	01-3160-31600		(\$441.96)		(\$441.96)		\$5,658.89
Trust & Estate Section							
Revenue							
Dues Income Section	01-4050-31600	1,530.00	30,405.00		30,405.00		25,725.00
Total Revenue Trust & Estate Section		1,530.00	30,405.00		30,405.00		25,725.00
Expenses							
AWARDS	01-5007-31600						(325.34)
Postage	01-5304-31600		(0.46)		(0.46)		(1.86)
Telephone	01-5412-31600	(76.25)	(155.10)		(155.10)		(143.83)
Meals (Not travel related)	01-5491-31600	(634.23)	(969.03)		(969.03)		(1,880.28)
Administration Fee	01-5494-31600	(494.58)	(1,483.74)		(1,483.74)		(1,470.00)
Total Expenses Trust & Estate Section		(1,205.06)	(2,608.33)		(2,608.33)		(3,821.31)
Statutory Revisions Committee							
Revenue							
Rev. Elderlaw Joint Task Force							
Rev. Uninform POA Act							
Rev. Uniform Trust Code							
Expenses							
Exp. Elderlaw Joint Task Force							
Exp. Uninform POA Act							
Exp. Uniform Trust Code							

CLE	
Revenue	
Revenue Joint CLE	
Revenue CLE Retreat	
Revenue CLE Section Only	
Expenses	
Expenses Joint CLE	
Expenses CLE Retreat	
Expenses CLE Section Only	
Council Notes	
Revenue	
Expenses	
Community & Civic Affairs	
Revenue	
Expenses	
Rules & Forms Committee	
Revenue	
Expenses	
Orange Book Forms	
Revenue	
Expenses	

Local Liaison			
Revenue		-----	
Expenses		-----	
Uniform Trust Code			
Revenue		-----	
Expenses		-----	
Transfer Deposits			
Revenue		-----	
Expenses		-----	
Admin. Chair			
Revenue		-----	
Expenses		-----	
Estate Planning Handbook			
Revenue		-----	
Expenses		-----	
Admin Council Dinner			
Revenue			
Meal Income	01-4051-31612		1,400.00
Total Revenue Admin Council Dinner			1,400.00
Expenses			
Meals (Not travel related)	01-5491-31612		(500.00)
Total Expenses Admin Council Dinner			(500.00)
Legislative Liaison			
Revenue			

Expenses

Internet Editor
Revenue

Expenses

Technology Committee
Revenue

Expenses

Real Estate Liaison
Revenue

Expenses

Green Book
Revenue

Expenses

The Colorado Lawyer
Revenue

Expenses

T&E Diversity Committee
Revenue

Expenses

Judicial Liaison
Revenue

Expenses					
Member Vouchers					
Expenses					
T&E Young Lawyer Society					
Revenue					
Expenses					
Telephone	01-5412-31629				(9.49)
Total ExpensesT7E YLS					
					(9.49)
Beginning Balance	01-3160-31600		(441.96)	(441.96)	5,658.89
Total Revenue All Sources	01-4???-316??	1,530.00	30,405.00	30,405.00	27,125.00
Total Expense All Sources	01-5???-316??	(1,205.06)	(2,608.33)	(2,608.33)	(4,330.80)
Ending Balance					
		324.94	27,354.71	27,354.71	28,453.09

		September	YTD	Budget	Variance	%	Last FY
Beginning balance	01-3160-31600		(\$441.96)		(\$441.96)		\$5,658.89
Trust & Estate Section- General							
Revenue	01-4???-31600	1,530.00	30,405.00		30,405.00		25,725.00
Expenses	01-5???-31600	(1,205.06)	(2,608.33)		(2,608.33)		(3,821.31)
Statutory Revisions Committee							
CLE							
Council Notes							
Community & Civic Affairs							
Rules & Forms Committee							
Orange Book Forms							
Local Liaison							
Uniform Trust Code							
Admin. Chair							
Estate Planning Handbook							
Admin Council Dinner							
Revenue	01-4???-31612						1,400.00
Expenses	01-5???-31612						(500.00)
Legislative Liaison							
Internet Editor							
Technology Committee							
Real Estate Liaison							
Green Book							
The Colorado Lawyer							
Diversity Committee							
Judicial Liaison							
Member Vouchers							
Uniform Trust Code							
Transfer Deposit							
Young Lawyer Society							
Expenses	01-5???-31629						(9.49)
Beginning Balance	01-3160-31600		(441.96)		(441.96)		5,658.89
Total Revenue All Sources	01-4???-316??	1,530.00	30,405.00		30,405.00		27,125.00
Total Expenses All Sources	01-5???-316??	(1,205.06)	(2,608.33)		(2,608.33)		(4,330.80)
Ending Balance		324.94	27,354.71		27,354.71		28,453.09

Proposed Flat Fee Rule

Colo. RPC 1.5

(a) through (g) [no changes]

(h) A “flat fee” is for specific legal services by a lawyer for which the client agrees to pay a fixed amount for those services, regardless of the time or effort involved or the result obtained.

(i) If a lawyer receives in advance a flat fee or any portion thereof, the basis or rate of the fee shall be communicated in writing before or within a reasonable time after commencing the representation and shall contain the following:

- (1) A description of the services the lawyer agrees to perform;
- (2) A statement of the amount to be paid to the lawyer for the services to be performed;
- (3) A description of when or how portions of the flat fee are deemed earned by the lawyer;
- (4) The amount, if any, of the fees the lawyer is entitled to keep upon termination of the representation before all the specified legal services have been performed.

(j) If a dispute arises about whether the lawyer has earned all or part of a flat fee, the portion of the flat fee in dispute shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the flat fee as to which the interests are not in dispute.

Trust and Estate Section of the Colorado Bar Association Bylaws
Restated as of April 18, 2002, as amended April 2008

ARTICLE I
Name and Purpose

Section 1. The Section shall be known as the Trust and Estate Section of the Colorado Bar Association (sometimes referred to as “Association”).

Section 2. The purposes of this Section shall be to promote the objects of the Colorado Bar Association within the field of trust and estate law and, to that end, promote an interest in trust and estate law among the members of the Bar and other citizens of Colorado, to foster and recommend legislation in this field in the furtherance of public interests and generally to serve the members of the Bar who are interested in trust and estate law.

ARTICLE II
Membership

Section 1. Each member of the Section shall pay to the Colorado Bar Association annual dues of One Dollar or such larger sum consistent with the policies of the Colorado Bar Association as may be fixed by the Section at any meeting thereof or as may be fixed by the Council of the Section. Any member or Associate Member of the Colorado Bar Association, upon request to the Executive Secretary of the Association and upon payment of dues for the current year, shall be enrolled as a member of this Section. Any member of the Section whose annual dues shall be more than six months past due may be dropped from the rolls of the Section.

Section 2. Associate members of the Colorado Bar Association who are members of the Section, but who are not licensed to practice law in the State of Colorado, shall be entitled to attend all meeting of the full Section, including Council and Section committee meetings, and shall receive all Section materials and benefits available to Section members. Further, such associate members shall be entitled to serve on special committees of the Section and to fully participate in, and vote at, such committee meetings and activities; provided, however, that such Associate members shall neither serve as an officer or council member of the Section nor vote at Section meetings.

ARTICLE III
Council

Section 1. The Council of this Section shall consist of the Chair, Vice Chair, Secretary/Treasurer, six Council members, and the Chair of the Section for the preceding year with each of these individuals having one vote. An individual may only serve in one of these positions at a time. The Council shall have general supervision and control of the affairs of the Section, subject to the Constitution and Bylaws of the Colorado Bar Association and the Bylaws of this Section. It shall authorize all commitments or contracts which shall entail the payment of money and shall, by the adoption of a budget or otherwise, authorize the expenditure of all moneys appropriated for the use or benefit of the Section. It shall not, however, authorize

commitments or contracts which entail the payment of money during any fiscal year in excess of the amount which shall have been previously appropriated to the Section for that year.

Section 2. The Council may authorize the Chair to appoint special committees from Section members to perform such duties and exercise such powers as the Council may direct, subject to the limitations of these Bylaws.

Section 3. Each year three members of the Council shall be elected at the annual meeting of the Section for terms of two years, such terms commencing on July 1 of the year of such meeting.

Section 4. If any member of the Council shall fail to attend two successive meetings of the Council, and if his or her absence is not excused by action at either meeting, then the office held by such member shall be deemed to be vacated, provided, however that ten days' notice in writing shall have been given to such member by the Secretary/Treasurer of each such meeting.

Section 5. The Council, during the interim between annual meetings of the Section, may fill vacancies in its membership or in the offices of the Section; provided, however, the office of Chair shall be filled automatically by the Vice Chair.

Section 6. A majority of the Council members and officers shall constitute a quorum for the transaction or business of the Council. The Council, however, may act by the submission to the Council members in writing of proposed action, and on any such submission, the Council may act only by the majority agreement of the whole Council. Meetings of the Council may be called by the Chair on such reasonable notice as circumstances permit.

ARTICLE IV

Officers, Liaisons and Representatives

Section 1. The voting officers of Council shall be the immediate Past Chair, Chair, Vice Chair and Secretary/Treasurer, who shall be nominated and elected at the annual meeting of the Section. Each officer shall serve for a term commencing on July 1 of the year of his or her election and ending on June 30 of the year subsequent to such election or until his or her successor shall have been elected and qualified.

Section 2. Vacancies in the offices of the Section shall be filled for the unexpired term by the Council as hereinafter provided.

Section 3. The Chair shall preside at all meetings of the Section and of the Council. The chair shall perform such other duties as usually pertain to the office of the Chair.

Section 4. Upon the death, resignation, or during the disability, of the Chair, or upon his or her refusal to act, the Vice Chair shall perform the duties of the Chair. The Vice Chair shall coordinate all continuing legal education programs and the Section retreat and perform such other duties as may be assigned to him or her by the Council or the Chair.

Section 5. The Secretary/Treasurer shall be the custodian of all books, papers and other property of the Section except money. The Secretary/Treasurer shall be the fiscal officer of the Section and shall keep an accurate record of all moneys appropriated to and expended for the use of the Section. The Secretary/Treasurer shall keep a true record of the proceedings of all meetings of the Section and the Council. The Secretary/Treasurer shall perform such other duties as usually pertain to his or her office or may be assigned by the Council or by the Chair.

Section 6. Prior to January 15th of each year, the Chair shall appoint a nominating committee consisting of the Chair, the Vice-Chair, the Secretary/Treasurer, the most recent Past Chair, and three other Section members (the “Nominating Committee”). In making his or her selections for the Nominating Committee, the Chair shall consider the inclusion of a young lawyer (age 37 or less or less than five years in the practice of trust and estate law) and an individual from outside the Denver metro area, if possible.

Section 7. The Nominating Committee shall make a call for nominations to the Section membership, which shall include the criteria for nominees for the offices of the Chair, Vice Chair, Secretary/Treasurer, and the Council members whose terms will expire on June 30 of the year of the annual meeting. The deadline for nominations is March 15th of each year. The Nominating Committee shall send a proposed slate to the Section membership for consideration no later than April 1st of each year. Any group of at least 25 Section members may propose an alternate slate for consideration by the Section by delivering the alternate slate, along with the signatures of at least 25 Section members, to the Chair no later than April 15th. The Section’s annual meeting shall be held on the third Thursday of May each year to approve the proposed slate or if necessary, to choose between the proposed slate and the alternate slate. The Chair shall announce the results no later than May 31st.

Section 8. When selecting individuals for the proposed slate, the Nominating Committee shall consider recognized diversity criteria; including ethnicity, age, gender, sexual orientation, area of practice, firm size, years in practice, and geographic location. The Nominating Committee shall also consider the need to preserve institutional knowledge, number of persons per law firm, and prior Section involvement.

Section 9. The Secretary/Treasurer shall cause a notice of the Annual Meeting of the Section to be given to the members of the Section no less than 21 days nor more than 63 days prior to the annual meeting. The notice shall contain a summary of any proposed Bylaw changes recommended by the Council, the proposed slate and any qualifying alternate slates. The notice may be given by mail or email. All elections shall be by voice vote unless otherwise ordered by resolution adopted by the Section at the annual meeting at which the election is held.

Section 10. The Nominating Committee shall also make recommendations to Council for the following positions: Communications Representative, Young Lawyers Representative, Legislative Liaison, and Board of Governors Representative. Each of these positions shall have a one-year term commencing on July 1 of the year of his or her appointment and ending on June 30 of the year subsequent to such appointment. Council shall vote on these appointments at its May meeting each year. An individual may be reappointed to these positions and multiple individuals may split the duties of these appointments.

Section 11. Council may appoint committee chairs and other representatives or liaisons as it deems necessary to conduct Section business.

ARTICLE V Section Meetings

Section 1. The Annual Meeting of the Section shall be held on the third Thursday of May at 3:30 p.m. in the offices of the Colorado Bar Association, with such program and order of business as may be arranged by the Chair.

Section 2. Special meetings of the Section may be called by the Chair upon approval of the Council, at such time and place as the Council may determine.

Section 3. The members of the Section present at any meeting shall constitute a quorum for the transaction of business.

Section 4. All binding action of the Section shall be by a majority vote of the members present.

ARTICLE VI Miscellaneous Provisions

Section 1. The fiscal year of the Section shall be the same as that of the Colorado Bar Association.

Section 2. All bills incurred by the Section, before being forwarded to the Treasurer of the Colorado Bar Association for payment, shall be approved by the Chair or the Secretary/Treasurer, or, if the Council shall so direct, by both of them.

Section 3. No salary or compensation shall be paid to any officer, council member or member of a committee.

Section 4. Any action by this Section must be approved by the Colorado Bar Association before the same becomes effective as the action of the Colorado Bar Association. Any resolution adopted or action taken by this Section may on request of the Section be reported by the Chair of the Section to the annual meeting of the Colorado Bar Association for the Association's action thereon.

Section 5. These Bylaws shall become effective upon the approval thereof upon recommendation of the Board of Governors of the Colorado Bar Association and by this Section.

ARTICLE VII Amendments

These Bylaws may be amended at any annual or special meeting to the Section by a majority vote of the members of the Section present and voting.

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Trust and Estate Section of the Colorado Bar Association Bylaws
Restated as of April 18, 2002, as amended April 2008

ARTICLE I
Name and Purpose

Section 1. The Section shall be known as the Trust and Estate Section of the Colorado Bar Association (sometimes referred to as “Association”).

Section 2. The purposes of this Section shall be to promote the objects of the Colorado Bar Association within the field of trust and estate law and, to that end, promote an interest in trust and estate law among the members of the Bar and other citizens of Colorado, to foster and recommend legislation in this field in the furtherance of public interests and generally to serve the members of the Bar who are interested in trust and estate law.

ARTICLE II
Membership

Section 1. Each member of the Section shall pay to the Colorado Bar Association annual dues of One Dollar or such larger sum consistent with the policies of the Colorado Bar Association as may be fixed by the Section at any meeting thereof or as may be fixed by the Council of the Section. Any member or Associate Member of the Colorado Bar Association, upon request to the Executive Secretary of the Association and upon payment of dues for the current year, shall be enrolled as a member of this Section. Any member of the Section whose annual dues shall be more than six months past due may be dropped from the rolls of the Section.

Section 2. Associate members of the Colorado Bar Association who are members of the Section, but who are not licensed to practice law in the State of Colorado, shall be entitled to attend all meeting of the full Section, including Council and Section committee meetings, and shall receive all Section materials and benefits available to Section members. Further, such associate members shall be entitled to serve on special committees of the Section and to fully participate in, and vote at, such committee meetings and activities; provided, however, that such Associate members shall neither serve as an officer or council member of the Section nor vote at Section meetings.

ARTICLE III
Officers

~~Section 1. The officers of this Section shall be a Chair, Vice Chair and Secretary/Treasurer, who shall be nominated and elected at the annual meeting of the Section. Each officer shall serve for a term commencing on July 1 of the year of his or her election and ending on June 30 of the year subsequent to such election or until his or her successor shall have been elected and qualified.~~

~~Section 2. Vacancies in the offices of the Section shall be filled for the unexpired term by the Council as hereinafter provided.~~

~~Section 3. The Chair shall preside at all meetings of the Section and of the Council. The chair shall present at each annual meeting of the Colorado Bar Association a report of the work of the Section for the past year. The chair shall perform such other duties as usually pertain to the office of the Chair.~~

~~Section 4. Upon the death, resignation, or during the disability, of the Chair, or upon his or her refusal to act, the Vice Chair shall perform the duties of the Chair. The Vice Chair shall perform such other duties as may be assigned to him or her by the Council or the Chair.~~

~~Section 5. The Secretary/Treasurer shall be the custodian of all books, papers and other property of the Section except money. The Secretary/Treasurer shall be the fiscal officer of the Section and shall keep an accurate record of all moneys appropriated to and expended for the use of the Section. The Secretary/Treasurer shall keep a true record of the proceedings of all meetings of the Section and the Council. The Secretary/Treasurer shall perform such other duties as usually pertain to his or her office or may be assigned by the Council or by the Chair.~~

~~Section 6. Prior to the December meeting of the Council, the Chair shall appoint a nominating committee consisting of the Chair and the three most immediate Past Chairs available. The committee shall report to the January meeting of the Council its nominations for the offices of the Chair, Vice Chair, Secretary/Treasurer and Council members whose terms will expire on June 30 of the year of the annual meeting. The Council shall cause a notice of the annual meeting of the Section to be given to the members of the Section no less than 30 days nor more than 60 days prior to the annual meeting. The notice shall contain a summary of any proposed ByLaw changes recommended by the Council and the slate of candidates nominated by the nominating committee. The notice may be given by mail, facsimile or email. Any Section member may make an additional nomination of an officer or Council member to be voted upon at the annual meeting by delivery of said additional nomination to the Chair in writing, at least two weeks prior to the annual meeting. All elections shall be by voice vote unless otherwise ordered by resolution adopted by the Section at the annual meeting at which the election is held.~~

ARTICLE IV

Council

Section 1. The Council of this Section shall consist of the Chair, Vice Chair, Secretary/Treasurer, six Council members, and the Chair of the Section for the preceding year with each of these individuals having one vote. An individual may only serve in one of these positions at a time. The Council shall have general supervision and control of the affairs of the Section, subject to the Constitution and Bylaws of the Colorado Bar Association and the Bylaws of this Section. It shall authorize all commitments or contracts which shall entail the payment of money and shall, by the adoption of a budget or otherwise, authorize the expenditure of all moneys appropriated for the use or benefit of the Section. It shall not, however, authorize commitments or contracts which entail the payment of money during any fiscal year in excess of the amount which shall have been previously appropriated to the Section for that year.

Section 2. The Council may authorize the Chair to appoint special committees from Section members to perform such duties and exercise such powers as the Council may direct, subject to the limitations of these Bylaws.

Section 3. Each year three members of the Council shall be elected at the annual meeting of the Section for terms of two years, such terms commencing on July 1 of the year of such meeting--
~~For the term commencing July 1, 1997, the Council shall elect 4 members. One will serve for a one-year term and three for a two-year term.~~

Section 4. If any member of the Council shall fail to attend two successive meetings of the Council, and if his or her absence is not excused by action at either meeting, then the office held by such member shall be deemed to be vacated, provided, however that **ten days' notice in writing shall have been given to such member by the Secretary/Treasurer of each such meeting.**

Section 5. The Council, during the interim between annual meetings of the Section, may fill vacancies in its membership or in the offices of the Section; provided, however, the office of Chair shall be filled automatically by the Vice Chair.

Section 6. A majority of the Council members and officers shall constitute a quorum for the transaction or business of the Council. The Council, however, may act by the submission to the Council members in writing of proposed action, and on any such submission, the Council may act only by the majority agreement of the whole Council. Meetings of the Council may be called by the Chair on such reasonable notice as circumstances permit.

ARTICLE IV **Officers, Liaisons and Representatives**

Section 1. The voting officers of Council shall be the immediate Past Chair, Chair, Vice Chair and Secretary/Treasurer, who shall be nominated and elected at the annual meeting of the Section. Each officer shall serve for a term commencing on July 1 of the year of his or her election and ending on June 30 of the year subsequent to such election or until his or her successor shall have been elected and qualified.

Section 2. Vacancies in the offices of the Section shall be filled for the unexpired term by the Council as hereinafter provided.

Section 3. The Chair shall preside at all meetings of the Section and of the Council. The chair shall perform such other duties as usually pertain to the office of the Chair.

Section 4. Upon the death, resignation, or during the disability, of the Chair, or upon his or her refusal to act, the Vice Chair shall perform the duties of the Chair. The Vice Chair shall coordinate all continuing legal education programs and the Section retreat and perform such other duties as may be assigned to him or her by the Council or the Chair.

Section 5. The Secretary/Treasurer shall be the custodian of all books, papers and other property of the Section except money. The Secretary/Treasurer shall be the fiscal officer of the Section and shall keep an accurate record of all moneys appropriated to and expended for the use of the Section. The Secretary/Treasurer shall keep a true record of the proceedings of all meetings of the Section and the Council. The Secretary/Treasurer shall perform such other duties as usually pertain to his or her office or may be assigned by the Council or by the Chair.

Section 6. Prior to January 15th of each year, the Chair shall appoint a nominating committee consisting of the Chair, the Vice-Chair, the Secretary/Treasurer, the most recent Past Chair, and three other Section members (the "Nominating Committee"). In making his or her selections for the Nominating Committee, the Chair shall consider the inclusion of a young lawyer (age 37 or less or less than five years in the practice of trust and estate law) and an individual from outside the Denver metro area, if possible.

Section 7. The Nominating Committee shall make a call for nominations to the Section membership, which shall include the criteria for nominees for the offices of the Chair, Vice Chair, Secretary/Treasurer, and the Council members whose terms will expire on June 30 of the year of the annual meeting. The deadline for nominations is March 15th of each year. The Nominating Committee shall send a proposed slate to the Section membership for consideration no later than April 1st of each year. Any group of at least 25 Section members may propose an alternate slate for consideration by the Section by delivering the alternate slate, along with the signatures of at least 25 Section members, to the Chair no later than April 15th. The Section's annual meeting shall be held on the third Thursday of May each year to approve the proposed slate or if necessary, to choose between the proposed slate and the alternate slate. The Chair shall announce the results no later than May 31st.

Section 8. When selecting individuals for the proposed slate, the Nominating Committee shall consider recognized diversity criteria: including ethnicity, age, gender, sexual orientation, area of practice, firm size, years in practice, and geographic location. The Nominating Committee shall also consider the need to preserve institutional knowledge, number of persons per law firm, and prior Section involvement.

Section 9. The Secretary/Treasurer shall cause a notice of the Annual Meeting of the Section to be given to the members of the Section no less than 21 days nor more than 63 days prior to the annual meeting. The notice shall contain a summary of any proposed Bylaw changes recommended by the Council, the proposed slate and any qualifying alternate slates. The notice may be given by mail or email. All elections shall be by voice vote unless otherwise ordered by resolution adopted by the Section at the annual meeting at which the election is held.

Section 10. The Nominating Committee shall also make recommendations to Council for the following positions: Communications Representative, Young Lawyers Representative, Legislative Liaison, and Board of Governors Representative. Each of these positions shall have a one-year term commencing on July 1 of the year of his or her appointment and ending on June 30 of the year subsequent to such appointment. Council shall vote on these appointments at its May meeting each year. An individual may be reappointed to these positions and multiple individuals may split the duties of these appointments.

Section 11. Council may appoint committee chairs and other representatives or liaisons as it deems necessary to conduct Section business.

ARTICLE V Section Meetings

Section 1. The ~~annual meeting at~~ Annual Meeting of the Section shall be held on the third Thursday of ~~April~~ May at 3:30 p.m. in the offices of the Colorado Bar Association, with such program and order of business as may be arranged by the ~~Council~~ Chair.

Section 2. Special meetings of the Section may be called by the Chair upon approval of the Council, at such time and place as the Council may determine.

Section 3. The members of the Section present at any meeting shall constitute a quorum for the transaction of business.

Section 4. All binding action of the Section shall be by a majority vote of the members present.

ARTICLE VI Miscellaneous Provisions

Section 1. The fiscal year of the Section shall be the same as that of the Colorado Bar Association.

Section 2. All bills incurred by the Section, before being forwarded to the Treasurer of the Colorado Bar Association for payment, shall be approved by the Chair or the Secretary/Treasurer, or, if the Council shall so direct, by both of them.

Section 3. No salary or compensation shall be paid to any officer, council member or member of a committee.

Section 4. Any action by this Section must be approved by the Colorado Bar Association before the same becomes effective as the action of the Colorado Bar Association. Any resolution adopted or action taken by this Section may on request of the Section be reported by the Chair of the Section to the annual meeting of the Colorado Bar Association for the Association's action thereon.

Section 5. These Bylaws shall become effective upon the approval thereof upon recommendation of the Board of Governors of the Colorado Bar Association and by this Section.

ARTICLE VII Amendments

These Bylaws may be amended at any annual or special meeting to the Section by a majority vote of the members of the Section present and voting.

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Rendering set	Standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
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Deletions	18
Moved from	17
Moved to	17
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Format changed	0
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