

**Meeting of Elder Law Section of the CBA
March 6, 2019**

Chair:	Arlene Barringer	Denver	303-757-4342	arlene@denverprobatelaw.com
Chair Elect:	Brooke Brestel	Broomfield	303-731-4402	brooke@brestelbucar.com
Secretary:	Sherene Stenger	Littleton	303-601-1475	Sherene.Stenger@yahoo.com
Treasurer:	Charles Spence	Durango	970-247-1755	cspence@mbsslpc.com
Council Members:				
	Erin Connor	Ft. Collins	970 224-9779	erin@sutherland-connor.com
	Shauna Clemmer	Grand Junction	970-243-8250	shauna@brownandbrownpc.com
	Tamara Trujillo	Denver	303-355-8500	tamara@coloradoelderlaw.com
	Letty Maxfield	Denver	303-353-8354	letty@tealaw.com
	Patrick Thiessen	Jefferson	303-420-1234	prthiessen@frieardt.com
	Mallory Hasbrook	Denver	303-376-4469	mhasbrook@wsmtlaw.com
	Paige Armstrong	Denver	303-534-5100	parmstrong@steenrodllaw.com
CBA Liaison:	Juliann Tricarico	Denver	303-824-5340	jtricarico@cobar.org
CBA Board of Governors Rep.:	Marco Chayet	Denver	303-355-8500	marco@coloradoelderlaw.com

Frank Slaninger Honorary Acronym Key:

ELS –	Elder Law Section
EC –	Executive Council
T&E –	Trust and Estates Section
SRC –	Statutory Revisions Committee
DPC –	Denver Probate Court
PoA –	Power of Attorney
NCCUSL –	National Conference of Commissioners on Uniform State Laws
HCPF –	Department of Health Care Policy and Financing

Other abbreviations:

BOG -	Board of Governors
M/S/A –	a motion was made, seconded and approved by the voting members.
M/S/D –	a motion was made, seconded and denied by the voting members.
SLD –	Senior Law Day
LPC –	Legislative Policy Committee

1. **Call to Order** at 8:38AM.

Introductions followed, and the sign-in sheet was circulated. **Please sign in or you may not be included in the minutes.** Those attending were:

<u>IN PERSON:</u>	<u>ON PHONE:</u>
Paige Armstrong	Charles Spence
Arlene Barringer	Steven Strandberg
Lisa Bayer	Tamara Trujillo
Frank Baysore	
Dave Bernhart	
Jerry Boreson	
Megan Brand	
Brooke Brestel	
Chris Brock	
Scott Challinor	
Daphne Dean	
Claire Dineen	
Tammy Conover	
W. Dirk Costin	
Jessica Creevy	
Jonathan Culwell	
Krista Dunn	
Lisa Eastin	
Susie Germany	
Carl Glatstein	
Sarah Golombek	
Eric Kelly	
Amy Kho	
Michael Kirtland	
Ayo Labode	
Rikke Liska	
Russell Luna	
Marcus Mcoy	
Marcie McMinimee	
Kayla Nelson	
Nancy Peterson	
Ryan Scott	
Jeremy Schupbach	
Catherine Seal	
Sandra Sigler	
Sherene Stenger	
Melanie Stickler	
Patrick Thiessen	
Juliann Tricarico	
Pam Wilson	

Hal Wright Josh Yeager Kris Zumalt	
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2. Call for review and approval of the February 2019 Minutes. M/S/A the February 2019 minutes.

3. **Chair's Report** – Arlene Barringer presented. An email will be sent in the near future regarding nominations for open positions of leadership within this section.

4. **Treasurer's Report** – Charles Spence-presented by phone. The balance in the section's account is approximately \$10,000.00. This amount does not include payment toward the Elder Law Retreat. After that payment is deducted, the balance will be approximately \$5,500.00 at the end of the fiscal year. There will be a discussion regarding increasing dues by \$5.00, making the total amount for dues \$35.00 per year. This will generate approximately \$1,500.00 for the section's use. A selling point for the increase in dues is that there is a CLE presented for 10 months which is included in this cost of dues.

5. **Old Business**
 - a. Committee Reports (Chairperson of the committee may report any current matters.) Our current committees are:
 - i. Civic and Community Affairs Committee (CCA): Chair: Sandra Sigler presented. The committee reached its fundraising goal. The SLD handbooks are almost ready to be published. The following is a list of scheduled SLD's:
 - a. Jefferson County-June 1, 2019 at the Jefferson County Courthouse;
 - b. 17th Judicial District-June 8, 2019 at Academy Charter School; and
 - c. Denver-July 27, 2019.

This committee has revised the contents of the brochure titled "What to do When Someone Dies" and will be presenting it to Elder Law and T & E today. It will be circulated at Executive Council for comments.
 - ii. CLE and Publications Committee: Chair: TBD. Arlene Barringer presented. This committee is currently seeking a chairperson. Please contact Arlene Barringer or Brooke Brestel if interested in serving as chairperson or if interested in presenting a CLE. The speaker this month's CLE is Keith D. Lapuyade on the topic of

Privity and Privacy: Recent Caselaw and Developments Impacting the Attorney Client Relationship.

- iii. Elder Law Retreat: Co-Chairs: Susie Germany and Tammy Conover. Tammy Conover presented. The 2019 Elder Law Retreat will be held on August 22-24, 2019 at the Vail Marriott. The program is almost completed and the details regarding the practicum are being finalized. Kayla Nelson may be substituting for Tammy Conover as Ms. Conover may not be at the Retreat. There will be trainings held in Spring and Summer for attorneys and vendors participating in the practicum.
- iv. Medicaid Regulatory Reform/Legislation Committee (MRRC): Co-chairs: Virginia Frazer-Abel and Eric Kelly. Eric Kelly presented. Meetings will be scheduled the first Tuesday of the month and will be held via telephone. Please contact Eric Kelly if you would like to join this committee.
- v. Probate Trial & Procedure Committee: Co-Chairs: Jody Pilmer and Zach Schlichting. Neither present. No report.
- vi. Advanced Legislative Response Team Joint Subcommittee: Co-chairs: Marco Chayet and Letty Maxfield. Letty Maxfield presented. HB 19-1167 titled Remote Notaries Protect Privacy, concerning an authorization for notaries public to perform notarial acts using audio video communication. ELS and the CBA voted to support this bill. It is out of House committee meetings and will now go to Appropriations. Opponents are against the data privacy issue. There was a stakeholder meeting held on Monday. General discussion on consumer protection.
- vii. Office of the Public Guardianship Committee (OPG): Chair: Carl Glatstein presented. HB-1045 Office of Public Guardianship Operating Conditions concerning funding for carrying out duties related to the Office of Public Guardianship. The bill removes the condition that the commission and director wait to carry out certain duties until the cash fund has received the specified amount (\$1.7 million) of gifts, grants, and donations. The pilot program for the OPG is for 3 years and the primary focus is to gather data on the anticipated need. There are approximately 17,000 outstanding cases. The prediction is that there are over 5,000 cases that need the assistance of this office. We will not know what the exact need is until the process is started and the OPG is able to collect the data. At the end of the pilot project, this office will report to the legislature as to the exact need. So far, two thousand

dollars has been raised which represents seed money for this office. State Judicial believes that \$500,000 is needed to get this office up and running. There will be a meeting today at 1pm with the staff from State Judicial to discuss increasing the filing fees on probate cases in order to raise money for this office. Representative Snyder and Connie Lind will be present at the meeting.

- viii. Mental Health Committee: Chair: Jonathan Culwell presented. There was a general discussion concerning the bills presented this session.
 - a. HB19-1169-Mental Health Involuntary Transportation Holds concerning the authority to hold a person in a mental health crisis through the provisions of the mental health involuntary transportation hold until the initial evaluation at the receiving facility is completed. This bill is postponed;
 - b. SB19-026-Postconviction Remedy Proceedings. This bill is postponed;
 - c. HB19-1177-Extreme Risk Protection Orders concerning the creation of an extreme risk protection order, and in connection therewith, making an appropriation – This “Red Flag” gun Bill is very political and has lots of representation among various groups. Elder Law Section will not take a position on this bill;
 - d. HB19-1044 Advance Behavioral Health Orders Treatment concerning advance behavioral health orders determining the scope of treatment an adult wishes to receive under certain behavioral health circumstances. Mr. Culwell is involved in the discussions with this bill. It offers a person the ability to select the scope of mental health treatment they would like to receive. Mr. Culwell testified to the Senate committee a few weeks ago and the suggested amendments to this bill were accepted. The bill is set to pass with amendments. This is called an “Order” but there is no provision for a signature from a doctor. It is more akin to a behavioral health advance directive. The Bill is not perfect but it’s a good start. Mr. Culwell and Mr. Schupbach will stay involved with this one. Thank you to both of them for their work on this bill.

- ix. Electronic Will & Remote Notarization Joint Subcommittee – Co-chairs: Letty Maxfield and Herb Tucker. Ms. Maxfield already discussed Remote Notarization above. Per Mr. Schupbach, the CULC is reappointed each year. Those who did not favor Electronic Wills were not reelected this year. He does not have assurance from the Commission that they have no interest in this

bill. Hence this bill may resurface. Per Mr. Kirtland, the Uniform bill could be passed at the end of April. General discussion.

- x. Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act Subcommittee: Co-chairs: Catherine Seal and Brooke Brestel. Arlene Barringer presented. The Bill of Rights is postponed indefinitely. Ms. Brestel and Ms. Barringer testified regarding this bill. It is dead this year but will resurface next year. This summer will be used to address the proponents' concerns regarding guardianships. Ms. Liska, Ms. Brestel and Ms. Seal will set an agenda and invite proponents of the bill to review parts of the uniform bill so they can report back to the legislature next year. The sponsor stated the bill is poorly drafted. The meetings will commence in May.
- xi. Subcommittee for Fiduciary Duties and Entities: Chair: Scott Challinor presented. No report.

b. Liaison Reports

- i. Board of Governors: Marco Chayet not present. No report.
- ii. Legislative Relations: Jeremy Schupbach presented.

The Disability Trust Bill. LPC and this section voted to support this bill. The next step is having leadership move on this bill. Most likely this bill will die. Person created this bill with no sponsors therefore this bill has been orphaned. Leadership is not sure what to do with this bill. Until this bill is made a priority, there is nothing this section can do. Eric Solem was the primary drafter of this bill and discussed it last month at the Elder Law Section general meeting. This bill impacts people in this state and those who want to move out of the state.

SB-172—Protect From Unlawful Abandonment And Confinement. This bill concerns crimes related to an at-risk person, and, in connection therewith, creating the crimes of unlawful abandonment and unlawful confinement. This bill increases the crime from a class 1 to a class 6 felony. Mr. Schupbach consulted with the Criminal Law section because of the change from a misdemeanor to a felony. Mr. Schupbach has a meeting with Senator Ginal. This bill needs to be considered by this section. General discussion. Ms. Zumalt will work on a memo concerning this bill and list the consequences should it

become law. The bill will be discussed at the ELS Executive Council meeting today.

- iii. Trust and Estate Section Liaison: Patrick Thiessen presented. No report.
- iv. SRC Liaison: Nancy Peterson/Mallory Hasbrook. Nancy Peterson presented.
 - a. Abandoned Estate Planning Documents-The new Secretary of State does not share the prior Secretary's views on this bill. Negotiations will likely be reopened.
 - b. Child Support in Probate Subcommittee-Pat Mellen has recruited a counterpart from the Family Law section. The next meeting will be March 20th at LawBank. Contact Pat Mellen (pat@patmellenlaw.com) if you would like to participate.
- v. Outreach Coordinator: Mallory Hasbrook not present. Nancy Peterson presented. See CBA YLD Liaison below.
- vi. Communications Representative: Paige Armstrong not present. No report.
- vii. CBA Legislative Policy Committee Liaisons: Brooke Brestel/Patrick Thiessen. Brooke Brestel presented. LPC approved the disability trust statute and remote notarization.
- viii. UTC Committee Liaison: Michael Kirtland presented. This committee is reviewing section 5-Creditors Rights.
- ix. NAELA Colorado: Marco Chayet not present. Tamara Trujillo presented. The annual NAELA conference is May 9-11, 2019 and will be held in Fort Worth Texas.
- x. National Guardianship Association/Colorado Guardianship Association: Sarah Golombek presented. The next presentation is scheduled for March 12, 2019 at Porter Place and the topic will be Social Security Benefits and the appropriate time to start collecting.

- xi. CBA Ethics Committee: Michael Kirtland presented. No report.
- xii. Probate Rules & Forms Committee: Marcie McMinimee presented. Rules and Forms have been finalized and are being reviewed by the Supreme Court. There will be revisions to Letters for Conservatorship. If you have any proposed changes to the forms, please contact Ms. McMinimee.
- xiii. SRC Public Administrator Liaison: Marcie McMinimee presented. The Public Administrator guidelines are currently in effect. Public Administrator reports were due on March 1, 2019. General discussion.
- xiv. CBA YLD Liaison: Mallory Hasbrook. Nancy Peterson presented.
 - a. A reminder that the Spring CLE and Social will be held this Thursday, March 7th, at The Lobby in Denver, featuring “lightning round” sessions on law practice management topics.
 - b. The 5th Annual ABA Western States Regional Summit will be held April 4–7 at the Steamboat Grand in Steamboat Springs. The Summit is an opportunity for young lawyers and law students throughout the western state region to network and attend valuable CLEs. Registration is \$75.
 - c. Volunteer attorneys, law students, paralegals, and community leaders are needed to judge the 2019 State High School Mock Trial Tournament this Friday and Saturday, March 8 and 9, in Golden. Several time slots are available; breakfast or lunch provided.

Those interested in attending any of these events may contact Mallory Hasbrook directly at 303-376-4469 or mhasbrook@wsmtlaw.com.

6. New Business and Announcements.

Megan Brand reported that the Colorado Fund for People with Disabilities is continuing to accept people over 65 into pooled trusts. General discussion.

The Section Meeting ended at 9:56AM.

The CLE portion of the meeting began shortly thereafter. The CLE speaker this month was Keith Lapuyade on the topic of "Privity and Privacy- A Discussion of Recent Developments in Caselaw and Ethics Opinions". Materials are available on the Section's website.