

**CBA TRUST AND ESTATE SECTION
STATUTORY REVISIONS COMMITTEE
AGENDA**

February 3, 2021

1. Introductions

As we are still meeting via Zoom, the introductions will be limited to those who are visitors, new members or members who are looking for a mentor, study group or to join a practice. Please feel free to look through your Zoom galleries to find old and new friends.

2. Approval of December 2, 2020 Minutes

3. Announcements

a. *Virtual Meetings.* Expect virtual meetings through at least the end of the winter and to this end there are a couple of procedural points.

i. Handling questions/comments - Message the word “question” to the zoom group during a presentation. At the end of the presentation, Chair will open the floor for folks who messaged in the order the messages were received.

ii. Please make sure if you are not speaking you are muted. If you are speaking make sure you are not muted.

b. *Email List.* If you did not receive the SRC materials in an email from Katie then you are not on the SRC email list. Email Dylan (dmetzner@joneskeller.com) and he’ll add you to the email list.

4. Legislative Report

5. SRC Approved Proposals

a. Active Matters

b. Inactive Matters Approved by SRC but Not Moving Forward for Various Reasons

(i) Colorado Electronic Preservation of Abandoned Estate Planning Documents Act Subcommittee (Pete Bullard, Chair)ⁱ

6. Unapproved Matters under Consideration by SRC - Reports from Subcommittees

a. Legislation Review Joint Subcommittee (Michael D. Holder, Chair)

- b. **ADR Legislation (C. Jean Stewart, Chair)**
 - c. **Child Support in Probate Subcommittee (Pat Mellen, Chair)**
 - d. **Witness Requirements in Advanced Directives (Carl Stevens, Chair)**
 - e. **Uniform Probate Code (UPC) 2019 Revisions (Bette Heller and Darla Daniels, Co-Chairs)**
 - f. **Family Allowance (Michael Kirtland, Chair)**
7. **Inactive Matters**
- a. **UTC Subcommittee Part 5 (Connie Eyster, Chair)**
 - b. **Uniform Fiduciary Income and Principal Act Subcommittee (Gene Zuspann, Chair and Georgine Kryda, Co-Chairs)**
 - c. **Uniform Electronic Wills Act (Letty Maxfield and Herb Tucker, Co-Chairs)**
8. **Report from Elder Law Section**
9. **Report from Other Sections of the Bar**
10. **New Matters**
11. **Passed Proposals for Inclusion in Omnibus Bill or Stand Alone Legislation**
- a. **Bankruptcy/Inherited IRAs (approved in 2015-2016)**
 - b. **Changes to the Uniform Power of Appointment Act (approved in 2015-2016)**
 - c. **Disclosure of Fiduciary Fees, §§ 15-10-602 and 15-12-705, C.R.S. (approved in 2015-2016) (Gordon Williams)**
 - d. **~~Uniform Directed Trust Act Subcommittee (Kevin Millard, Co-Chair, and Kelly Cooper, Co-Chair)~~**

ⁱ Judicial (State Court Administrator) would only agree to become the sponsoring agency of this legislation if the seven separate categories under the definition of “original estate planning document” was pared down to the single category of “will documents.” This was insisted upon to minimize the size of the “pilot program” Judicial envisioned would be needed to initially implement the legislation in partnership with (and utilizing the technological resources of) the Colorado State Archives office. Once Judicial has completed its pilot program and the electronic document upload, storage, and retrieval system for “will documents” is operating as intended under the statute, the other six categories of “original estate planning documents” as they appear in § 15-23-103(14) in HB19-1229 as originally introduced on March 8, 2019 should be restored to the Act by amendment. See <https://leg.colorado.gov/bills/hb19-1229>.

**CBA TRUST AND ESTATE SECTION
STATUTORY REVISIONS COMMITTEE
MINUTES**

December 2, 2020

1. Introductions

Chair, Lauren DaCunha, called the meeting to order at 1:31 p.m. As this was a Zoom meeting, introductions were limited to new members or those seeking a mentor or a practice.

2. Approval of November 4, 2020 Minutes

The minutes from the November 4, 2020 meeting were unanimously approved. Eugene Zuspahn moved to approve and Carl Stevens seconded.

3. Announcements

a. *Virtual Meetings.* Expect virtual meetings through at least the end of the winter and to this end there are a couple of procedural points.

i. Handling questions/comments - Message the word "question" to the zoom group during a presentation. At the end of the presentation, Chair will open the floor for folks who messaged in the order the messages were received.

ii. Please make sure if you are not speaking you are muted. If you are speaking make sure you are not muted.

b. *Email List.* If you did not receive the SRC materials in an email from Katie then you are not on the SRC email list. Email Dylan (dmetzner@joneskeller.com) and he'll add you to the email list.

4. Legislative Report

Andy White presented the legislative report.

Priority issues from SRC have been the uniform law commission bills. These have been drafted and Andy wished to thank the drafting committee. These bills are UPC Part 5, Electronic Wills and UFIPA.

Legislature's emergency session was focused on COVID emergency relief.

Legislature is scheduled to convene its general session on January 13, 2021.

5. **SRC Approved Proposals**

a. **Active Matters**

b. **Inactive Matters Approved by SRC but Not Moving Forward for Various Reasons**

- (i) **Colorado Electronic Preservation of Abandoned Estate Planning Documents Act Subcommittee (Pete Bullard, Chair)ⁱ**

6. **Unapproved Matters under Consideration by SRC - Reports from Subcommittees**

a. **UTC Subcommittee Part 5 (Connie Eyster, Co-Chair)**

Approved and has gone to LPC committee and has been approved at LPC.

This will be moved in inactive matters.

b. **Legislation Review Joint Subcommittee (Michael D. Holder, Chair)**

No Report

c. **ADR Legislation (C. Jean Stewart, Chair)**

No Report

e. **Uniform Fiduciary Income and Principal Act Subcommittee (Gene Zuspahn, Chair and Georgine Kryda, Co-Chairs)**

Approved and has gone to LPC committee.

This will be moved to inactive matters.

f. **Child Support in Probate Subcommittee (Pat Mellen, Chair)**

No Report

g. **Uniform Electronic Wills Act (Letty Maxfield and Herb Tucker, Co-Chairs)**

Approved and has gone to LPC committee.

This will be moved to inactive matters.

h. **Witness Requirements in Advanced Directives (Carl Stevens, Chair)**

Carl Reported

During the November meeting a Straw Poll was taken which indicated support to a change to 15-18-106. The Straw Poll was based on the following three options:

- Option A- Consistent with Wills (two independent witnesses or notary)

- Option B- Only requirement is that it be signed (no witness or notary requirement).
 - o This is consistent with the uniform act.
- Option C- Recommend that Option A be the statutory language but provide the Option B language to the Governor's office in the event that the Governor chooses to make an emergency declaration to remove the witness/notary requirements.

The result of the Straw Poll showed the majority of SRC members in attendance liked Option C. After Carl's November Presentation to SRC he was asked to take this to Elder Law and Health Care Law for their input.

Carl presented to Elder Law on December 2nd, which approved Option C. Carl believes this was a vote of the Elder Law Section but the Executive Committee may still need to approve. Carl will report to Health Care Law Section at it's December meeting and will update SRC in January.

i. Uniform Probate Code (UPC) 2019 Revisions (Bette Heller and Darla Daniels, Co-Chairs)

Darla Presented- Subcommittee had a meeting and will have another meeting on December 28th if anyone would like to join.

7. Inactive Matters

8. Report from Elder Law Section

None

9. Report from Other Sections of the Bar

None

10. New Matters

a. Proposed Statutory Changes to Sections 12-14-708(2) and 15-14-421(6)(a) (Kathy Seidel and Norv Brash- Probate Trial and Procedure Committee)

Kathy Seidel reported.

The suggested revisions to the statutory language are intended to be a point of clarification as opposed to substantive changes. The issue is that 15-14-708 is inconsistent with 15-14-421 because the latter provides that once a conservator is appointed an agent under power of attorney shall take no action, while the former

provides that the agency relationship is not affected unless “limited, suspended, or terminated by the court”.

Proposed fix is to cross reference the two statutes and make clear that an agent under a financial power of attorney cannot act unless authorized by the conservator and is subject to the supervision and authority of the conservator. The PTPC committee believes it important to allow for a power of attorney to remain in effect in the event of a conservatorship and the court could always decide to terminate the agency relationship.

Kathy presented this to Elder Law but due to technical difficulties they did not receive the draft changes. Elder Law will let PTPC know within a week of Elder Law’s provision. PTPC will present to T&E Council today and would like SRC’s vote as to whether SRC is in agreement that a change should be made.

Frank Hill moved to approve PTPC’s suggested language and Mark Masters seconded. The motion passed by unanimous vote of the SRC.

b. In Re Estate of Rabin 2020 CO 77

Dylan presented a brief overview of ruling.

(1) The legal files of a decedent are the property of the attorney and not the estate. This is not a property law issue.

(2) Attorney-Client Privilege survives the death of a client but the estate does not necessarily stand in the shoes of the decedent with respect to the attorney-client privilege.

Question as to whether a subcommittee should be formed to examine this case and whether proposed legislation should be considered to address this issue.

Mark Masters- Is there a difference between a testate decedent and intestate decedent? What happens if we have a revocable trust and there is no probate estate.

No motion was made to start a subcommittee. Lauren recommended that anyone who is interested in forming a subcommittee reach out to her or Dylan or contact the Orange Book Committee to discuss potential form to include in the orange book for clients who wish to allow their fiduciaries to have access to privileged material.

c. Family Allowance Issue (CRS § 15-11-404)

Michael Kirkland summarized the issue- There is a case before the Colorado Court of Appeals (Estate of Doughty) in which the probate judge declared that the widow cannot have the family allowance because there are no minor children. This is contrary to precedent but is based on the current statute which says the family allowance is for the surviving spouse and minor

children. Jefferson County and El Paso County courts have ruled that and means you must have both.

Michael is willing to chair this subcommittee and volunteered Gordon Williams to the committee. Any SRC members who wish to participate on the subcommittee please reach out to Lauren,

11. Passed Proposals for Inclusion in Omnibus Bill or Stand Alone Legislation

- a. Bankruptcy/Inherited IRAs (approved in 2015-2016)**
Strong opposition going forward from other sections.
- b. Changes to the Uniform Power of Appointment Act (approved in 2015-2016)**
Strong opposition going forward from other sections.
- c. Disclosure of Fiduciary Fees, §§ 15-10-602 and 15-12-705, C.R.S. (approved in 2015-2016) (Gordon Williams)**
Dylan Reported
Andy is waiting on the summary of the proposal and the bill language. Once Andy has these items then he can put it on the LPC agenda for December but Andy cautions that we would still need to find a sponsor.

Dylan and Lauren will reach out to Gordon for guidance and will also look through the minutes of the committee to figure out who were the members of the subcommittee to put this together and the subcommittee deliberated brought materials to the committee.
- d. ~~Uniform Directed Trust Act Subcommittee (Kevin Millard, Co-Chair, and Kelly Cooper, Co-Chair)~~**

Lauren DaCunha adjourned the meeting at 2:15 p.m.

Respectfully Submitted

/s/ Dylan Metzner

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