

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

March 4, 2020

- 1. Introductions**
- 2. Approval of February 5, 2020 Minutes**
- 3. Announcements**
- 4. Legislative Report**
- 5. SRC Approved Proposals**
 - a. Active Matters - Work to Finalize Required**
 - (i) Amendment to ethical rules re Colorado Electronic Abandoned Estate Planning Documents Act**
 - 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)**
 - b. Legislation Review Joint Subcommittee (Michael D. Holder, Chair)**
 - c. Advance Legislative Response Team (Marco Chayet and Letty Maxfield, Co-Chairs)**
 - d. ADR Legislation (C. Jean Stewart, Chair)**
 - e. Uniform Fiduciary Income and Principal Act Subcommittee (Gene Zuspann, Chair and Georgine Kryda)**
 - f. Child Support in Probate Subcommittee (Pat Mellen, Chair)**
 - g. Uniform Electronic Wills Act (Letty Maxfield and Herb Tucker, Co-Chairs)**
 - h. Witness Requirements in Advanced Directives (Carl Stevens)**

- i. **Uniform Probate Code (UPC) 2019 Revisions (Bette Heller)**
- 7. **Inactive Matters**
 - a. **Changes to Conservator’s Report (Lindsay Andrew)**
- 8. **Report from Elder Law Section**
- 9. **Report from Other Sections of the Bar**
- 10. **New Matters**
 - a. **SB 129 - Amendment (Letty Maxfield)**
- 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 it’s 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**

February 5, 2020

1. Introductions

Chair Molly Zwerdinger called the meeting to order at 1:35 p.m. There were introductions from those in attendance and on the phone/online.

2. Approval of December 4, 2019 Minutes

The minutes from the December 4, 2019 meeting were unanimously approved.

3. Announcements

There were no announcements.

4. Legislative Report- none at this time

There was no legislative report.

5. SRC Approved Proposals

a. Active Matters - Work to Finalize Required

(i) None

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)

The subcommittee met today and made good progress. They plan on finishing the last section at their March meeting.

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

No report.

c. Advance Legislative Response Team (Marco Chayet and Letty Maxfield, Co-Chairs)

This subcommittee is not actively meeting. There is no report.

d. ADR Legislation (C. Jean Stewart, Chair)

No report.

e. Uniform Fiduciary Income and Principal Act Subcommittee (Gene Zuspann, Chair and Georgine Kryda)

The subcommittee will be finishing in March.

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

No report.

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

The subcommittee is still reviewing the act. They would like to be done in May, but will plan on having suggestions to SRC before the Uniform Law Commission's meeting in September.

h. Witness Requirements in Advanced Directives (Carl Stevens)

No report.

i. Changes to Conservator's Report (Lindsay Andrew)

No report. This subcommittee is tabled for this legislative session. Will move to inactive matters.

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

The subcommittee is going through the non-substantive changes. They are deferring the material changes at this time since there is substantial conflict between the UPC's Parentage Act and the CBA Family Law section. The subcommittee will be review the 2019 revisions for the next year or more.

7. Inactive Matters

None at this time.

8. Report from Elder Law Section

No report.

9. Report from Other Sections of the Bar'

No report.

10. New Matters

a. CRPP 40 (Kathy Seidel)

The committee will be voting on minor changes to CRPP 40 (discovery and disclosure) and confirms that there is a need to follow Civil Rule 26 in probate cases. The proposed changes, included in meeting materials, adds a new subsection b (current subsection b will become c) as well as adding subsections e and f. Elder Law Executive Council has already approved the changes.

The proposed changes to CRPP 40 were approved unanimously.

The Probate Trial and Procedure Committee is setting up a subcommittee to review the cost and compensation statute. If interested reach out to Kathy Seidel.

b. SB 129 (Letty Maxfield)

The committee will be voting on whether to oppose SB 129.

Background: This legislation came out of a summer stakeholder meeting regarding guardianship based on the proposed legislation that has come about over the past several years. SB 129 requires a PRE-filing meeting to a large group of people. This bill is meant to address emergency situations where government entities are abusing their power.

It is expected that Senate Bill 129 will be amended before it is heard on February 12, 2020. The amendment, which will come from the bill's sponsor, relates to circumstances where a special guardian is appointed without notice. A court visitor will immediately be assigned and they must submit their report to the Court within 14 days. This report concerns whether or not there are any other people who can serve as guardian. The Court will then decide if any of the named people should receive notice and if there are any additional limitations that should be placed on the powers of the guardian. The Disability Law Section felt there was some merit to involving the disabled person's perspective and including them in the meeting. The Elder Law Section has voted to oppose.

The committee voted to oppose SB 129 as written but will consider any future amendments.

c. Remote Notary (Letty Maxfield)

It was expected that this year's Remote Notary bill would look substantially similar to the bill that the Trust and Estate Section support last year. That is not the case. The new remote notary bill has been substantially changed. It now contains the ability to sell information used in the notary process; the only prohibition is on the sale of a person's "personal information"- i.e. their name. There is no limitation on the data being used by third parties. The Colorado Bar Association currently stands alone in its opposition to this. The question presented to us is: are we going to oppose and how?

There was concern about how *In re Fox v. Alfini*, a Colorado Supreme Court case concerning the waiver of attorney client privilege when an unnecessary third party is present, would affect the claim of attorney client privilege when the notarial service is allowed to mine this data involved in a notarized signing.

The Elder Law Section opposed this bill.

The committee voted to oppose remote notary legislation unless it is amended to prevent the use and sale of data by remote notary companies and third parties.

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)**

Molly Zwerdinger adjourned the meeting at 2:14pm.

Respectfully submitted,
/s/ Lauren da Cunha

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 it's 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>.