

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

December 2, 2020

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 November 4, 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. UTC Subcommittee Part 5 (Connie Eyster, Co-Chair)

- b. **Legislation Review Joint Subcommittee (Michael D. Holder, Chair)**
 - c. **ADR Legislation (C. Jean Stewart, Chair)**
 - e. **Uniform Fiduciary Income and Principal Act Subcommittee (Gene Zuspann, Chair and Georgine Kryda, Co-Chairs)**
 - 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, Chair)**
 - i. **Uniform Probate Code (UPC) 2019 Revisions (Bette Heller and Darla Daniels, Co-Chairs)**
7. **Inactive Matters**
8. **Report from Elder Law Section**
9. **Report from Other Sections of the Bar**
10. **New Matters**
- a. **Proposed Statutory Chnages to Sections 12-14-708(2) and 15-14-421(6)(a) (Kathy Seidel)**
 - b. **In Re Estate of Rabin 2020 CO 77**
 - c. **Family Allowance Issue (CRS § 15-11-404)**
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**

November 4, 2020

1. Introductions

Co-Chair, Dylan Metzner, called the meeting to order at 1.34 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 October 7, 2020 Minutes

Frank Hill had two corrections to the October 7, 2020 draft Minutes:

First to clarify in item two that Molly moved to approve the September 2, 2020 minutes and that Frank seconded that Motion.

Second, Frank graciously provided Conrad Imel's last name formal position.

Dylan Metzner incorporated these corrections to the October 7, 2020 Minutes and these Minutes were unanimously approved after Frank moved to approve and Gene seconded.

3. Announcements

a. *Virtual Meetings.* Expect virtual meetings through at least the end of the year 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 Reported

Update on the November 3, 2020 election. Despite all of the uncertainty on the national level, Colorado results are in. Andy provided a brief report on state legislative issues and ballot measures that have an impact on the legal profession through budget allocations.

All three measures from SRC (UFIPA, E Wills and UTC Part 5) will be before legislative policy committee on Tuesday November 10th.

No definitive word as to when the State legislature will convene but there is some talk of a temporary adjournment due to the pandemic.

5. SRC Approved Proposals

a. Active Matters

b. Inactive Matters Approved by SRC and with LPC or Beyond

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

Steve Brainerd and Darla Daniels Reported. This is one of the pieces of legislation being advanced through the Legislative Policy Committee. Connie provided LPC with a summary and Darla prepared a memo for LPC. The Subcommittee is hopeful that this will pass through the LPC and then on the uniform law commission.

Disclosure of Fiduciary Fees, §§ 15-10-602 and 15-12-705, C.R.S. (approved in 2015-2016) (Gordon Williams)

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 will 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.

Uniform Fiduciary Income and Principal Act Subcommittee (Gene Zuspahn, Chair and Georgine Kryda)

No report other than what Andy reported.

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

In drafting.

a. 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

Frank reminded SRC that the only reason this is on the Agenda is for the footnote.

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

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

Bette reported that this Subcommittee is supposed to report to SRC issues within the legislature that would affect the T&E Section. Andy White confirmed that he will also keep SRC apprised of legislative items that affect the T&E Section.

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

No Report.

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

No Report

h. Witness Requirements in Advanced Directives (Carl Stevens)

Carol Stevens reported.

The Subcommittee was formed Pre-COVID-19 to determine whether to recommend changes to the witness and/or notary requirements with respect to Advance Directives (i.e. Living Wills).

The Subcommittee recommends that SRC consider 2 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.

Michael Kirtland orally provided a brief state survey regarding the two options. Most states do not require a notary but do require witnesses. There are some states that do not require independent witnesses; however, Colorado does require independent witnesses.

The SRC members engaged in an indepth discussion of the two options. During discussion a third option emerged:

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.

There was no formal vote resulting from the Subcommittee's report and discussion, but a straw pole was taken as to the three options.

Option A 2 votes

Option B -1 vote

Option C- 20 votes
1 abstention

The Subcommittee may take the proposal to Elder Law and the Health Law Section. The Subcommittee will let us know when it is ready for a vote at SRC.

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

Darla Gave Report: Met on 10/28 continue to make progress on substantive changes. Goal is to be done in December with detailed report in January. Please let Darla know if you would like to participate in the subcommittee.

7. Inactive Matters

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

Kathy Seidel reported that this has been on the Probate Trials and Procedure Committee agenda and this is tabled. We will take this off the agenda and Kathy will inform SRC if this becomes active again.

8. Report from Elder Law Section

None

9. Report from Other Sections of the Bar

None

10. New Matters

a. In Re Estate of Rabin 2020 CO 77

Kathy Seidel- Reported on the Rabin case. The case can be found at <https://cases.justia.com/colorado/supreme-court/2020-19sc86.pdf?ts=1604336513>

Supreme Court 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.

SRC will discuss this case again in December and determine whether subcommittee is warranted.

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

Michael Kirkland reported that some courts are interpreting the language "surviving spouse *and* minor children" language to mean that the family allowance is not available if there are no minor children. Michael suggests getting this issue resolved through Uniform Probate Code (UPC) 2019 Revisions subcommittee but it appears that such a

resolution may be outside of the subcommittee's purview if this is not addressed by the UPC 2019 Revisions. Stan suggested that if this issue could be resolved through a technical amendment then we may need to have the ULC make a technical amendment.

SRC will address this issue again in December and determine whether to establish a subcommittee to address this issue.

c. Probate Trial and Procedure Committee

Kathy Seidel reported that PTP Committee found an issue of conflicting language in CRS § 15-14-708(2) and §15-14-421(6)(a) regarding the authority and effectiveness of a power of attorney in cases in which a conservatorship has been established for the power of attorney principal. PRC plans to report on this issue to SRC in December.

PTC will provide the current statutory language and PTC's proposed language (graciously drafted by Marcie McMinnimee) to SRC for discussion in December.

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)**
Stan Kent pointed out that this is an example of a technical correction to be supported.
- c. Disclosure of Fiduciary Fees, §§ 15-10-602 and 15-12-705, C.R.S. (approved in 2015-2016) (Gordon Williams)**
See report in item

Dylan Metzner adjourned the meeting at 2:55 p.m.
Respectfully Submitted

/s/ Dylan Metzner

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C.R.S. §15-14-708(2):

If, after a principal executes a power of attorney, a court appoints a conservator of the principal's estate or other fiduciary charged with the management of some or all of the principal's property, the agent's authority is subject to the provisions of C.R.S. 15-14-421(6)(a). ~~is accountable to the fiduciary as well as to the principal. Except as set forth in C.R.S. 15-14-421(6)(a),~~ the power of attorney is not otherwise affected ~~terminated and the agent's authority continues~~ unless limited, suspended, or terminated by the court.

C.R.S. §15-14-421(6)(a):

Upon notice of the appointment of a conservator, all agents acting under a previously created power of attorney by the protected person:

- (I) Shall take no further actions without the direct written authorization of the conservator;
- (II) Shall promptly report to the conservator as to any action taken under the power of attorney; and
- (III) Shall promptly account to the conservator for all actions taken under the power of attorney.

Pursuant to C.R.S. 15-14-708(2), except as set forth herein, the power of attorney is not otherwise affected unless limited, suspended, or terminated by the court.

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C.R.S. §15-14-708(2):

If, after a principal executes a power of attorney, a court appoints a conservator of the principal's estate or other fiduciary charged with the management of some or all of the principal's property, the agent is accountable to the fiduciary as well as to the principal. The power of attorney is not terminated and the agent's authority continues unless limited, suspended, or terminated by the court.

C.R.S. §15-14-421(6)(a):

Upon notice of the appointment of a conservator, all agents acting under a previously created power of attorney by the protected person:

- (I) Shall take no further actions without the direct written authorization of the conservator;
- (II) Shall promptly report to the conservator as to any action taken under the power of attorney; and
- (III) Shall promptly account to the conservator for all actions taken under the power of attorney.