

Council of the Trust and Estate Section, Colorado Bar Association

Notice of and Agenda for the December 2, 2020 Meeting

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

From: Molly T. Zwerdlinger
Secretary/Treasurer
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Notice of Meeting

The next monthly meeting of the 2020-2021 Council of the Trust and Estate Section of the Colorado Bar Association will be held:

Date and time: ***Wednesday, December 2, 2020, 3:15 p.m.***
Place: ***THIS MEETING WILL BE CALL-IN ONLY DUE TO COVID 19***

Call-In Instructions

Call-in instructions are as follows: 1.425.436.6390
Access Code: 420360

Minutes of Previous Meeting, Financial Reports & Attachments

1. Minutes of the November 4, 2020 meeting of the Council
2. Financial spreadsheets as of October 31, 2020
3. Memorandum from Real Estate Section meeting
4. POA Statutes and revised POA Statutes

**Trust and Estate Section Council Agenda
December 2, 2020**

In an attempt to adhere to the allotted meeting duration of one (1) hour and thirty (30) minutes, the Chair will exercise his/her 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 November 4, 2020, meeting of the Council
2. Chair's Report and Administrative Matters (Spencer Crona)
3. Secretary/Treasurer's report (Molly Zwerdinger)
4. Tax Section Liaison (Georgine M. Kryda)
5. Elder Law Section Liaison (Patrick Thiessen)
6. Real Estate Section Liaison (Chad Rounds)
7. Family Law Section Liaison (Kim Willoughby)
8. Statutory Revisions Committee (Lauren DaCunha)
9. Legislative Liaison (Darla Daniel & Steve Brainerd)
10. Council Notes (Kristin Dittus)
11. CLE/Estate Planning Retreat (Tim Bounds)
12. Orange Book Forms Committee (Lisa Hardin)
13. Rules and Forms Committee (Gordon Williams)
14. Civic and Community Affairs Joint Committee of the Elder Law Section (Sandra Sigler)
15. Equity, Diversity, and Inclusivity Committee (Melissa Schwartz)
16. Probate Trial and Procedures Committee (Kathy Seidel & Norv Brasch)
17. Colorado Estate Planning Handbook (David Johns)
18. Green Book (Josie Faix)
19. Trust & Estate Practice Support Committee (Jennifer Hazelton & William Ellison)
20. The Colorado Lawyer (Emily Bowman)

21. Communications Representative/Ambassador Program (Lindsay Andrew)

22. Board of Governors Representative (Jonathan Haskell)

23. Miscellaneous/FYI

24. Adjournment

**Council of the Trust and Estate Section of the Colorado Bar Association
Minutes of November 4, 2020, Meeting**

Council met on Wednesday, November 4, 2020 via audio-visual conference due to the ongoing COVID19 situation. The meeting was called to order at approximately 3:15p.m. by Spencer Crona, Chair.

The following members of Council participated by Zoom/phone and constituted a quorum:

Spencer Crona, Chair
Molly Zwerdinger, Secretary
Charles Spence (2nd year member)
Georgine Kryda (1st year member), Tax Section Liaison
Amy Symons (1st year member)
Simon Tolbert (1st year member)

Also in attendance were:

Patrick Thiessen, Elder Law Section Liaison
Andy White, CBA Legislative Liaison
Katie Roberts, CBA Staff
Kristin Dittus
Sandra Sigler
Kayla Nelson
Leia Ursery
Kathy Seidel
Chad Rounds
Darla Daniel
Melissa Schwartz
David Kirch
Alida Solieau, Law Student

1. Approval of Minutes of Prior Meeting

The Minutes of the October 7, 2020, Council meeting were approved unanimously.

2. Chair's Report (Spencer Crona)

Judicial Liaison Committee - they offered judicial perspective on CLE topics. Contact is judge Eric Johnson.

Will have 3 votes on matters today.

The Retreat was successful and had good attendance.

Estate of Rabin was decided a few days ago and we will likely address this at today's meeting.

Budget has changed on a state level and judiciary was not included. Spencer gave a brief update on other budgetary matters from the election.

Alida Solieau student is attending this meeting as Spencer's guest.

3. Secretary/Treasurer Report (Molly Zwerdinger)

Molly reviewed the financial reports for September and year-to-date.

4. Tax Section Liaison (Georgine M. Kryda)

Great attendance at CLE last month. There were over 55 attendees.

5. Elder Law Section Liaison (Patrick Thiessen)

Kathy gave report regarding DHS. Office of Public Guardian has relocated. No other substantive reports.

6. Real Estate Section Liaison (Chad Rounds)

Life estate deeds: David and Darla assembled an informal study group. Focus was that the life estate deed is good for primary residence only. Usually it is better to use a trust for life estates, particularly if there are other assets. Suggest a note to the deed to recommend when the deed should be used and suggest use of trust instead. Darla thinks that a note on use for the deed needs to either be a suggestion, or just discussion on risks and benefits as a caution only. Discussed whether we want to advocate a position. Did not reach a consensus. Simon expressed concern about open mine doctrine. Motion was made to approve of the comments/notes as proposed. Approved, with one "no" vote by Darla.

7. Family Law Section Liaison (Kim Willoughby)

There was no report from the Family Law Section.

8. Statutory Revisions Committee (Lauren Da Cunha)

Disclosure of Fiduciary Fees- Draft language was presented to SRC in the 2015-2016 session and was approved. No action has been taken since that approval. SRC going to submit past materials to Andy White to put on LPC agenda.

Witness Requirements in Advanced Directive- subcommittee drafted proposed language for two options. Option A would require either 2 disinterested witnesses or a notary for an advanced directive (i.e. Living Will) to be effective. Option B only requires the signature of the declarant. During discussions an Option C was established. Option C is using Option A language and providing the language in Option B to the Governor's office as sample language should the Governor choose to enact an emergency declaration doing away with the requirement for Witnesses or a Notary. SRC did not vote on this proposal but did take a straw poll. Option C won the poll with one abstention. SRC will take this poll to Elder Law and the Health Services Section for feedback.

SRC will decide in December whether to create subcommittee to address decision in *In re Estate of Rabin*.

9. Legislative Liaison (Stephen M. Brainerd & Darla Daniel)

UFIPA, Electronic Wills and CUTC Part 5 are all on LPC agenda.

10. Legislative Update (Andy White)

Overview of last night's elections. Colorado results were reported efficiently and quickly. Very little changed in the makeup of the legislature. Two items of note: 1. Concern of resources given to judiciary - repeal of Gallagher; 2. Passage of 116 that decreases state income tax rates. May have another adjournment of legislature due to COVID.

11. Council Notes (Kristin Dittus)

Looking for more articles.

12. Continuing Legal Education & Estate Planning Retreat (Tim Bounds)

Great turnout and many new attendees. Networking platform went well, but did not work on tablets. Attendees did not like having the presentations recorded and replayed for later sessions.

13. Orange Book Forms Committee (Lisa Hardin)

There was no report.

14. Rules & Forms Committee (Gordon Williams)

There was no report.

15. Civic & Community Affairs (Sandra Sigler)

There were opportunities for people across the state to attend virtual classes from senior law days. Sandra and Kayla can deliver Senior Law Books if requested. Brochures presented about powers of attorney and serving as agent under power of attorney. Comments were made in Elder Law regarding the brochures and the small changes were addressed. Hot powers sentence will be added. There will be an email vote once changes are sent.

16. Equity, Diversity & Inclusivity Committee (Melissa Schwartz)

Two items need a vote: 1. Section Executive Counsel Task Lists – these are described as “should/ will” – should we mandate or encourage them? Depends on each item individually. Committee will discuss each item and get back to Council with recommendations for vote on #1. 2. Committee Composition and Responsibilities – Motion to approve #2 – approved. Committee going to change time of meeting.

17. Probate Trial & Procedures Committee (Kathy Seidel & Norv Brasch):

Second meeting with DHS (CAMDORS) – fact finding to understand their process. After county is done with their investigation, if there is mistreatment a letter is sent to alleged perpetrator – can appeal within 90 days – reviewer has 120 days to resolve (can be held in advance or extended in certain circumstances). An Alleged perpetrator can skip this process and go directly in front of an administrative law judge. Standard is preponderance of evidence – they look to see if the county’s finding is substantiated. This filing stays in the county records, but there is no access by the general public on whose names are on these lists. Name is only revealed if a facility is doing a background check with alleged perpetrators permission. People may share their stories or issues relating to these cases with Sandra at her email or on her cell.

18. Colorado Estate Planning Handbook (David Johns)

There was no report.

19. Green Book (Josie Faix)

There was no report.

20. New T&E Practice Support Committee (Jennifer Hazelton & William Ellison)

There was no report.

21. The Colorado Lawyer (Emily Bowman & David Kirch)

There is a desperate need for articles in trust and estate.

22. Communications Representative & Ambassador Coordinator (Lindsey Andrew)

There was no report.

23. Board of Governors Representative (Jonathan Haskell)

There was no report.

24. Other Business

None.

ADJOURNMENT

The meeting was adjourned at 5:01p.m. The next Council meeting will be held in December 2020.

Respectfully submitted

/s/ Molly T. Zwerdinger, Secretary

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.

KIRCH ROUNDS BOWMAN & DEFFENBAUGH PC

MEMORANDUM

TO: CBA Council of the Trust and Estate Section

FROM: Chad Rounds

RE: Summary of 11/17/20 CBA Real Estate Section Council Meeting

DATE: 11/23/20

I attended the CBA Real Estate Section Council ("RESC") meeting on 11/17/20. It was conducted on Zoom. The following is my report on matters addressed which the CBA Trust and Estate Section Council ("TESC") might find of interest:

#1) Inclusivity Task Force

The Real Estate Section Inclusivity Task Force is hoping to encourage the drafting and sponsorship of legislation in the 2021 or 2022 legislative session to eliminate race based restrictive covenants from the public real estate records. They are already unenforceable after they were struck down by the U.S. Supreme Court in 1948's *Shelley v. Kraemer*. The proposed legislation would likely protect title insurance companies from liability for not showing these types of covenants on title searches and title commitments.

#2) Legislative Update

Andy White discussed the special session of the Colorado General Assembly set to be called by the governor for this December. Focus will be on a Colorado response to the economic effects of the COVID-19 pandemic. Areas to be addressed include small business relief, rental assistance, and expansion of broadband. Also, there are some federal funds which Colorado could lose if not appropriated by the end of this calendar year.

Andy White also addressed how the recent election will affect the resources of the Colorado judiciary. It was observed how the Colorado voters were all over the place on tax issues. Likely, it was a wash as some tax initiatives which passed will raise government revenue, while others will reduce it. For example, the Gallagher Amendment was appealed allowing more flexibility on property taxes, and an increase in the tobacco tax passed, while at the same time, a reduction in the state income tax rate was approved.

Colorado Bar Association
Trust & Estate
For the Four Months Ending October 31, 2020

		October	YTD	Budget	Variance	%	Last FY
Beginning balance	01-3160-31600		\$28,848.32		\$28,848.32	0%	\$22,262.87
Trust & Estate Section							
Revenue							
Dues Income Section	01-4050-31600	1,050.00	32,520.00		32,520.00	0%	31,110.00
Total Revenue Trust & Estate Sect		1,050.00	32,520.00		32,520.00	0%	31,110.00
Expenses							
Travel	01-5102-31600					0%	(20.00)
Internet/E-Mail Access	01-5413-31600		(356.51)		(356.51)	0%	(544.99)
Meals (Not travel related)	01-5491-31600					0%	(2,159.46)
Administration Fee	01-5494-31600	(1,020.00)	(4,080.00)		(4,080.00)	0%	(2,016.68)
Grants/Contributions	01-5500-31600					0%	(7,500.00)
Total Expenses Trust & Estate Sec		(1,020.00)	(4,436.51)		(4,436.51)	0%	(12,241.13)
Statutory Revisions Committee							
Revenue							
Rev. Elderlaw Joint Task Force							
Rev. Uniform POA Act							
Rev. Uniform Trust Code							
Expenses							
Other Expense	01-5000-31603			(1,000.00)	1,000.00	0%	
Exp. Elderlaw Joint Task Force							
Exp. Uniform POA Act							
Exp. Uniform Trust Code							
Total Expenses Statutory Revisio				(1,000.00)	1,000.00	0%	
CLE							
Revenue							
Revenue Joint CLE							
Revenue CLE Retreat							

Colorado Bar Association
Trust & Estate
 For the Four Months Ending October 31, 2020

	October	YTD	Budget	Variance	%	Last FY
Revenue CLE Section Only						
Expenses						
Other Expense 01-5000-31611			(\$6,250.00)	\$6,250.00	0%	
Expenses Joint CLE						
Expenses CLE Retreat						
Expenses CLE Section Only						
Total Expenses CLE			(6,250.00)	6,250.00	0%	
Council Notes						
Revenue						
Expenses						
Community & Civic Affairs						
Revenue						
Expenses						
Other Expense 01-5000-31613			(2,750.00)	2,750.00	0%	
Total Expenses Community & Civi			(2,750.00)	2,750.00	0%	
Rules & Forms Committee						
Revenue						
Expenses						
Orange Book Forms						
Revenue						
Expenses						
Other Expense 01-5000-31607			(500.00)	500.00	0%	
Total Expenses Orange Book For			(500.00)	500.00	0%	
Local Liaison						
Revenue						
Expenses						

Colorado Bar Association
Trust & Estate
 For the Four Months Ending October 31, 2020

	October	YTD	Budget	Variance	%	Last FY
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				0%	\$1,600.00
Total Revenue Admin Council Din					0%	1,600.00
Expenses						
Other Expense	01-5000-31612		(4,500.00)	4,500.00	0%	
Meals (Not travel related)	01-5491-31612				0%	(1,000.00)
Total Expenses Admin Council Di			(4,500.00)	4,500.00	0%	(1,000.00)
Legislative Liaison						
Revenue						
Expenses						
Internet Editor						
Revenue						
Expenses						

Colorado Bar Association
Trust & Estate
For the Four Months Ending October 31, 2020

		October	YTD	Budget	Variance	%	Last FY
Technology Committee							
Revenue							
Expenses							
Real Estate Liaison							
Revenue							
Expenses							
Green Book							
Revenue							
Expenses							
The Colorado Lawyer							
Revenue							
Expenses							
T&E Diversity Committee							
Revenue							
Expenses							
Other Expense	01-5000-31628			(\$1,000.00)	\$1,000.00	0%	
Total Expenses Diverstiy Comm.				(1,000.00)	1,000.00	0%	
Judicial Liaison							
Revenue							
Expenses							
Member Vouchers							
Expenses							
T&E Young Lawyer Society							
Revenue							
Expenses							
Beginning Balance	01-3160-31600		28,848.32		28,848.32	0%	22,262.87
Total Revenue All Sources	01-4???-316??	1,050.00	32,520.00		32,520.00	0%	32,710.00
Total Expense All Sources	01-5???-316??	(1,020.00)	(4,436.51)	(16,000.00)	11,563.49	28%	(13,241.13)

Colorado Bar Association
Trust & Estate
For the Four Months Ending October 31, 2020

	<u>October</u>	<u>YTD</u>	<u>Budget</u>	<u>Variance</u>	<u>%</u>	<u>Last FY</u>
Ending Balance	\$30.00	\$56,931.81	(\$16,000.00)	\$72,931.81	-356%	\$41,731.74

Colorado Bar Association
Trust & Estate Summary
 For the Four Months Ending October 31, 2020

		October	YTD	Budget	Variance	%	Last FY
Beginning balance	01-3160-31600		\$28,848.32		\$28,848.32	0%	\$22,262.87
Trust & Estate Section- General							
Revenue	01-4???-31600	1,050.00	32,520.00		32,520.00	0%	31,110.00
Expenses	01-5???-31600	(1,020.00)	(4,436.51)		(4,436.51)	0%	(12,241.13)
Statutory Revisions Committee							
Expenses	015???3160...			(1,000.00)	1,000.00	0%	
CLE							
Expenses	015???3161...			(6,250.00)	6,250.00	0%	
Council Notes							
Community & Civic Affairs							
Expenses	01-5???-31613			(2,750.00)	2,750.00	0%	
Rules & Forms Committee							
Orange Book Forms							
Expenses	01-5???-31607			(500.00)	500.00	0%	
Local Liaison							
Uniform Trust Code							
Admin. Chair							
Estate Planning Handbook							
Admin Council Dinner							
Revenue	01-4???-31612					0%	1,600.00
Expenses	01-5???-31612			(4,500.00)	4,500.00	0%	(1,000.00)
Legislative Liaison							
Internet Editor							
Technology Committee							
Real Estate Liaison							
Green Book							
The Colorado Lawyer							
Diversity Committee							
Expenses	01-5???-31628			(1,000.00)	1,000.00	0%	
Judicial Liaison							
Member Vouchers							
Uniform Trust Code							
Transfer Deposit							
Young Lawyer Society							
Beginning Balance	01-3160-31600		28,848.32		28,848.32	0%	22,262.87
Total Revenue All Sources	01-4???-316??	1,050.00	32,520.00		32,520.00	0%	32,710.00
Total Expenses All Sources	01-5???-316??	(1,020.00)	(4,436.51)	(16,000.00)	11,563.49	28%	(13,241.13)
Ending Balance		30.00	56,931.81	(16,000.00)	72,931.81	-356%	41,731.74