

**Meeting of Elder Law Section of the CBA
September 15, 2016**

Co-Chairs:	Michael Kirtland	Colorado Springs	719-448-0734	mak@kirtlandseal.com
	Letitia Maxfield	Denver	303-353-8354	letty@tealaw.com
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CBA Liaison:	Rebecca Spence	Denver	303-824-5311	rspence@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:

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 by Letitia Maxfield at 8:32 A.M.

Introductions followed, and the sign-in sheet was circulated. Those attending in person were:

Names in italics are nonmember attendees

Frank Baysore
Dirk Costin
Carl Glatstein

David Bernhart
Kristin Dittus
Ruben Hernandez

Scott Challinor
John Estes
Kathryn Kaeble

Mark Kiken
Michael LaVigne
Thomas Linn
Alyssa Miller
Sandra Sigler
Barbara Van Vliet
Kirby Yost
Matthew James

Ayo Labode
Michelle Lawonn
Letitia Maxfield
Kayla Nelson
Carl Stevens
Tess Wilson
Hannah Fowler
Justin Robbins

Myka Landry
Kevin Lazar
Marcie McMinimee
Ryan Scott
Patrick Thiessen
Jonathan Haskell
Aaron Burton

On the phone:

Courtney Smith
Cody Christian
Elizabeth Stewart
Chuck Connell
Sarah Pheral

Spencer Crona
Robert Hercher
Kris Callahan
Charles Spence
Steven Strunk

Marco Chayet
Steven Strandberg
Doug Holden
Shari Caton

2. **Judge Leith Announcement** – Judge Leith of the Denver Probate Court and Amber Roth, Clerk of Court at the Denver Probate Court, requested that the Section provide performance reviews of Magistrate Hernandez of the Denver Probate Court before September 30th. The State Court Administrator's Office and the legislature pick the Magistrate's hours and salary. The Magistrate does not face retention votes on the ballot, so the DPC is trying to get as many people as they can to give feedback. Comments are anonymous. Ms. Roth is also happy to talk with attorneys by phone or email about their comments.
3. **Tribal Wills Project at DU** – Brian Davis and Donovan Gibbons of DU Law School presented about DU's Tribal Wills Project. The students work with attorneys and Professor Marsh to draft and execute living wills, powers of attorneys and wills for Native Americans in various parts of the United States. The Native American cultures consider death and wills taboo subjects, and their laws require that their property pass to their first-born son. The students have trips planned for January 2nd-6th to Phoenix, Arizona to work with the Navajo, March in Santa Fe, New Mexico, and May in Montana to work with the Crow. They need more supervising attorneys for the trips because they can take more students with more supervising attorneys. Each trip costs \$1,500; any donation toward their trips is tax-exempt as well. There are state-specific attorneys coordinated with each trip to review and sign off on everything. Interested attorneys can contact Leia Ursery or Professor Marsh.

Call for review and approval of the August 2016 Minutes. M/S/A of the August 2016 Minutes.

4. **Chair's Report** – Michael Kirtland – not present. Letitia Maxfield reports that she circulated an unpublished opinion last week, *Estate of Cerrone*. The case involved a collection agency placing a lien on a protected person's property for a

contract that was entered into by the protected person after a conservator was appointed for him. The conservator attempted to void the contract on unconscionability, and the collection agency had no actual notice of the conservatorship and had not checked the public records. The request for rehearing was denied and the issue is ripe for a petition for cert. Ms. Maxfield had previously suggested ELS consider writing an amicus brief, but that course of action may not be possible until after cert is granted. The Section will not consider taking any action until cert is granted. The attorney on the case has filed a motion for extension on the petition for cert and asked the CBA pro bono committee to pick up the petition. The Trial Lawyers' Association said they can do an amicus brief on the petition for cert. Persons interested in helping the attorney before cert is granted should contact Ms. Maxfield.

3. **Treasurer's Report** – Charles Spence. The Section currently has \$17,330.85, and is continuing to receive Section dues.

4. **Old Business**

- a. Committee Reports (Chairperson of the committee may report any current matters.) Our current committees are:
 - i. Board of Governors: Marco Chayet reports that the next meeting is October 22nd in Colorado Springs.
 - ii. Civic and Community Affairs Committee (CCA): Casey Williams – not present. The Committee will be meeting today at 10:00am. The Committee will be seeking the election of a new Chair. Sandra Sigler is the only person to express interest. The Committee will also be reviewing its subcommittees. To get involved with local Senior Law Day events, interested persons should contact Sandra Sigler or Casey Williams. The 18th Judicial District's District Attorney's Office is putting together a Safety Summit on Friday, October 14th at Charles Schwab in Lone Tree, Colorado. Attorneys interested in assisting with Ask a Lawyer sessions should contact Arlene Barringer.
 - iii. CLE and Publications Committee: Rose Zapor – not present.
 - iv. Elder Law Retreat: Arlene Barringer/Susan Germany. Thank you to Ms. Barringer and Ms. Germany for a successful Retreat! Both Ms. Barringer and Ms. Germany are continuing to Chair the Committee. Ms. Barringer reports that the Retreat had 175 attendees, 25 presenters, 17 different programs, 16 sponsors, 13 general CLE credits, 11 states represented, 10 scholarships for judicial officers and staff, 5 lightning round sponsors, 3 national

speakers, and 1 fabulous CLE team. The Committee will be meeting at 11:00am starting in November 2016.

- v. Court Visitor Subcommittee: Lisa DiPonio – not present. The Subcommittee is meeting today at 11:00am.
- vi. Medicaid Regulatory Reform/Legislation Committee (MRRC): Mary Catherine Rabbitt – not present. The Committee discussed recent implementation of Section 8.063 for estate recovery and that the families of 3 MAGI clients were served with Medicaid liens even though they were not on long term services. Shari Caton's firm is fighting 2 of these cases. Local counties are requesting more documentation, such as 3 years of bank records, and trust reviews are taking 5 months or longer, even where there are no assets remaining. Several cases are currently pending in Colorado courts regarding the right to 90 days of retroactive Medicaid for those applying for HCBS. The Price decision from Ohio is cited as favorable authority. Individuals with knowledge of any other jurisdiction opinions should pass them along to Ms. Rabbitt. HCPF 16-007 agency letter discusses changes to the Medicaid appeals process, as required by HB 16-1277, which extended the time to file an appeal from 30 to 60 days. Carl Glatstein suggested that individuals request that a county send along what they use for income trusts. The 2015 agency letters section has more information about income trusts.
- vii. Probate Trial & Procedure Committee: Tom Rodriguez – not present. The Committee is preparing a sample bench book for probate, spearheaded by Jamie Roth. The Committee is starting with the guardianship and conservatorship sections of the probate code, and Judge Leith has asked to be actively involved with the bench book process.
- viii. Capacity *Sorenson* Committee: Tammy Conover – not present.
- ix. ABLE Act Committee: Shari Caton reports that the Committee will not be meeting until the second Wednesday of December.
- x. Legislative Response Team Joint Subcommittee: Marco Chayet/Spencer Crona. Mr. Crona reports that the Team will be meeting tomorrow at 1:30pm in the Capitol Room. Call-in information will be available.
- xi. Eldercare Coordinating Committee: Michael Kirtland – not present.

- xii. Office of the Public Guardianship Committee: Shari Caton reports that the section-approved draft bill was circulated with judicial. Mr. Schupbach is hoping to have a meeting with judicial's liaison. The Committee is not supposed to reach out to any potential sponsors until Mr. Schupbach has that meeting.

b. Liaison Reports

- i. Legislative Relations: Jeremy Schupbach reports that the Bar will see 30 topics this year. The bills facing this Section will include Medicaid reform or efforts regardless of Amendment 69. The Uniform Law Commission's agenda is relatively light for ELS' interests. They will be reviving and repassing the Uniform Athletes and Agents Act; they will be taking a look at the Uniform Trust Code and we will make sure they understand our work on the Act needs to be part of whatever Colorado considers; they won't be addressing any other bills we haven't liked. Ms. Maxfield reports that LPC isn't meeting until November. The Committee put some pressure on Steve Brainard to get the Uniform Trust Code to the Commission; persons interested in helping on the Uniform Trust Code should email the Committee. LPC wants comments by November regarding the following bills: Uniform Family Law Arbitration Act, Uniform Unsworn Domestic Declarations Act, the amendment to the Revised uniform law on notaries, and the Revised Uniform Unclaimed Property Act. Mr. Schupbach reports that we will see a "child" of SB 26 this year. Lastly, a bill is going to run that will move Article 5 of Title 12, which describes legislative parameters regarding what it means to be a lawyer, out of Title 12. The Article's provisions themselves will not be changed. Any concerns about this proposed bill should be addressed to Mr. Schupbach.
- ii. Uniform Power of Appointment Act: Susan Boothby/Carl Stevens. This Committee will be taken off future agendas.
- iii. Trust and Estate Section Liaison: Patrick Thiessen reports that Steve Vascancellos of the State Court Administrator's Office presented to the Executive meeting and was very receptive to comments. Casey Williams is organizing a list of concerns regarding the changes to the JDF form formats. T&E thought the *Cerrone* case was more the purview of ELS and questioned the propriety of requesting an amicus brief when the Supreme Court

has not yet granted cert. The T&E Retreat will be the 2nd week in June, 2017 in Vail, Colorado.

- iv. Trust & Estate Standing Committee – Statutory Revisions: Arlene Barringer reports that SRC’s Chair is asking for volunteers for committees and to review the acts proposed by the Uniform Law Commission. Sonny Weigan and Susan Boothby are working on the Revised Unclaimed Property Act. Julie McVey is working on revisions to the Transfer on death of Vehicles bill that passed last year.
- v. Trust & Estate Standing Committee – Uniform Trust Code: Michael Kirtland – not present. Carl Stevens reports that the Committee is meeting today to address Articles 1 and 4 regarding the modification of a trust.
- vi. Department of Health Care Policy and Finance Liaison: John Campbell – not present.
- vii. CBA Legislative Policy Committee Liaison: Letitia Maxfield – no report.
- viii. NAELA Colorado: Marco Chayet reports that the Colorado NAELA is holding a Board of Directors meeting right now. National NAELA has no official position on the Peter Faulk Act. It has been adopted by 6-7 states.
- ix. Denver Triad: Rose Zapor/Rocky Williams – not present.
- x. National Guardianship Association/Colorado Guardianship Association: Courtney Smith – no report.
- xi. AARP Liaison: Dennis Valentine – not present.
- xii. SRC Joint Legislative Review Subcommittee: TBD.
- xiii. CBA Ethics Committee: Michael Kirtland – not present. Ms. Maxfield has recommended to Mr. Kirtland that the Committee consider revising the application of formal ethics opinion 126 to apply to post-adjudication guardianship and conservatorship situations.
- xiv. Probate Rules & Forms Committee: Shari Caton/Michael Kirtland/Marcie McMinimee. Ms. McMinimee reports that the forms half of the Committee is currently working on the substance

of the conservatorship annual report and financial plan with inventory. Comments on the substance of these documents should be sent to Ms. McMinimee. The Committee as a whole will be meeting at the end of September.

- xv. SRC Public Administrator Liaison: Marcie McMinimee – the Committee is currently drafting guidelines for Public Administrators. They are hoping to have something in November for individuals to look at in the form of a Chief Justice Directive. The Committee will not be pursuing any statutory changes at this time.

5. New Business and Announcements

- a. Michelle Lawonn brought brochures for A Little Help company to the meeting. The company helps seniors with yard work, takes them to appointments, and helps clean their homes. They arrange a “Service Saturday” twice a year with volunteers in the community as well.
- b. Ms. Lawonn is also has a client who needs an attorney regarding constructive eviction. Interested persons should contact Ms. Lawonn.
- c. Dirk Costin reported that the JDF forms can be manipulated if the text of the form is copied and pasted into a blank Word document.

The Section Meeting ended at 9:37 A.M.

The CLE portion of the meeting was cancelled due to the speaker’s unexpected illness.