

**Council of the Trust and Estate Section of the Colorado Bar Association
Notice of and Agenda for the January 4, 2022, Meeting**

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

From: Dylan Metzner
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Notice of Meeting

The next monthly meeting of the 2022-2023 Council of the Trust and Estate Section of the Colorado Bar Association will be held:

Date and time: **Wednesday, January 4, 2022, 3:15 p.m.**

Place: 1290 Broadway, Suite 1700, Denver, CO 80203 Room West 1
or Call-In/Zoom

<https://cba-cle.zoom.us/j/83843741966?pwd=NXVOTEExdUxuQ0FrV0VXV3ZrU3hVQT09>

Meeting ID: 838 4374 1966

Passcode: 534100

Call-in: 16694449171

Minutes of Previous Meetings & Attachments

1. Minutes of the December 7, 2022 meeting of the Council
2. Revised Advance Medical Directives Brochure

Trust and Estate Section Council Agenda
January 4, 2023

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 December 7, 2022 meeting of the Council
2. Succession Items re: Council Member Vacancy, Committee Chair; Liaisons and Representative
 - a. Vacancy- Executive Council First Year Member
 - b. Succession Planning- Legislative Liaison
 - c. Discussion- re Possible Creation of Liaison to ADR Section
3. Chair's Report and Administrative Matters (Molly Zwerdinger)
4. Secretary/Treasurer's report (Dylan Metzner)
5. Tax Section Liaison (Aaron Burton)
6. Elder Law Section (Patrick Thiessen)
7. Real Estate Section Liaison (Chad Rounds)
8. Family Law Section Liaison (Kim Willoughby)
9. Statutory Revisions Committee (Jonathan Haskell)
10. Legislative Liaison (Steve Brainerd)
11. Legislative Update (Tyler Mounsey)
12. Council Notes (Kristin Dittus)
13. CLE/Estate Planning Retreat (Lauren da Cunha)
14. Orange Book Forms Committee (Rikke Liska)
15. Supreme Court's Rules and Forms Committee (Leia Ursury)

16. Civic and Community Affairs Joint Committee of the Elder Law Section (Sandra Sigler)
17. Equity, Diversity, and Inclusivity Committee (Amber Marchlowska)
18. Probate Trial and Procedures Committee (Marcie McMinimee & Lindsay Andrew)
19. Colorado Estate Planning Handbook (David Johns)
20. Green Book (Josie Faix)
21. Trust & Estate Practice Support Committee (Margrit Parker)
22. The Colorado Lawyer (Emily Bowman & David Kirch)
23. Communications Representative/Ambassador Program (Kayla Nelson)
24. Board of Governors Representative (Jonathan Haskell)
25. Miscellaneous/FYI
26. Adjournment

**Council of the Trust and Estate Section of the Colorado Bar Association
Minutes of December 7, 2022, Meeting**

Council met on Wednesday, December 7, 2022 via audio-conference. The meeting was called to order at approximately 3:15 p.m. by Molly Zwerdinger, Chair.

The following members of Council participated by Zoom/phone or in-person and constituted a quorum:

In attendance were:

Molly Zwerdinger, Chair
Lauren Da Cunha, Vice Chair
Dylan Metzner, Secretary/Treasurer
Marianne Luu-Chenn (2nd Year Member)
Kelianne Chamberlain (1st Year Member)
Tim Bounder, Immediate Past Chair

Also in attendance were:

Emma Baxter, CBA Staff
Amber Marchlowska
Chad Rounds
Leia Ursery
Kyle Aber
Rikke Liska
Josie Faix
Melissa Schwartz
Kyla Nelson
Sandra Siegler
Haylea Lamborn
Patrick Theisen
Steve Brainard
Kim Willoughby
Elizabeth Howard

1. Review/approval of November 2, 2022 Minutes.

The draft of the November 2, 2022 Minutes were approved unanimously.
Approved Unanimously

2. Chair's Report and Administrative Matters (Molly Zwerdinger)

a. Vacancy- Executive Council First Year Member.

Council received 7 applications and in November formed a Nominating Committee to review applications and suggest one or more candidates for

Council to consider. Nominating Committee suggested that Council consider, Griffin Bridgers, Margot Edwards, and Chris Schmidt. Council will either vote via email or during the January meeting on a final First Year Member.

b. Succession Planning- Legislative Liaison.

Steve Brainard reported that we do need an additional Legislative Liaison to assist Steve now as former Co-Legislative Liaison is unable to serve due to other commitments. The new Co-Legislative Liaisons(s) would hopefully be able to serve as Steve's successor. Council, through Council Notes, will broadcast a solicitation.

Ideal Legislative Liaison candidate will have institutional involvement with the state legislature and experience with Statutory Revisions Committee. Steve will develop a bullet point job description to for broadcast through the Statutory Revisions Committee and Council Notes.

Elder Law Section has 3 Legislative Liaisons so there is precedent for a Section to have more than 2 Legislative Liaisons.

c. Discussion- re Possible Creation of Liaison to ADR Section.

No Report

d. Discussion- Getting Members Back to in Person Meetings.

A robust discussion was held, spearheaded by Melissa Schwartz, regarding the strong desire of many Members to connect with other Members at Section Meetings in Person. Prior to Covid, the majority of Members attended meetings in person which benefited the Section through increased collaborations, collegiality and rigorous discord. Council and other attendees were supportive of engaging in efforts to encourage more in-person attendance but there was also discussion of risk factors associated with exposure to Covid, the prevalence of virtual meeting options, and other factors that may hamper a return to pre-Covid level in-person meetings.

Council is open to polling Members to determine whether a change in meeting day would help encourage in-person meetings and this poll may also a "suggestion" box for Members to let Council know what would help encourage that Member to participate in-person.

Council and the Committees will message during January's Probate Day that we strongly encourage Member's attend February's Probate Day in Person. Council will look into setting up a Happy Hour at the end of February's Probate Day to encourage in-person attendance.

e. Presentation from Greater Colorado Law Student Experience

Kyle Aber- Address issue of Legal Deserts (underserved areas). Get students experience in these underserved areas in the hopes that they serve these areas as attorneys. Pilot was in Summer 2022 in Leadville and Glenwood Springs (4 students) Monday-W: Judicial Externship; Thursday Legal Aid Work; Friday- Networking and exploring. About \$10 short...Bar Foundation made a 5k Grant. Law School provides 1K for each student and 10k raised from local bar associations. T&E Section request is \$3,400 but any amount would be helpful. What other sections have donated. Business Law Section has donated.

Lauren moved and Dylan Seconded- \$1,000 with request for report as to how the 2023 program connected with T&E.

3. Secretary/Treasurer's report (Dylan Metzner)

Financials are in good shape.

Based discussion during October's Executive Council's meeting, Secretary/Treasurer will review the financials from previous years to make a report back to Council as to balances over the past for purposes of potentially establishing setting a minimum amount to keep in the account for unexpected expenses or dips in revenue.

4. Tax Section Liaison (Aaron Burton)

No report.

5. Elder Law Section (Patrick Thiessen)

Elder Law is discussing issues regarding change to guardian and visitation statute. Further discussion of office of public guardianship filing a report as a pilot project. Seeking commissioner of public guardianship office. If interested, reach out to Patrick Thiessen.

6. Real Estate Section Liaison (Chad Rounds)

Federal Targeting Order has been issued to combat criminal financial transactions and title companies are required to report residential real estate transactions that cover cash. This doesn't apply to Colorado yet, but it might.

Marianne Luu-Chenn reported that the Financial Crimes Enforcement Network (FinCEN) is taking steps toward implementing reporting requirements for residential real estate transactions that would require disclosure of trust beneficiaries and of owners of an entity that owns real estate. More information can be found at:

<https://www.arnoldporter.com/en/perspectives/advisories/2021/12/what-to-know-about-fincen-proposed-rule>

7. Family Law Section Liaison (Kim Willoughby)

Section is exploring what is needed to establish a dedicated family law court.

8. Statutory Revisions Committee (Jonathan Haskell)

Section is looking a chair to lead a subcommittee on Electronic Estate Planning Documents Act. SRC is looking for a chair to lead the subcommittee.

Status of Disclosure of Fiduciary Fees (CRS 15-10-602 and 15-12-705), which was approved by SRC back in the 2015-2016 year. Never approved by Council. Probate Trial and Procedure did not have any objections to the proposed language but recommended "option (o)". The next step was to take this to Supreme Court's Rules and Forms Committee. Dylan will send this to Statutory Revisions Committee and Steve Brainerd will take this to LPC.

9. Legislative Liaison (Steve Brainerd)

No report other than items regarding Legislative Liaison Succession Issues, which was discussed in the Chair's Report.

10. Legislative Update (Tyler Mounsey)

No report other than items regarding Legislative Liaison Succession Issues, which was discussed in the Chair's Report.

11. Council Notes (Kristin Dittus)

Griffin Bridgers will do article on QTIP election

12. CLE/Estate Planning Retreat (Lauren da Cunha)

Retreat content moving forward and good on lunches. Retreat June 8th through 10th hoping to have registration in February.

13. Orange Book Forms Committee (Rikke Liska)

Working on notes on use for beneficiary deed to trust.

14. Supreme Court's Rules and Forms Committee (Leia Ursury)

Ton of forms have been processed through the committee with feedback from Judge Leith as part of the Probate Caucus, new JDFs coming out in the next few months.

15. Civic and Community Affairs Joint Committee of the Elder Law Section (Sandra Sigler)

Advanced Medial Directive Brochure- Elder law is revising. Will send out the revised version to email for T&E council to vote on via email.

16. Justice, Equity, Diversity, and Inclusivity Committee (Amber Marchlowska)

Received a lot of interest on idea for pamphlet for Elder Law and T&E Sections. Getting a website for committee up and running. Committee is encouraged to attend CU program on EDI topics.

17. Probate Trial and Procedures Committee (Marcie McMinimee & Lindsay Andrew)

None

18. Colorado Estate Planning Handbook (David Johns)

None

19. Green Book (Josie Faix)

Turned in last month.

20. Trust & Estate Practice Support Committee (Margrit Parker)

Speaker from Golden Fiduciary services.

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

None

22. Communications Representative/Ambassador Program (Kayla Nelson)

Elder Law and Trust& Estate Job Fairs (CU and DU)- Looking at dates in mid/late February or Early March. Interested firms and attorneys would need to submit job descriptions by the end of January. Committee is going to send initial sign up out to T&E Section and Elder Law Section regarding sponsoring a table at either of if they are interested in a table at either or both events. Kayla will draft email and send that to Emma for distribution. DU made it clear that they are limited on staff and budget and they may need funds for this.

23. Board of Governors Representative (Jonathan Haskell)

None

24. Other Business

None

ADJOURNMENT

The meeting was adjourned at 4:48p.m. The next Council meeting will be held January 4th, 2023.

Respectfully submitted

/s/ Dylan Metzner, Secretary

ADVANCE MEDICAL DIRECTIVES

Every adult has the legal right to consent to or refuse medical treatment. Advance medical directives are legal documents that state your wishes about your medical care when you are not able to communicate yourself.

In Colorado there are two common advance medical directives:

- A Medical/Health Care Power of Attorney
- A Declaration as to Medical or Surgical Treatment (sometimes called a “living will”)

An advance medical directive does not take away your right to make medical decisions for yourself if you are able to do so. It allows your beliefs and decisions to be carried out even when you cannot communicate them.

If you become incapacitated and you do not have any advance medical directives, your loved ones may have to go to court and pursue a guardianship to have the authority to make medical decisions for you.

While you are encouraged to work with an attorney to execute advance medical directives, forms are available at most office supply stores or by searching the internet. If you choose to use a form, make sure it is a Colorado form as the requirements for advance medical directives are specific to each state.

Medical Durable Power of Attorney

A Medical Durable Power of Attorney identifies the person who will make medical decisions for you when you cannot make them for yourself. This person is known as the “agent,” and they can make any medical decisions you could make for yourself, if you were able to do so.

Your medical power of attorney may grant your agent very broad authority or limit their authority. The document may include directions and guidance as to your wishes and beliefs. You may name alternate or successor agents and can revoke your medical power of attorney at any time.

A medical power of attorney should include a statement giving medical professionals permission to release information to your agent even before it is determined you cannot make decisions for yourself. This provision allows the agent to communicate with the medical professionals to determine whether you are incapacitated.

Declaration as to Medical or Surgical Treatment

In Colorado, individuals may execute a “Declaration as to Medical or Surgical Treatment,” sometimes referred to as a “Living Will.” This Declaration covers the type of life-sustaining procedures you want when you have a terminal condition or are in a persistent vegetative state. In these very limited circumstances, statements you make in a properly executed Declaration as to Medical or Surgical Treatment govern your treating physician’s course of

action regarding artificial nutrition, artificial hydration, and the administration, removal, or refusal of life- sustaining procedures.

Under Colorado law, a “life-sustaining procedure” is any medical procedure that only serves to prolong the dying process, including CPR, defibrillation, medications, and surgery.

A Declaration as to Medical or Surgical Treatment may also include declarations regarding your wishes as to your treatment if you are in a persistent vegetative state.

Regardless of your decision to accept or reject life-sustaining treatment, medical professionals will continue to provide all necessary treatment to alleviate pain and suffering.

You may revoke or amend your Declaration as to Medical or Surgical Treatment at any time.

Other Common Documents and Situations

CPR Orders/Do Not Resuscitate Orders

CPR treatments are medical procedures that attempt to restore cardiac function or support breathing, including chest compressions, electric shocks, and breathing tubes. You must get a CPR directive from your doctor’s office or the Colorado Department of Health, and your doctor must sign it after a consultation. If you have a CPR directive, you should place it prominently in your home (on the front door or refrigerator) so that emergency medical personnel can find it easily and carry out your wishes. In addition, you may receive an ID bracelet, that indicates you do not want CPR administered.

Disposition of Last Remains Declarations

You have the right and power to direct the disposition of your last remains. Colorado laws provides protection from individuals who may try to impose their views over your stated wishes.

The declaration may cover disposition (cremation, burial, entombment) and ceremonial instructions, and must be signed and dated by you. If you do not make a declaration, your Personal Representative, spouse, designated beneficiary, adult children, parents, guardian, conservator, majority of adult siblings, can make the decision for you. If none of the above individuals are available, then any person willing to pay gets to decide for you.

Organ and Tissue Donation Declarations

You may make a declaration regarding organ and tissue donation in a stand-alone document, Declaration as to Medical or Surgical Treatment, or on your driver’s license. You may give specific direction as to who should benefit from the donation and may even give certain individuals, such as family members a preference. If you do not make a declaration, your agent, spouse, adult children, parents, adult siblings, adult grandchildren, grandparents, caregiver, or your guardian, if applicable, gets to

decide whether to make an organ and/or tissue donation.

Proxy Decision Maker for Medical Treatment

If you do not make any advance medical directives, Colorado law allows health care providers to rely on a proxy decision maker chosen by “interested persons” to make decisions for an incapacitated patient. In general, medical professionals will attempt to locate as many interested persons as practicable. Often this includes parents, children, grandchildren, and close friends.

In order for a proxy decision maker to have authority to make medical decisions, the patient’s attending physician must determine that the patient lacks the ability to provide informed consent to or refusal of medical treatment. Medical professionals must try to tell the patient that he or she lacks the ability to provide informed consent and that a close relative or friend will be selected to make medical decisions for them.

Frequently Asked Questions

Where should I store my advance directives?

You should keep the directives somewhere that is easily accessible and you should inform your loved ones where to find them. It is not a good idea to place the documents in a safe deposit box at a bank, as on weekends, holidays, and nights, the documents would not be available for use.

Should I talk with my family and friends about my documents?

Yes. When it comes to end of life and medical treatment issues, communication with family members and close friends is the key to ensuring your wishes are followed. Take the time to discuss these issues with your family, close friends, and medical professionals so that they understand your values. The documents do not cover every possible scenario.

How do I convey my values in my advance directives?

Your advance medical directive(s) should include statements about your values and any religious beliefs that would either prohibit or require certain types of medical care.

How do I inform my doctors and other medical professionals about my documents?

You should provide either a physical or an electronic copy of your documents to your primary care doctors and specialists. Take the documents along to your next visit or upload the documents to the medical records portal used by your health care providers.

I just moved to a different state. Are my advance directives still valid?

If your advance medical directives comply with the state law where the directive were executed, they will likely be recognized and honored in all other states. If you have any questions about whether the directives are valid, consult an attorney.

What if I spend part of the year in another state?

If you spend a significant amount of time in more than one state, such as having a vacation or winter home in another state, you should execute documents in both states in case there are different requirements. It is very important to make sure all your declarations are consistent to avoid any confusion or disputes.

What do I do if I change or revoke my advance directives?

If you revoke or amend any of your advance directives, it is very important that you provide your doctor, family, and nominated agent(s) with the most current versions so they are aware of your wishes.

This brochure is published as a public service by the Colorado Bar Association and was authored and is reviewed and updated as needed by the Civic and Community Affairs Committee, a Subcommittee of the Trusts and Estates Section. Its purpose is to provide general information about the topic contained herein, which is a common legal issue that may come up in estate planning, probate, and/or elder law cases. The information in this brochure is current as of December 2022. You should ensure that there have not been any changes in the law that may affect your matter, which may require consulting with an attorney.

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Advance Medical Directives

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