

**Council of the Trust and Estate Section of the Colorado Bar Association**  
**Minutes of the January 17, 2013, Meeting**

Council met on Thursday, January 17, 2013, at the Colorado Bar Association offices, 1900 Grant Street, Denver, Colorado. The meeting was called to order at 3:30 pm.

The following members of Council were present or participated by phone and constituted a quorum:

Jennifer M. Spitz, Immediate Past Chair (by phone)  
Spencer Crona, Chair  
Walter Kelly II, Vice Chair  
Elizabeth A. Bryant, Secretary/Treasurer  
Greg Densen (1st year)  
David Johns (1st year)  
William Welch (1st year)  
Kerri Klein (2nd year)  
E. David Griffith (2nd year) (by phone)  
Michelle R. Mieras (2nd year)

Also attending were: John DeBruyn, Marc C. Darling, David Kirch, Patrick Thiessen, and Tammy Conover. Attending from the Colorado Bar were Amy Sreenan and Lisa Travis-Fischer.

**1. Approval of Minutes of Prior Meeting**

Council reviewed the draft December 20, 2012 Minutes.

Motion: David Johns moved approval of the Minutes, and Bill Welch seconded. Motion approved.

**2. Chair's Report, Administrative Matters, and Council Planning (Spencer Crona)**

**A.** Spencer reported that Legislative Policy Committee approved the following:

- § 15-12-805 – Change to classification of claims, to elevate claims due for child support
- § 15-14-429 – Change priority of claims in conservatorship, to allow court to consider needs
- § 15-16-702 – Revocable Trust statute amendments
- § 15-14-407 – Adds to conservatorship statute language for court-ordered professional evaluation, replicating language in guardianship statute.

**B.** Spencer reported the Nominating Committee has proposed the following slate of offices for next year:

**Officers:**

Connie Eyster - Chair  
Elizabeth Bryant – Vice Chair  
Melissa Schwartz - Secretary/Treasurer

**First Year Members:**

Susan Boothby  
Laurie Hunter  
Jane Paddison

**C.** Council discussed the role of Council with respect to rules and amendments, and development of a protocol as it pertains to proposed amendments/rules changes for matters affecting both the T&E and Elder Law Sections. The customary procedure is: once Rules are approved by Rules & Forms (R&F), then State Court Administrator’s Office (SCAO) and the Probate Advisory Committee of SCAO takes them up, then directly to Supreme Court Rules Committee for approval, amendment or rejection.

There is nothing specific that authorizes Council to vote on or reject Rules promulgated and approved by R&F. But Council has general responsibility – in Article 4, Section 1 of the Bylaws – for supervision and control of T&E Section subject to Article 1, Section 2. The Committees operate under the auspices of Council.

- Two alternative routes for Council review of actions by R&F and Orange Book:
  1. Council member to move that any Rule approved by R&F be voted on by Council
  2. Chair of subcommittee may ask Council for a vote
- Council either needs approve or reject.
- Communicate items that may have need for review by Elder Law to Elder Law.

Council discussed the new Discovery Rule. The subcommittee passed it unanimously, which was then passed unanimously by R&F. The new Discovery Rule codifies the current procedure, excepting subpoenas and discovery directed to respondent not allowed until a guardian or conservator is appointed.

**3. Secretary/Treasurer’s Report (Elizabeth Bryant)**

Financials Review: Beth presented the Financials for the six months ended December 31, 2012. Financials were approved.

**4. Tax Section Liaison (Andrew Kroll)**

No report.

**5. Statutory Revisions Committee (Marc Darling/Aaron Evans).**

Mark reported that nothing was presented for vote in SRC but summarized what had been passed. He then presented the following fast-track items to go before Council for vote:

**A. Technical amendment to § 15-12-1201 - Small Estate Affidavit.** To add language to clarify “funds on deposit” included in property to be collected under Small Estate Affidavit. So §15-12-1201 would read:

- (1) At any time ten or more days after the date of death of a decedent, any person indebted to the decedent or having possession of ANY PERSONAL PROPERTY INCLUDING BUT NOT LIMITED TO FUNDS ON DEPOSIT AT ANY FINANCIAL INSTITUTION, tangible personal property, or an instrument evidencing a debt, obligation, stock, chose in action, or stock brand belonging to the decedent shall PAY OR DELIVER SUCH PROPERTY to a person claiming to be the successor of the decedent upon being presented an affidavit made by or on behalf of the successor stating that: (the rest of the statute remains unchanged)

*Motion:* Motion made and seconded to approve. Motion carried.

**B. House Bill 13-1016.** Independent Bankers Association Bill on POD Beneficiary Designations – John DeBruyn presented to Council. The Bill allows a depositor to specify POD beneficiaries in a manner other than equal shares, i.e., 80%, 10%, 10%

*Motion:* In Roman II lines 14 and 15 of Bill remove “designated” and add language, so the provision will read:

(II) IF THERE ARE TWO OR MORE BENEFICIARIES, AND IF ANY BENEFICIARY FAILS TO SURVIVE THE SOLE PARTY OR THE LAST SURVIVOR OF TWO OR MORE PARTIES, SUMS ON DEPOSIT BELONG TO THE SURVIVING BENEFICIARIES IN PROPORTION TO THEIR RESPECTIVE INTERESTS, UNLESS THERE IS CLEAR WRITTEN EVIDENCE OF A DIFFERENT INTENT IN THE RECORDS OF THE FINANCIAL INSTITUTION AT WHICH THE ACCOUNT IS MAINTAINED.

*Motion:* To work to (1) secure amendments to clarify the nature of the evidence required, and (2) deal with the application of antilapse, so that if there is a question about the applicability of antilapse, to clarify antilapse does not apply.

Council asked Steve Brainerd to convey Council's comments to the Bill proponents, and also indicate Council's recommendation that the evidence standard should be *clear and convincing written evidence*.

**C.** A request was made for a discussion by Council regarding Colorado's Trust laws, specifically, where Colorado trust statutes stand compared to other states. This topic will be added as an agenda item for the February meeting of Council.

**D. Senate Bill 13-011.** Colorado Civil Union Act. Council discussed the Bill and noted that some parts of Title 15 are not specifically included.

*Motion:* The Section supports the Bill and will be suggesting conforming amendments to Title 15. Walt Kelly moved to support the Civil Unions Bill. Greg Densen seconded. Motion carried.

**6. Legislative Liaison (Steve Brainerd)**

No report.

**7. Council Notes (Merry Balson/Julia McVey)**

No report.

**8. CLE/Estate Planning Retreat (Walter M. Kelly II/Gary Abrams)**

Walt reported that we have full compliment of speakers for the Annual Retreat in June.

**9. Orange Book Forms (Dan Rich/Kate Boland)**

It was reported that the Committee worked on the Designated Beneficiary Agreement and the Client Letter.

**10. ADR Committee (Dennis Whitmer)**

No report.

**11. Rules & Forms (Kerri Klein)**

Kerri reported the Committee continues to work on the Rules review as suggested by Judge Stewart, and the task force and asked for by the State Court Administrative Office over past two years. Kerri reported on the following actions by the Committee:

- Rule 1 Scope of Rules – no changes
- Rule 19 Registry of Court – no changes

- Rule 21 Withdrawal of Documents and Exhibits – deleted as archaic
- Rule 20 Security of Files – sent back to subcommittee for further review
- Rule 23 Wills–Venue–Transfer to Other Jurisdiction – minor revisions to be discussed next month
- Rule 25.2 Proof of Will in Formal Testacy – deleted as duplicative of statute
- Rule 27.1 Physicians’ Letters – struck specific reference and correct typo
- Rule 30 Decedent’s Estates – no changes

*Motion:* Walt Kelly moved that Council approve the work of the R&F Committee. Seconded by Greg Densen. Motion carried.

**12. Colorado Estate Planning Handbook (David Johns/Constance Wood/Julie McVey)**

It was reported that the Orange Book has been shipped.

**13. Green Book (David Johns)**

It was reported that the Green Book is being shipped.

**14. New T & E Lawyers Committee (Facilitator, Mark Masters/ Secretary, Lisa Blattner,)**

No report.

**15. Colorado Lawyer (David Kirch/Connie Smith)**

No report

**16. Media Liaison (Mark Masters)**

No report.

**17. Civic and Community Affairs Committee of the Elder Law and T&E Sections (Carl Glatstein)**

No report.

**18. Elder Law Section Liaison (Tammy Conover/Patrick Thiessen)**

It was reported that Elder Law approved the friendly amendment to the compensation statute, §15-10-603, passed by SRC in December meeting, which be presented to LPC on January 25, 2013.

The Denver Probate Judge has indicated her preference for no specific Discovery Rule.

**19. Probate Trial and Procedure Committee (Kelly Cooper)**

Kelly reported on the first meeting of the committee, held today. The primary project is to create a litigation procedure manual that discusses different judges and how they handle procedural matters.

**20. Real Estate Section Liaison (David Kirch)**

No report.

**21. Technology Committee (Gene Zuspann)**

No report.

**22. Board of Governors Representative (Melissa Schwartz)**

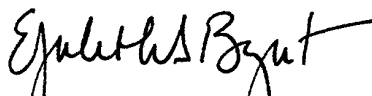
No report.

**23. Miscellaneous/FYI**

**24. Adjournment**

The meeting was adjourned at 5:24 pm.

Respectfully submitted,

  
Elizabeth A. Bryant

**Council of the Trust and Estate Section of the Colorado Bar Association**  
**Minutes of the February 21, 2013, Meeting**

Council met on Thursday, February 21, 2013, at the Colorado Bar Association offices, 1900 Grant Street, Denver, Colorado. The meeting was called to order at 3:36 pm.

The following members of Council were present or participated by phone and constituted a quorum:

Jennifer M. Spitz, Immediate Past Chair (by phone)  
Spencer Crona, Chair  
Walter Kelly II, Vice Chair  
Elizabeth A. Bryant, Secretary/Treasurer  
David Johns (1st year)  
William Welch (1st year)  
Kerri Klein (2nd year)  
E. David Griffith (2nd year) (by phone)  
Michelle R. Mieras (2nd year) (by phone)

Also attending were: Steve Brainerd, Kelly Cooper, Andrew Kroll, John DeBruyn, Marc C. Darling, David Kirch, Patrick Thiessen, Tammy Conover, and David Struthers. Attending from the Colorado Bar were Michael Valdez, Amy Sreenan and Lisa Travis-Fischer.

**1. Approval of Minutes of Prior Meeting**

Council reviewed the draft January 17, 2012 Minutes, with minor revisions noted by EAB.

*Motion:* Keri Klein moved approval of the revised Minutes, and Bill Welch seconded. The motion was approved.

**2. Chair's Report, Administrative Matters, and Council Planning (Spencer Crona)**

Spencer thanked Council for its responsiveness to Bills reviewed and voted on by Council since last meeting:

- Colorado Compact – January 24, 2013 vote of Council
- HB 13-1016 POD Statute Revisions – February 4, 2013 vote of Council
- SB 13-111 Mandatory Reporting for Elder Abuse – February 7, 2013 vote of Council
- SB 13-077 Business Trusts in Omnibus Bill– February 8, 2013 vote of Council
- HB 13-1213 Uniform Asset Freezing Orders – February 14, 2013 vote of Council
- § 15-14-407 – Adds to conservatorship statute language for court-ordered professional evaluation, replicating language in guardianship statute.

**SB 13-077 Omnibus Bill** – Marc Darling reported the Bill passed out of the Senate Judiciary Committee on a 5-0 vote.

**SB 13-111 Mandatory Reporting for Elder Abuse** – Tammy Conover reported that the Bill passed out of Senate Judiciary, 2/20/13, on 4-1 vote. The Bill has a lot of support, including from sheriff and police departments; some opposition, including from banks, and the criminal defense bar is now neutral.

There were five amendments offered by the CBA, and a total of 11 amendments for the Bill. LPC previously gave conditional support, contingent on amendments.

Amendments:

- Clarified clergy reporting requirement.
- Criminal prosecution for failure to report must be willful.
- Addressed duplicative reporting.
- Added legislative declaration that Bill is not intended to create a civil duty that did not exist prior this Bill
- Report abuse or exploitation
- What needs to be reported - technical terms removed
- Clarified immunity provisions for reporting in good faith
- Clarified state of mind required for abuse
- Clarified undue influence definition – no longer mixes breach of fiduciary duty and undue influence
- Mandatory reporters – “volunteers” removed as mandatory reporter

Attorneys are not included in the Bill as reporters.

Even with Amendments, there will be “cleanup” needed to the Bill, but the policy behind it has support by both legislative houses and the Governor.

Walt asked Council to support Elder Law’s position, but there is concern about how “undue influence” in the Bill could be interpreted to create criminal and civil liability. There was consensus agreement among Council regarding this concern.

**3. Secretary/Treasurer’s Report (Elizabeth Bryant)**

Financials Review: Beth presented the Financials for the seven months ended January 31, 2013. The Financials were approved.

**4. Tax Section Liaison (Andrew Kroll)**

No report.



**5. Statutory Revisions Committee (Marc Darling/Aaron Evans).**

Mark Darling reported on what took place in SRC, earlier today.

**Senate Bill 13- 077 Omnibus Bill** – The technical amendments to the Colorado Civil Unions Act are to be included when reviewed by the House.

**Senate Bill 13-111 Mandatory Reporting for Elder Abuse** – see full report, above

**Senate Bill 13-011 Colorado Civil Union Act** – Council discussed the Bill and noted that some parts of Title 15 are not specifically included.

**House Bill 13-1204 Marital Agreement Act** –The CBA Family Law Section and the American Academy of Matrimonial Lawyers were involved in the review of the Bill. The T&E subcommittee formed to work on Bill reviewed and engaged in revisions, and supports the Bill. As reported by the T&E Committee, the Bill makes four changes to current law, adding criterion for enforceability:

1. Voluntariness – Agreement must be w/o duress, and the burden is on the opponent to the agreement
2. Time – Both parties must have reasonable time to consider need for and to obtain counsel
3. Notice – Notice of a waiver of rights not currently in existing law
4. Full Disclosure – Full disclosure of parties’ respective assets & liabilities

SRC voted to support with the Bill based on the recommendations of T&E subcommittee members.

The Family Law Section has asked for the Bill to go to LPC tomorrow, Friday, February 22, 2013, and Family Law will oppose the Bill. Though Council has not had the opportunity to thoroughly review the Bill, if Council does not take a position, it is believed LPC will likely defer to Family Law and oppose it, contrary to T&E’s subcommittee’s recommendation to support. Another possibility is that LPC could take “no position” for the CBA, but allow each Section to testify at the Legislature.

Discussion by Council included the following points:

- It was noted that a T&E subcommittee had reviewed the Bill and we should support the work of our subcommittee. It was suggested that Council endorse with a recommendation to have more time to review.
- It is noteworthy that the Family Law Section has come out in opposition of the Bill, due to existing body of law and prior agreements that may be affected by enactment of this Bill. Council should pay attention to the concerns of the Family Law Section.
- The Uniform Law Committee that drafted the Act had at least three marital attorneys on the committee when drafting the Uniform Act, so a great deal of thought has been put into the Act.
- The Bill does something to address position of the economically weaker party. It tightens due process. It adds safeguards for both parties. The Bill deserves the support of T&E Section

that has, as its greatest concern, the effect of an agreement when one or both of the parties are not alive to deal with or defend a Marital Agreement.

- The Uniform Act makes an attempt, which is not in the current Act, about what constitutes a Marital Agreement.
- There are important concepts in the Bill that T&E supports, and we realize there are amendments needed. Ask to give us time to work it out. The Bill needs to stand or fail on its own merits.
- There is concern that the more-moneyed party may be required to pay for the counsel of the less-moneyed party.

*Motion:* David Griffith moved that Council support the concepts embraced by the Bill and would have the Colorado Bar Association support the Bill with amendments, and T&E is willing to work on the amendments. David Johns seconded. The motion was approved.

**House Bill 13-1213 Uniform Asset-Freezing Orders Act** – The Litigation and Business Law Sections oppose the Bill. The Bill sponsor wants comments to be able to give feedback to the Uniform Law Commissioners. SRC voted to oppose Council’s vote on February 14, 2013.

**6. Legislative Liaison (Steve Brainerd)**

Steve reported on the POD account legislation, HB 13-1016. Our proposed amendments were approved by LPC, but the Independent Bankers did not receive the proposed changes well. They want to go back to the original language where, if a Designated Beneficiary has died, there will be equal distribution, not disproportionate distribution. The Independent Bankers group is not in support of using a *clear and convincing* standard for written evidence. There will be a conference call to discuss the proposed amendments on Monday, February 25, to try to come to an agreement.

**7. Council Notes (Merry Balson/Julia McVey)**

No report.

**8. CLE/Estate Planning Retreat (Walter M. Kelly II/Gary Abrams)**

Walt reported that we have all of the speakers for the Annual Retreat in June.

**9. Orange Book Forms (Sonny Wiegand/Kate Boland)**

It was reported that the Committee passed the Designated Beneficiary Agreement form, the Designated Beneficiary Agreement Letter, and the Single-Person Pourover Will form.

**10. ADR Committee (Dennis Whitmer)**

No report.

**11. Rules & Forms (Kerri Klein)**

Kerri reported on the following actions by the Committee:

- JDF 999 Small Estate Affidavit. Revised because of the new COLA figure.
- Rule 23 Wills-Venue-Transfer to Other Jurisdiction. Revised and approved.
- Rule 7 Identification of Party and Attorney. Approved as is.
- Rule 35 Rules of Court. Approved as is.
- Rule 15 Guardians Ad Litem. Deleted as duplicative.
- Rule 30.1 Conservatorships-Closing. Sent back for further review.
- Rule 31 Accountings. Revised in conjunction with 31.1, and will be called Accountings and Reports
- Rule 31.1 Deleted.
- Rule 33.1 Compensation of Personal Representatives and Attorneys. Deleted due to enactment of Cost and Compensation Act.
- Rule 2 Definitions. Revised and approved.
- Rule 5 Preparations of Proceedings. Revised and approved.

Next month the Committee will take up Rule 10, Rule 12, Rule 18, Rule 28, Rule 34, and possibly notice Rules.

Rule 16 Guardianships and Conservatorships – Settlement of Personal Injury Claims. Was sent back to subcommittee last year. Progress being made but is still under review.

Discovery Rule not yet sent to State Court Administrative Office because of concerns about response by Denver Probate Judge. Aaron Evans approached Judge Leith, who forwarded to other judges. Feedback has been favorable, with one minor tweak, so will be sent to SCAO next week.

The Committee continues to work on the Rules review, as suggested by Judge Stewart, the task force, and asked for by the SCAO during past two years.

Motion: Walt Kelly moved that Council approve the work of the R&F Committee. Seconded by Greg Densen. The motion was approved.

**12. Colorado Estate Planning Handbook (David Johns/Constance Wood/Julie McVey)**

No report.

**13. Green Book (David Johns)**

No report.

**14. New T & E Lawyers Committee (Facilitator, Mark Masters/ Secretary, Lisa Blattner,)**

No report.

**15. Colorado Lawyer (David Kirch/Connie Smith)**

David reported new articles are needed. Upcoming articles are:

- Undue Influence
- Small Estate Affidavit
- Trustee indemnification provisions

**16. Media Liaison (Mark Masters)**

No report.

**17. Civic and Community Affairs Committee of the Elder Law and T&E Sections (Carl Glatstein)**

No report.

**18. Elder Law Section Liaison (Tammy Conover/Patrick Thiessen)**

No report.

**19. Probate Trial and Procedure Committee (Kelly Cooper)**

The Committee is working on a questionnaire for practitioners to complete on court procedures and practice in Colorado courts, regarding responsive pleadings, discovery, etc.

The Committee is creating an Orders Bank, which will be accessible on line. Jarod Balson will coordinate this. Practitioners will be asked to redact names and submit samples to him at [jarod@coloradolitigator.com](mailto:jarod@coloradolitigator.com)

The Committee has a CBA Website under subcommittee link, similar to SRC and R&F

Kelly Cooper is the T&E liaison

Tom Rodriguez is the Elder Law liaison

**20. Real Estate Section Liaison (David Kirch)**

David stated that it is "ok" that there has been a delay regarding the issue of real estate title passing to successor trustees when the title is initially placed in the name of the trustee. Communications will continue between the T&E Section and the Title Standards Committee of the RE Section.

Council discussed the relationship of LPC and the Section. Carl Stevens is the T&E Section's representative on LPC. It is imperative that there be communication with Carl regarding T&E Section Bills.

David noted RE Section's decision to not oppose the provisions of the T&E Section's Omnibus bill this year relating to the priority of claims for child support and the conservatorship provisions.

**21. Technology Committee (Gene Zuspann)**

No report.

**22. Board of Governors Representative (Melissa Schwartz)**

No report.

**23. Miscellaneous/FYI**

David Griffith asked the Chair to send an invitation to new El Paso County Magistrate to attend Super Thursday meetings.


Council discussed Courtney Smith, the Benefits Payee Services representative, who wishes to attend meetings as a patron. Spencer highlighted the CBA Bylaws, 3.6, which applies to non-lawyer patrons. Patrons of the CBA shall pay such fees as may be fixed by the Board of Governors, and may participate in such CBA activities and privileges as may be approved by the Board of Governors, but no patron of the CBA may hold office or vote. The Elder Law Section has approved Courtney Smith as a patron. Membership is to be used for participation in the Section and cannot be used for marketing purposes. The form for patron membership includes requirements regarding participation.

Motion: A motion was made and seconded to allow Courtney Smith to be a patron of the Section. The motion was approved.

**24. Adjournment**

The meeting was adjourned at 5:27 pm.

Respectfully submitted,

  
Elizabeth A. Bryant

**Council of the Trust and Estate Section of the Colorado Bar Association**  
**Minutes of the March 21, 2013, Meeting**

Council met on Thursday, March 21, 2013, at the Colorado Bar Association offices, 1900 Grant Street, Denver, Colorado. The meeting was called to order at 3:50 pm.

The following members of Council were present or participated by phone and constituted a quorum:

Jennifer M. Spitz, Immediate Past Chair (by phone)  
Walter Kelly II, Vice Chair  
Elizabeth A. Bryant, Secretary/Treasurer  
Kerri Klein (2nd year)  
E. David Griffith (2nd year)  
Michelle R. Mieras (2nd year)

Also attending were: Susan Boothby, Steve Brainerd, Kelly Cooper, John DeBruyn, David Kirch, Patrick Thiessen, Sonny Wiegand. Attending from the Colorado Bar was Andrea Mueller Arias.

**1. Approval of Minutes of Prior Meeting**

Council reviewed the draft February 21, 2012 Minutes.

*Motion:* It was moved and seconded to approve the Minutes. The motion was approved.

**2. Chair's Report, Administrative Matters, and Council Planning (Spencer Crona)**

Spencer was at the Colorado Legislature testifying on the T&E Omnibus Bill, along with Marc Darling, Bill Welch and Michael Valdez. Walt chaired the meeting and reported the following:

- The 2013 T&E Omnibus Bill passed out of the House Judiciary Committee earlier today on a 9-0 vote. Now will go to the House floor.
- The Colorado Civil Union Act is being signed by the Governor at 3:00pm today.
- LPC's actions since February T&E Council Meeting:
  - LPC supported T&E's position on the Uniform Marital Agreement Act
  - LPC supported Elder Law's amendments (which were supported by T&E Section) to the Mandatory Reporting Act – LPC supported
- The New T&E Lawyers Committee is holding a CLE today
- Courtney Smith has been approved as Patron member of the CBA

- The Board of Governors Meeting will be held on Saturday, May 11, and the deadline to submit items is Friday, April 5

### **3. Secretary/Treasurer's Report (Elizabeth Bryant)**

Financials Review: Beth presented the Financials for the eight months ended February 28, 2013. The Financials were approved.

Walt raised the issue of Council's making a contribution to CLE for the Annual T&E Retreat. Council held a discussion about historic funding practice, and the interplay of CLE and CBA funding for the Annual Retreat. Speaker rooms are paid for by CLE. Whether portion of funding to be available for stipend/transportation to speakers and also scholarships for those who want to attend but can't afford it. Total budget is for \$11,000.

*Motion*: It was moved and seconded to approve a distribution of \$7,500 to CLE, with the suggestion that the funds be used travel expenses of the speakers and scholarships for those who want to attend but can't afford it. The motion was approved, with David Griffith abstaining on the vote.

### **4. Tax Section Liaison (Andrew Kroll)**

No report.

### **5. Statutory Revisions Subcommittee (Marc Darling/Aaron Evans).**

Walter highlighted what took place in SRC, earlier today:

- **Senate Bill 13-111 Mandatory Reporting for Elder Abuse** – see above in Chair's Report.
- **Senate Bill 13-011 Colorado Civil Union Act** – see above in Chair's Report.
- **House Bill 13-1204 Marital Agreement Act** – see above in Chair's Report.
- **Uniform Powers of Appointment Act** – A subcommittee was formed to review. Susan Boothby will be chair of the subcommittee.
- **House Bill 13-1213 Uniform Asset-Freezing Orders Act** – The Bill was pulled.

### **6. Legislative Liaison (Steve Brainerd)**

No report.

### **7. Council Notes (Merry Balson/Julia McVey)**

It was noted Council Notes was distributed last week.

**8. CLE/Estate Planning Retreat (Walter M. Kelly II/Gary Abrams)**

Walt reported on the following:

**Annual T&E Retreat:** Josh Rubenstein will be the keynote speaker at the Annual Retreat. Brochure for the Retreat being finalized, to be sent in the next couple of weeks.

**Upcoming CLEs:**

- April – David Griffith – movies plays and inheritance laws.
- May – Randy Robida – tax issues associated with trust modification
- July – Annual Update – Legislative and Caselaw

**9. Orange Book Forms Subcommittee(Sonny Wiegand/Kate Boland)**

Sonny reported the Single-Person Pourover Will form has been pulled from publication until a Single-Person Trust has been created.

Walt asked if the subcommittee is considering a Joint Trust, given the change in exemption amount.

**10. ADR Committee (Dennis Whitmer)**

No report.

**11. Rules & Forms (Kerri Klein)**

Kerri reported the following were reviewed/revised/approved by the subcommittee:

- JDF 999 Small Estate Affidavit taken up again – SCAO had revised to show different amounts for different years – subcommittee made changes for clarity.
- Rule 10 Petitions Must Indicate Persons Under legal Disability – minor changes.
- Rule 12 Fiduciaries-Change of Address – minor changes.
- Rule 18 Foreign Personal Representatives, and Conservatives and Conservators.
- Rule 25.1 Informal Probate-Separate Writings – minor changes.
- Rule 34 Delegation of Powers to Clerk and Deputy Clerk – changed to apply rule of 7.
- Rule 22 Wills-Deposit for Safekeeping and Withdrawals – kept though in conflict with justice directive.



- Rule 28 Inventory with Financial Plan-Conservatorships-Date Due-Contents-Oath or Affirmation – tabled for further work.
- Rule 17 Heirs and Devisees-Unknown, Missing or nonexistent-Notice Attorney General Rule – no longer a need for certified copy, struck “certified.”

R&F created a subcommittee to review changes needed as a result of the Civil Unions Bill

Next month, R&F will review Rule 26, 29, 20, and all notice Rules.

Council discussed some of the challenges experienced due to the different protocols between Lexis-Nexis and ICCES and whether uniformity could be encouraged.

Kerri noted the subcommittee’s goal has been the full review/re-write of the Rules, and there are only twelve remaining Rules to review/re-write. She will send out a new Table of Contents May for Council to review in May.

**12. Colorado Estate Planning Handbook (David Johns/Constance Wood/Julie McVey)**

No report.

**13. Green Book (David Johns)**

No report.

**14. New T & E Lawyers Subcommittee (Facilitator, Mark Masters/ Secretary, Lisa Blattner,)**

Reported attendance of 10-12 at each meeting. A CLE is being presented today.

**15. Colorado Lawyer (David Kirch/Connie Smith)**

David reported new articles are needed. Upcoming articles include:

- Undue Influence
- Small Estate Affidavit
- Trustee Delegation under Prudent Investor
- Trustee Indemnification and Exculpation Provisions
- Tortious Interference with Inheritance
- Privilege and Testamentary Exception

The Colorado Lawyer is considering publishing an entire issue on issue on T&E matters.

**16. Media Liaison (Mark Masters)**

No report.

**17. Civic and Community Affairs Subcommittee of the Elder Law and T&E Sections (Carl Glatstein)**

Patrick Thiessen reported on Senior Law Days for 2013:

- Jefferson County in June
- Denver County in July
- Larimer and El Paso in August

Patrick noted that Casey Williams will be in charge of Senior Law Day, going forward.

Patrick reported on the new Denver Probate Court Access to Justice Program. There will be a Court staff member available from 8-4 daily, to assist pro se parties.

Jennifer raised the issue of creating a video for pro se parties to review, explaining the probate process, similar to what was done for guardianships and conservatorships. There was positive feedback as to the value of such a video.

**18. Elder Law Section Liaison (Tammy Conover/Patrick Thiessen)**

No additional report other than what was stated above in Civic and Community Affairs.

**19. Probate Trial and Procedure Subcommittee (Kelly Cooper)**

Kelly reported on the following actions by the subcommittee:

The subcommittee held its third meeting today – meetings are being well-attended

- Jan 40-45 attendees
- Feb and March 25-30 attendees

The subcommittee's goal: to gather information about court procedures throughout the State. Spencer and Tammy Conover met with Judge Leith, who is supportive of local practice information gathering.

Topics the subcommittee has identified:

- Subject matter jurisdiction in trust actions and estate proceedings
- Monitor discovery issues with Rules & Forms
- Creating Orders Bank from jurisdictions around the state. You must submit an order to access the bank. Jarod Balson will coordinate this effort.
- Jury instructions

- Cost & Compensation Act – whether benefit rule applies to fiduciary and third parties and whether to extend time for filing
- Probate Rule 35 – local practice
- Spencer and Tammy Conover met with Judge Leith, who is supportive of local practice information gathering
- Rules and Forms and SRC coordination encouraged – is a liaison needed for coordination between R&F and SRC?

**20. Real Estate Section Liaison (David Kirch)**

No report.

**21. Technology Subcommittee (Gene Zuspahn)**

No report.

**22. Board of Governors Representative (Melissa Schwartz)**

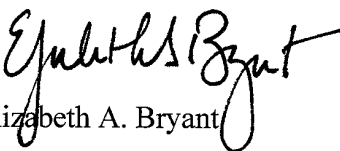
No report.

**23. Miscellaneous/FYI**

**24. Adjournment**

The meeting was adjourned at 4:22 pm.

Respectfully submitted,

  
Elizabeth A. Bryant

**Council of the Trust and Estate Section of the Colorado Bar Association**  
**Minutes of the April 18, 2013, Meeting**

Council met on Thursday, April 18, 2013, at the Colorado Bar Association offices, 1900 Grant Street, Denver, Colorado. The meeting was called to order at 3:15 pm.

The following members of Council were present or participated by phone and constituted a quorum:

Jennifer M. Spitz, Immediate Past Chair (by phone)  
Spencer Crona, Chair  
Walter Kelly II, Vice Chair  
Elizabeth A. Bryant, Secretary/Treasurer  
Gregory Densen (1st year)  
David Johns (1st year)  
William Welch (1st year)  
Kerri Klein (2nd year)  
E. David Griffith (2nd year)  
Michelle R. Mieras (2nd year)

Also attending were: Aaron Evans, Kelly Cooper, John DeBruyn, David Kirch, Andrew Kroll, Patrick Thiessen, Sonny Wiegand. Attending from the Colorado Bar were Michael Valdez, Andrea Mueller Arias, and Lisa Travis-Fischer.

**1. Approval of Minutes of Prior Meeting**

Council reviewed the draft March 21, 2013 Minutes.

Motion: It was moved and seconded to approve the Minutes. The motion was approved.

**2. Chair's Report, Administrative Matters, and Council Planning (Spencer Crona)**

Spencer reported the following:

- Bill Welch, Marc Darling, John DeBruyn and Spencer testified to the Judiciary Committee on the 2013 T&E Omnibus Bill, which unanimously passed out of that Committee. Spencer noted and gave special thanks to Marc's presentation to legislators.
- The question was raised as to whether T&E Council should review and vote on the product of Rules & Forms and it was noted that Council had previously agreed that the chair would bring to Council for approval when appropriate. But should Council create a Rule of Order as opposed to a Bylaws change, to be a guide regarding the approval process? It was suggested not to do a Bylaws revision, as a Rule of Order would be more flexible and better suited for actions of irregular frequency. The

history of the process of R&F and SCAO was discussed. (Elder law had requested that Council vote on the Discovery Rule promulgated by R&F) R&F is under T&E where Elder Law is separate, which is why, procedurally, Elder Law asked for Council approval.

### **3. Secretary/Treasurer's Report (Elizabeth Bryant)**

Financials Review: Beth presented the Financials for the nine months ended April 30, 2013. The Financials were approved.

### **4. Tax Section Liaison (Andrew Kroll)**

Walt will find a speaker for the June Joint Section Annual Update and advise Andrew.

### **5. Statutory Revisions Subcommittee (Marc Darling/Aaron Evans).**

Marc highlighted what took place in SRC, earlier today:

Legislative Report by MAV

- **Senate Bill 77** – Probate Omnibus Bill – passed and on way to Governor, effective August 7, 2013.
- **Senate Bill 11** – Civil Unions Bill – passed Senate, to House next week, effective May 1, 2013.
- **Senate Bill 111** – Mandatory Reporting for Elder Abuse – in House next week.
- **House Bill 1035** – new judges added in 5<sup>th</sup> and 9<sup>th</sup> Districts. Effective July 1, 2013.
- **House Bill 1204** – Premarital & Marital Agreements Act – passed conference committee today and will go back to both houses for approval. Effective date July 1, 2013.
- **House Bill 1016** – Payable on Death Designations – signed by Governor. Effective March 29, 2013.
- **House Bill 1029** – Shall vs Must – Must is a condition precedent and Shall is a duty. Effective August 7, 2013.

Additional actions in SRC

- Trust Protector Act – Greg Densen chair of T&E committee – ULC just getting off the ground on this work.
- Capacity – new committee of SRC to review – David Kirch chair, David Griffith, Melissa Schwartz, Jarod Balson, Davd Johns, Andrew Kroll, Sonny Wiegand.

### **6. Legislative Liaison (Steve Brainerd)**

Michael Valdez reported -- counting days to end of session – should be no surprises before end of session in the area of T&E.

**7. Council Notes (Merry Balson/Julia McVey)**

No report.

**8. CLE/Estate Planning Retreat (Walter M. Kelly II/Gary Abrams)**

Walt reported on the following:

**Upcoming CLEs:**

- Randy Robida – re tax implications of trust modification.
- Beth Bryant and Erica Johnson – re Civil Unions law on May 1.

**Annual T&E Retreat:** Regarding money allocated from T&E, Gary will exercise his discretion in administering the money given for scholarship and travel.

**9. Orange Book Forms Subcommittee(Sonny Wiegand/Kate Boland)**

Sonny Wiegand reported:

- Committee finished Designated Beneficiary Agreement Notes on Use.
- Adopted Notes on Use for Notarized Wills.
- The tax apportionment clause was discussed, specifically in Notes on Use – recommended to use default unless really know and understand the tax ramifications and facts and circumstances of client(s).

**10. ADR Committee (Dennis Whitmer)**

No report.

**11. Rules & Forms (Kerri Klein)**

Kerri reported the following were reviewed/revised/approved by the subcommittee:

- Rule 28 – Inventory w/Financial Plan for Conservatorships - revised
- Rule 26 – Fiduciaries – Appointment of Non-Resident - revised
- Rule 29 – Bond and Surety – (a) was deleted as duplicative; (b) was revised
- Rule 20 – Security of Files – revised. With comments to SCAO re definitions
- Rule 8 – Process and Notice – tweaked to improve
- Rule 8.1 – Constitutional adequacy of Notice – no change
- Rule 8.2 – Waiver of Notice – no change

- Rule 8.3 – Notice of Formal Proceedings Terminating Estates – minor revisions

Kerri noted the subcommittee's goal has been the full review/re-write of the Rules, and there are only five remaining Rules to review/re-write. She will send out a new Table of Contents for Council to review in May.

Next month the Committee will look at changes to:

- JDF 940 – Information of Appointment and forms affected by the DBA and the Civil Unions law
- JDF 999 – Small Estate Affidavit

**12. *Colorado Estate Planning Handbook* (David Johns/Constance Wood/Julie McVey)**

David reported on two new chapters in process. David Kirch on Constructive Trusts. Elder Issues. The expected publication is the fall of 2013.

**13. *Green Book* (David Johns)**

No report.

**14. *New T & E Lawyers Subcommittee* (Facilitator, Mark Masters/ Secretary, Lisa Blattner,)**

Lisa reported another well-attended meeting, with new persons. Taking a CLE approach. Thanked Council for the money to assist with Retreat. They have a study group every second Thursday.

**15. *Colorado Lawyer* (David Kirch/Connie Smith)**

David noted that T&E had five articles in the first six months, more than normal amount. The Colorado Lawyer is considering publishing an entire issue on issue on T&E matters.

**16. *Media Liaison* (Mark Masters)**

No report.

**17. *Civic and Community Affairs Subcommittee of the Elder Law and T&E Sections* (Carl Glatstein)**

Patrick Thiessen reported on Senior Law Days for 2013:

**17. Civic and Community Affairs Subcommittee of the Elder Law and T&E Sections (Carl Glatstein)**

Patrick Thiessen reported on the Senior Law Days scheduled for 2013:

- Jefferson County in June
- Denver County in July
- Larimer and El Paso in August

**18. Elder Law Section Liaison (Tammy Conover/Patrick Thiessen)**

They are working on an “Ask a Lawyer” program for Senior Law Day.

**19. Probate Trial and Procedure Subcommittee (Kelly Cooper)**

Kelly reported on the fourth meeting, held today. Holly Panetta, from SCAO, presented regarding the mediation survey on domestic relations mediations, which may be applied to trust & estate mediations.

The Committee is dividing issues and subcommittees:

- Scope of work concerns.
- Clarification of substantive matters and interaction/effect on SRC and other committees of the CBA.

Other issues discussed by Committee today (and discussing flow to affected subcommittees or other sections)

- Local practice information gathering.
- Jury instructions.

It was noted that Civic and Judicial affairs would be the best to work on a video for pro se guardianships and conservatorships, raised in the March Council meeting.

**20. Real Estate Section Liaison (David Kirch)**

No report other than Real Estate Section is glad the successor trustee Bill was pulled this year.

**21. Technology Subcommittee (Gene Zuspann)**

No report.



**22. Board of Governors Representative (Melissa Schwartz)**


No report.

**23. Miscellaneous/FYI**

**24. Adjournment**

The meeting was adjourned at 4:43 pm.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Elizabeth Bryant", written in a cursive style.

Elizabeth A. Bryant

**Council of the Trust and Estate Section of the Colorado Bar Association**  
**Minutes of the November 15, 2012, Meeting**

Council met on Thursday, November 15, 2012, at the Colorado Bar Association offices, 1900 Grant Street, Denver, Colorado. The meeting was called to order at 3:42 pm.

The following members of Council were present or participated by phone and constituted a quorum:

Jennifer M. Spitz, Immediate Past Chair  
Spencer Crona, Chair  
Elizabeth A. Bryant, Secretary/Treasurer  
William Welch (1st year)  
Kerri Klein (2nd year)  
E. David Griffith (2nd year)  
Michelle R. Mieras (2nd year)

Also attending were: Andrew Kroll (by phone), Marc C. Darling, David Kirch, Sonny Wiegand, Aaron Fishman (by phone), and Billie Castle (by phone). Attending from the Colorado Bar were Michael Valdez, and Lisa Travis-Fischer.

**1. Approval of Minutes of Prior Meeting**

Beth reported on a minor change to draft of the October 18 Minutes. Council voted approval of the revised minutes of the September 20, 2012, meeting.

*Motion:* Kerri Klein moved approval of the revised Minutes, and Michelle Mieras seconded. Motion approved.

**2. Chair's Report, Administrative Matters, and Council Planning (Spencer Crona)**

Michael Valdez gave the legislative report. The 2013 Legislature will be different than the past two years as both the Senate and House will have a Democratic majority. Introduction and passage of a Civil Unions Bill is expected. Michael has requested copy of Bill from the sponsor as soon as it is drafted, to allow for review by all CBA Sections.

Spencer reported that Erica Johnson has been contacted to be chair or co-chair of the SRC subcommittee for the review of the Civil Unions Bill.

Jennifer Spitz noted that, due to the comprehensive nature of the Bill and issues that weren't covered in last Session's Bill, such as the treatment of community property, it will be best to establish a subcommittee in place as soon as possible, to initiate a review as soon as a draft Bill is received from the sponsor. Beth Bryant will send her email list of last Session's subcommittee members to Michael Valdez.

**3. Secretary/Treasurer's Report (Elizabeth Bryant)**

Financials Review: Beth presented the Financials for the four months ended October 31, 2012. She noted the Annual Dinner is tonight at Strings, and expects around 45 to attend.

**4. Tax Section Liaison (Andrew Kroll)**

Andrew asked who the speakers will be for the:

- January 9, 2013 Judicial Update CLE at the Warwick. Spencer suggested he contact Jamie Roth
- June 12, 2013 Caselaw Update CLE through the annual retreat.

**5. Statutory Revisions Committee (Marc Darling/Aaron Evans).**

Mark reported there are six statutes approved to be included in the Omnibus Bill, and two more may be added in December, depending on approval by Family Law and Tax Sections:

1. Priority of Creditor Claims in Conservatorships
2. Revisions to Dead Man's Statute
3. Standing of Personal Representative to Litigate
4. ILIT Trustee Protection Statute
5. UPC III – effective date provisions
6. Information of Appointment
7. Proposed Amendment in response to Rev Ruling 2004-64 – reimbursement of grantor's income taxes won't subject trust assets to grantor's creditors – awaiting approval from Tax Section
8. Priority of Child Support in Decedent's Estate – awaiting approval from Family Law Section

Council discussed adding two more to the Omnibus Bill during December:

- Change to conservatorship act to allow mirror provisions similar to guardianships
- Change to compensation statute

Council discussed the trifurcation statute re Directed Trustee, § 15-16-701 *et seq*, as approved by SRC. Council supports the statute but concerns were raised about the retroactivity issue and concern about definitions in the statute.

Motion: Kerri Klein moved and Jennifer Spitz seconded a Motion for the Chair to convene a virtual meeting to consider the trifurcation statute, to allow for work on the issues raised during Council discussion.

**6. Legislative Liaison (Steve Brainerd)**

No report.

**7. Council Notes (Merry Balson/Julia McVey)**

No report.

**8. CLE/Estate Planning Retreat (Walter M. Kelly II/Gary Abrams)**

Spencer reported that Ron Nemirow of Kennedy & Childs will present in the 2013 Retreat on the topic of the erosion of the privity doctrine.

**9. Orange Book Forms (Sonny Wiegand/Kate Boland)**

Sonny Wiegand reported the Committee is working on the "Notes on Use" for the Power of Attorney form.

**10. ADR Committee (Dennis Whitmer)**

No report.

**11. Rules & Forms (Kerri Klein)**

Kerri reported the Committee has completed all the orders appointing guardian.

The Discovery Rule subcommittee has passed its recommendation out of subcommittee and passed it onto the Rules and Forms Committee for consideration in its December meeting. A question raised issue of whether it needs to be vetted by Elder Law. Spencer asked Aaron for Elder Law input, and Aaron believes the Elder Law Section would be interested in giving feedback. Marco Chayet has suggested sending it out for comments, and not formally submitting it to Elder Law.

**12. Colorado Estate Planning Handbook (David Johns/Constance Wood/Julie McVey)**

No report.

**13. Green Book (David Johns)**

No report.

**14. New T & E Lawyers Committee (Facilitator, Mark Masters/ Secretary, Lisa Blattner,)**

Lisa Blattner reported there were 10-15 attendees in today's meeting. The Committee is submitting information to the CBA Young Lawyers Division, and the Elder Law group at DU School. The officers of the Committee are:

- Lisa Blattner – Chair
- Sumi Lee – Vice Chair
- Mark Zammuto – Secretary
- Ayo Labode – Treasurer

The new Committee now appears on the CBA website.

*Motion:* E. David Griffiths moved and Bill Welch seconded appropriation of \$750 for the Committee's budget. Motion approved.

**15. Colorado Lawyer (David Kirch/Connie Smith)**

No report.

**15. Media Liaison (Mark Masters)**

No report.

**17. Civic and Community Affairs Committee of the Elder Law and T&E Sections (Carl Glatstein)**

No report.

**18. Elder Law Section Liaison (Aaron Frishman)**

Other than discussion reported in Rules and Forms, above, no additional report.

**19. Real Estate Section Liaison (David Kirch)**

No report.

**20. Technology Committee (Gene Zuspann)**

No report

**21. Board of Governors Representative (Melissa Schwartz)**

No report.

**22. Miscellaneous/FYI**

**22. Adjournment**

The meeting was adjourned at 4:59 pm.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Elizabeth Bryant", written in a cursive style.

Elizabeth A. Bryant

**Council of the Trust and Estate Section of the Colorado Bar Association**  
**Minutes of the December 20, 2012, Meeting**

Council met on Thursday, December 20, 2012, at the Colorado Bar Association offices, 1900 Grant Street, Denver, Colorado. The meeting was called to order at 3:30 pm.

The following members of Council were present or participated by phone and constituted a quorum:

Jennifer M. Spitz, Immediate Past Chair (by phone)  
Spencer Crona, Chair  
Walter Kelly, Vice Chair  
Elizabeth A. Bryant, Secretary/Treasurer  
David Johns (1st year) (by phone)  
William Welch (1st year)  
Kerri Klein (2nd year)  
E. David Griffith (2nd year)  
Michelle R. Mieras (2nd year)

Also attending were: Andrew Kroll (by phone), Marc C. Darling, David Kirch, Kevin Millard, and Tammy Conover. Attending from the Colorado Bar were Michael Valdez, and Lisa Travis-Fischer.

**1. Approval of Minutes of Prior Meeting**

Beth reported on a minor change to draft of the November 15, 2012 Minutes.

*Motion:* Kerri Klein moved approval of the revised Minutes, and Bill Welch seconded. Motion approved.

**2. Chair's Report, Administrative Matters, and Council Planning (Spencer Crona)**

• Civil Unions Bill for 2013 Legislative Session

Spencer reported that Erica Johnson and Brandon Fields will be the co-chairs of the joint sub-committee, which will review the Civil Unions Bill. The Bill is expected to be introduced early in the 2013 Legislative Session.

• Budget request for reimbursement of Uniform Law Commission Observer

SRC suggested to Council that the T&E Section support a budgetary allocation of funds to allow a selected T&E Member to attend drafting sessions of the ULC Forms Drafting Committee, as an Observer. Observers are welcome and are allowed to participate in the Drafting Committee meetings, similar to Commissioners (make comments, offer drafting suggestions), but cannot vote.

Each Drafting Committee meets two times per year, for two days, requiring a two-night hotel stay in the host city. The Observer costs (travel, hotel and meals) are not reimbursed by the ULC. SRC suggested that having a selected T&E Member attend Drafting Committee meetings would be a mutually beneficial way for our T&E Section to add expertise to the drafting process, and provide for better coordination with the ULC regarding proposed uniform law that will be forthcoming in Colorado.

There are generally 15-20 attendees at a meeting, including 8-10 Commissioners, members of the ABA and ACTEC, and several Observers. It was noted that many of the Drafting Committees are made up of a majority of non-practitioner attorneys. Catherine Seal's attendance at the Digital Assets Drafting Committee meetings in 2012, as a reimbursed member of NAELA, was offered as an example of the value of having an Observer who is an active practitioner, and who can provide input based on knowledge and experience. SRC suggested that a T&E Member/Observer could both contribute to a Drafting Committee's work, and provide valuable input back to the T&E Section. In 2013, there will be Drafting Committees for the Trust Protector and the Trust Decanting uniform laws.

Such a T&E selected Observer may be a valuable addition to the knowledge and insight currently provided to us by Stan Kent, Kevin Millard, may assist with Colorado uniform legislation, and enhance the reputation of our Section. An Observer may also be an ad-hoc liaison for the Commissioners elected to the Colorado Legislature.

*Motion:* E. David Griffith made a motion for Council to allocate up to \$4,000 for one year, on a trial basis, for a T&E selected person to attend two Drafting Committee meetings, as an Observer, to participate to the extent of T&E's policies. Reimbursement to the T&E selected Observer for expenses will adhere to the Colorado Legislature's policy on traveler's spending guidelines. This motion was seconded by Bill Welch. The motion carried.

- Trifurcation Statute re Directed Trustee §15-16-701 et seq

Council continued its discussion on the trifurcation statute re Directed Trustee, §15-16-701 et seq, which was approved by SRC on November 15, 2012. In its November 15, 2012 meeting, Council supported the concept of the statute but decided to convene a virtual meeting to consider the trifurcation statute, to allow for work on the issues raised.

Council discussed the refinements that had been discussed since the November meeting. It was also noted that a Drafting Committee of the Uniform Law Commission is working on a Trust Protector Statute, which may provide clarification regarding some of the issues raised, including the concern about the difference between a trust protector and a trust advisor, and that the Statute may have broader application than intended.

There was a consensus of support in Council for the concept of a Directed Trustee statute, but it a discussion was held about whether it made sense to wait for the ULC Trust Protector Statute. Bill Welch indicated the subcommittee would honor Council's vote, and is comfortable with postponing the matter.



Motion: E. David Griffith moved, and David Johns seconded, a motion to reconsider and vacate the prior vote in support of the Directed Trustee statute, given that the ULC will propose a uniform Trust Protector law, and to refer the matter back to SRC for further discussion. The motion carried.

- Omnibus Bill

Michael Valdez reported that the Legislative Policy Committee voted to approve 70% of Omnibus Bill. A vote on the proposed amendment to the compensation statute, §15-10-603, was held back by LPC, for further review. Ellen Roberts will be the Omnibus Bill sponsor.

**3. Secretary/Treasurer's Report (Elizabeth Bryant)**

Financials Review: Beth presented the Financials for the five months ended November 30, 2012. The Annual T&E Council Dinner was held on November 15, 2012, at Strings Restaurant.

**4. Tax Section Liaison (Andrew Kroll)**

Andrew reported that the Section supported the proposed amendment in response to Revenue Ruling 2004-64 – Reimbursement of Grantor's Income Taxes Won't Subject Trust Assets to Grantor's Creditors.

**5. Statutory Revisions Committee (Marc Darling/Aaron Evans).**

Mark reported Statutory Revisions Committee approved three statutes to be included in the Omnibus Bill:

- §15-14-407 – A change to the conservatorship act to replicate the substantive provisions in the guardianship act regarding the process by which evaluations shall take place.
- Change to the compensation statute, §15-10-603(3)(j) to add the words “special skills” at beginning of (j), as a factor for consideration in reasonableness of fees. Earlier in the day, after much discussion, Elder Law tabled consideration.
- Adoption of Part 6 of the UTC dealing with Revocable Trusts, which will be Part 7 of Colorado's Probate Code. SRC was split on the issue of the capacity standard stated in §15-16-701. Catherine Seal said that making the capacity standard for a trust the same as a will should not be adopted into a statute. David Kirch offered a friendly amendment that would add some preface that it relates only to the dispositive provisions of the document. Marc Darling offered a friendly amendment to vote on this without 701, and preserve the capacity issue for next year, which was approved by SRC.

Motion: Walter Kelly moved, and E. David Griffith seconded a motion to approve all three. The motion carried.

**6. Legislative Liaison (Steve Brainerd)**

No report.

**7. Council Notes (Merry Balson/Julia McVey)**

No report.

**8. CLE/Estate Planning Retreat (Walter M. Kelly II/Gary Abrams)**

Walter reported that the team of speakers has been set for the Annual Retreat in June. He also indicated he has several speakers lined up for the lunch presentations on the 1<sup>st</sup> Tuesday of each month during the first part of 2013.

**9. Orange Book Forms (Dan Rich/Kate Boland)**

It was reported that the Committee approved the Statutory Power of Attorney form and Notes on Use. The Committee will next work on the Designated Beneficiary Agreement and the Client Letter.

**10. ADR Committee (Dennis Whitmer)**

No report.

**11. Rules & Forms (Kerri Klein)**

Kerri reported on the following actions by the Committee:

- The Discovery Rules were approved in Committee. Having Elder Law review the changes was discussed. Council discussed the protocol of running changes proposed by the Committee by Elder Law. In the November Council meeting, Aaron Frishman indicated there may be comments from Elder Law, and he understood the proposed Discovery Rules were to be disseminated to certain members of Elder Law, for review and comment. Tammy Conover indicated Executive Council had not seen the proposed changes, and inquired as to whether that review was possible, given the Probate Advisory Committee meeting mid-January. Marc Darling indicated he would send a copy of the Discovery Rules to Tammy, for dissemination to Elder Law for review prior to the January PAC meeting. Kerri requested direction from Council regarding clarification of the review process, to establish clear protocol.
- Deleted JDF forms 733 and 734 (Motion and Order to Release Trust Registration).

- Revised Rule 8.6 re Trust Registration. Because of electronic filing, tweaked to remove requirement for certified copies.
- Discussed JDF form 800 (Acknowledgement of Responsibilities).

**12. Colorado Estate Planning Handbook (David Johns/Constance Wood/Julie McVey)**

The Colorado Estate Planning Handbook is at the printer.

**13. Green Book (David Johns)**

David reported the Green Book should be available in early or mid-January.

**14. New T & E Lawyers Committee (Facilitator, Mark Masters/ Secretary, Lisa Blattner,)**

No report.

**15. Colorado Lawyer (David Kirch/Connie Smith)**

David Kirch reported on several articles will be forthcoming in 2013:

- Article on the adoption intestacy rights under UPC III
- Article on the Small Estate Affidavit
- Article on Mediation

**16. Media Liaison (Mark Masters)**

No report.

**17. Civic and Community Affairs Committee of the Elder Law and T&E Sections (Carl Glatstein)**

No report.

**18. Elder Law Section Liaison (Tammy Connover)**

Other than the discussion about the Discovery Rules (covered above in Rules and Forms), no report.

**19. Real Estate Section Liaison (David Kirch)**

David reported there was no meeting of the Real Estate Section this month. He noted that the RE Section did not support the successor trustee title standard change proposed by T&E.

**20. Technology Committee (Gene Zuspenn)**

No report.

**21. Board of Governors Representative (Melissa Schwartz)**

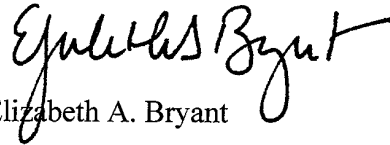
No report. Next meeting will occur the second Saturday in May.

**22. Miscellaneous/FYI**

**22. Adjournment**

The meeting was adjourned at 5:06 pm.

Respectfully submitted,



Elizabeth A. Bryant