

Council of the Trust and Estate Section of the Colorado Bar Association

Minutes of the January 21, 2015 Meeting

Council met on Thursday, January 21, 2016, at the Colorado Bar Association offices, 1900 Grant Street, Denver, Colorado. The meeting was called to order at approximately 3:38 pm.

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

Melissa R. Schwartz, Chair

Darla L. Daniel, Vice Chair

Kelly Cooper, Secretary/Treasurer

Elizabeth Bryant, Immediate Past Chair (via phone)

Leia Ursery (2nd year)

Jarod Balson (2nd year)

Josie M. Faix (1st year)

Sumi Lee (1st year)

Patrick Thiessen (1st year)

Also attending were: Steve Brainerd, David Kirch, Clara Brown Shaffer, Andrea Mueller Arias, Georgine Kryda, Peggy Gardner, Letty Maxfield, Jennifer Spitz, Stan Kent and Jeremy Schupbach.

1. Approval of Minutes of Prior Meeting

The Minutes of the December 17, 2015 Council meeting were approved.

2. Chair's Report, Administrative Matters (Melissa Schwartz)

Changes may be made to CJD 05-01 to allow public access to probate files. Public Access Committee. Jean Stewart spoke with the State Court Administrator's Office and gained additional information. An attorney reported to the Public Access Committee that this was not workable when needing access to research probate filings. Protective proceedings will remain non-public. The Committee is willing to accept comments. Sumi volunteered to follow up with SCAO and will update Council.

Melissa is still looking for volunteers for the Ambassadors Program. All Council members will serve as Ambassadors.

3. Secretary/Treasurer's Report (Kelly Cooper)

The budget and financials for last month are submitted. Kelly is continuing to work on the dinner invitation list.

4. Tax Section Liaison (Georgine Kryda)

No report from the Tax Section. Georgine serves as tax scholarship chair and discovered that DU and CU were not aware that law students can join the CBA for free.

5. Statutory Revisions Committee (Clara Brown Shaffer)

The Committee voted to support Uniform Trust Decanting Trust Act. Council voted to support the Act.

The deposit of original documents committee was discussed. Bette Heller resigned as co-chair. Pete Bullard will now serve as co-chair along with Tim Bounds.

SRC voted to support the RUFADAA bill. Council voted to support RUFADAA.

SRC voted to oppose Fiduciary Oversight bill. Council also voted to oppose the Fiduciary Oversight bill.

SRC did not take a position on the Visitation bill because there is a call today with elder law practitioners to discuss concerns and possible avenues of support. Council voted to support the Elder Law Section's position on this bill.

A bill has been introduced to allow for a revocable beneficiary deed for vehicles. Jennifer Spitz has volunteered to review the bill with Stan Kent and they will report back to Council.

SRC changed its vote to support Uniform Substitute Decision Makers Act with amendments suggested by Steve Brainerd. Council voted to support the bill.

Clara is working with Jeremy to narrow the title of the Omnibus Bill title.

SRC tabled any action on the proxy decision maker (HB 1101).

6. Legislative Liaison (Steve Brainerd / CBA Jeremy Schupbach)

No report.

7. Council Notes (Julia McVey/Josie Faix)

Josie reported that they have good articles and that they will be working to update the chart on the age of majority in Colorado (18 v. 21).

8. CLE/Estate Planning Retreat (Darla Daniel)

Darla reported the following CLE programs for the year:

February - intra-family loans.

March – Kevin Millard with Carolyn Fairless (hopefully) on the Wood Ris case.

April – asking Mike Stiff to do talk on step up basis in trusts.

May – Melissa – tips of trade.

Darla also reported that the Retreat is in good shape. Clary Redd will be speaking on hot topics and fiduciary litigation and will also serve on the panel for hot topics on tax.

9. Orange Book Forms Committee (Leia Ursery/Peggy Gardner)

The committee focused on joint trusts and made some progress, but they are not likely to finish the joint trusts form this year.

10. Rules & Forms Committee (Casey Williams)

No report. Melissa asked if this Committee could consider the goals and purposes of the Rules & Forms with new SCAO Probate Rules Committee.

11. Diversity Committee (Melissa Schwartz)

This will be a long-standing committee with the goal of reaching out to law schools and other outreach programs and activities. There was discussion about various ideas and activities for the Committee to consider.

12. Elder Law Section Liaison (Patrick Thiessen)

Elder Law Retreat is August 25-27 in Vail. Everything else has already been covered.

13. Real Estate Section Liaison (David Kirch/Diana Wendel)

Real Estate is continuing to work on the fix for intra family loan issues. There is also a pending bill regarding the Real Estate Transfer Declaration form.

14. Probate Trial and Procedure Committee (Herb Tucker)

The Committee discussed decanting and what is going to happen with the new Probate Rules Committee. They continued work on accounting issues. The annual report form for conservators may need to add a conferral notice. Darla will let Herb know that UTC will start considering Part 10 next month.

15. Colorado Estate Planning Handbook (David Johns/Constance Wood/Julia McVey)

No report.

16. Green Book (David Johns)

No report.

17. New T & E Lawyers Committee (Facilitator Mark Masters/Elizabeth Stewart)

No report.

18. Colorado Lawyer (David Kirch/Connie Smith)

David got three excellent articles two weeks ago and all will be published. It is in good shape.

19. Media Liaison (Mark Masters)

No report.

20. Civic and Community Affairs Subcommittee of the Elder Law and T&E Sections (Casey Williams)

No report.

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

No report.

22. Miscellaneous/FYI

Jennifer asked that we include the role of the Procedure Committee in the T&E Section manual that Beth is working on.

Darla raised the issue that Michael Kirtland raised during SRC regarding the Ethics Committee wanting to issue substantive guidance on ethics issues in probate. Darla noted that the Orange Book already provides some guidance on this topic. Melissa noted that this discussion has been ongoing for some time and will likely continue.

22. Adjournment

The meeting was adjourned at or about 4:40 p.m.

Respectfully submitted,

/s/ Kelly Dickson Cooper

Kelly Dickson Cooper

Council of the Trust and Estate Section of the Colorado Bar Association

Minutes of the February 18, 2015 Meeting

Council met on Thursday, February 18, 2016, at the Colorado Bar Association offices, 1900 Grant Street, Denver, Colorado. The meeting was called to order at approximately 2:55 pm.

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

Melissa R. Schwartz, Chair

Darla L. Daniel, Vice Chair

Kelly Cooper, Secretary/Treasurer

Elizabeth Bryant, Immediate Past Chair (via phone)

Leia Ursery (2nd year)

Jarod Balson (2nd year)

Josie M. Faix (1st year)

Also attending were: Steve Brainerd, Herb Tucker, David Kirch, Clara Brown Shaffer, Andrea Mueller Arias, Georgine Kryda, Diana Wendel and Jeremy Schupbach.

1. Approval of Minutes of Prior Meeting

The Minutes of the January 21, 2016 Council meeting were approved.

2. Chair's Report, Administrative Matters (Melissa Schwartz)

Melissa renewed her request for Section members to serve as ambassadors for new lawyers. Metro Volunteer Lawyers will be here next month to explain their services.

3. Secretary/Treasurer's Report (Kelly Cooper)

The budget and financials for last month are submitted. Kelly is continuing to work on the dinner invitation list and proposed categories for invitees. Council voted to approve the following categories for Section dinner invitees:

Members of Council and those who report to Council regularly
Committee Chairs and Co-Chairs

All past Chairs of the Section who are still active practitioners in Colorado

Chairs of significant subcommittees as determined by Council

Uniform Law Commissioners from Colorado with T&E expertise

Past and current Denver Probate Court judges

Past Sterling Ambler Award winners

Current Sterling Ambler Award winner
Invitees of current Sterling Ambler Award winner
Committee members for Sterling Ambler Award
All liaisons (including, but not limited to Real Estate, Tax and Elder Law)
Those persons who contributed significantly to the Section in the past year as determined by Council (including, but not limited to Colorado Lawyer authors in past year and those providing significant CLE presentations)

Kelly reported that nominations for the R. Sterling Ambler Award are due March 31, 2016 to Kelly or Andrea. Notices will be published in The Colorado Lawyer, The Docket, and Council Notes. Notice was already published in the last edition of Council Notes and on the Section list serve.

Kelly asked if past nominees of the Award, who did not receive the Award, should be considered as nominees. Beth agreed to speak with members of the Sterling Ambler Award Committee to get their input. Council agreed to defer any formal decision on this issue until Beth has a chance to consult the committee members.

4. Tax Section Liaison (Georgine Kryda)

No report.

5. Statutory Revisions Committee (Clara Brown Shaffer)

Clara said that there may be some problems with the Bill Tracker software with past year's bills showing up this year. Jeremy will speak with the software developer about this issue and make sure there is not a problem.

Council never approved John Burrus' amendment to the Uniform Power of Attorney Act because of concerns from Elder Law. Jeremy explained this is not an active bill so Council does not need to take a position at this time.

SRC formed two new sub-committees:

1. Question of whether fee schedules for fiduciaries and attorney should be included on the Information of Appointment.
2. Review of Public Administrator statutes and options in light of recent bill introduced by Senator Carroll.

The Committee voted to oppose the bill that would make Public Administrators state employees introduced by Senator Carroll. Council voted to oppose the bill. Jeremy reported that this bill will not be placed on the LPC agenda until the fiscal note is finalized.

Clara reported that both omnibus bills will be introduced soon. Steve Brainerd will testify in support of these bills.

In regard to the Visitation bill, the CBA's official position is to amend the bill and it is in a wait and see mode.

6. Legislative Liaison (Steve Brainerd / CBA Jeremy Schupbach)

The Real Estate Section is working on a bill regarding an exception for family members making mortgage loans to other family members. Diana reported on the efforts thus far, but there has been some push back. Jeremy and Diana will continue to monitor this effort for the Section.

7. Council Notes (Julia McVey/Josie Faix)

Julia and Josie are working to put together the Spring edition to be done March 15th. They are always looking for more articles and ideas for topics.

8. CLE/Estate Planning Retreat (Darla Daniel)

Darla reported the following CLE programs for the year:

March – Kevin Millard with Carolyn Fairless (hopefully) on the Wood Ris case.

April – Mike Stiff to do talk on step up basis in trusts.

May – intra family loan rules.

Darla is also working on a half day CLE on Decanting before the Act becomes effective in August. Letty Maxfield and others have agreed to present.

9. Orange Book Forms Committee (Leia Ursery/Peggy Gardner)

No report.

10. Rules & Forms Committee (Casey Williams)

The Committee is revisiting the Rule 16 petition and order before final submission to the new Probate Rules Committee.

11. Diversity Committee (Melissa Schwartz)

No report.

12. Elder Law Section Liaison (Patrick Thiessen)

No report.

13. Real Estate Section Liaison (David Kirch/Diana Wendel)

See Legislative Report.

14. Probate Trial and Procedure Committee (Herb Tucker)

Marcie McMinimee presented regarding the conservator's responsibility to amend the financial plan. Marcie explained that there are concerns about when this responsibility is triggered when the protected person goes through significant changes in a short period and then returns back to a more typical setting. The Committee is considering potential amendments to the relevant statutes.

The Committee is also looking at JDF 882 in regard to possible changes to a protected person's estate plan. Any suggested changes will be vetted through Elder Law and Rules and Forms.

There will be a final proposal to Committee next month regarding changes to the accounting statutes and rules. Elder law already vetted the proposal. It has not yet gone to SRC.

15. Colorado Estate Planning Handbook (David Johns/Constance Wood/Julia McVey)

No report.

16. Green Book (David Johns)

No report.

17. New T & E Lawyers Committee (Facilitator Mark Masters/Elizabeth Stewart)

No report.

18. Colorado Lawyer (David Kirch/Connie Smith)

Georgine has agreed to draft a third part to her article, which has received a lot of interest. Lucy Marsh has submitted an article on tribal issues. We also have Kelly and Rebecca Schroer's article.

19. Media Liaison (Mark Masters)

No report.

20. Civic and Community Affairs Subcommittee of the Elder Law and T&E Sections (Casey Williams)

Georgine has received a request to see if the Tax Section would like to support Senior Law Day. Casey has resigned as chair effective this coming fall. They are working to finish the brochure review.

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

No report.

22. Miscellaneous/FYI

Andrea is leaving the CBA as of April 1, 2016. She will keep us posted on her replacement.

23. Adjournment

The meeting was adjourned at or about 3:40 p.m.

Respectfully submitted,

/s/ Kelly Dickson Cooper

Kelly Dickson Cooper

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**Council of the Trust and Estate Section of the Colorado Bar Association
Minutes of the May 21, 2015 Meeting**

Council met on Thursday, May 21, 2015, at the Colorado Bar Association offices, 1900 Grant Street, Denver, Colorado. The meeting was called to order at approximately 3:00 pm.

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

Elizabeth Bryant, Chair
Melissa R. Schwartz, Vice Chair
Darla L. Daniel, Secretary/Treasurer
Laurie A. Hunter (2nd year)
Susan Boothby (2nd year)
Jane Paddison (2nd year)
Leia Ursery (1st year)
Jarod Balson (1st year)
Daniel Rich (1st year)

Also attending were: Josie Faix, David Kirch, Kerri Klein, Clara Brown Shaffer, Jeremy Schupbach, Patrick Thiessen and Diana Wendel. Andrea Mueller Arias attended from the Colorado Bar.

1. Approval of Minutes of Prior Meeting

The Minutes of the April 16, 2015 council meeting were approved.

2. Chair's Report, Administrative Matters (Beth Bryant)

Beth reported on her attendance at the Unauthorized Practice of Law committee meeting held recently. Under discussion was the concept of the limited license legal technician, designed to help increase access to justice for underserved communities. Washington state has an "LLLT" program for family law, and the Colorado Supreme Court is looking at this concept with interest. Chief Justice Rice's focus is on increasing access to legal services.

3. Secretary/Treasurer's Report (Darla L. Daniel)

Financials for April, 2015 were approved.

Susan Boothby made a request that Council cover the cost of lunches for the Decanting subcommittee meetings in June and July, which are held at the CBA offices over the lunch hour. There are approximately 12 people who will attend on June 25th and July 23rd. After discussion, the motion for Council to cover this cost was unanimously approved.

4. Tax Section Liaison (Leia Ursery/ Constance Smith)

Leia did not have anything to report, other than that the section is getting ready for the legislative update on June 10th.

5. Statutory Revisions Subcommittee (Kerri Klein/Clara Brown Shaffer)

Kerri stated that SRC had voted to approved revisions to C.R.S. § 15-10-503, and that she moved for Council approve the same. The motion was seconded and unanimously approved.

Kerri also reported that the Death with Dignity subcommittee has been reformed with Michael Kirtland as chair.

6. Legislative Liaison (Steve Brainerd)

No report.

7. Council Notes (Julia McVey/Josie Faix)

Josie reported that they are all set for articles for the rest of 2015.

8. CLE/Estate Planning Retreat (Melissa Schwartz)

Melissa reported that CLE planning for the 2014-2015 year is done. The Trust series CLE is experiencing record attendance. There are 161 registrants for the Estate Planning Retreat so far.

9. Orange Book Forms Subcommittee (Leia Ursery)

Leia reported that the committee is still not finished with the joint trust form. The committee approved a Note on Use to the estate planning questionnaire for firearm ownership.

10. Rules & Forms (Laurie Hunter)

Laurie reported that Civil Rules tabled their review of all of the PAC-approved new CRPP rules.

Laurie also reported that they have been working for several months on updating the small estate affidavit and COLA table, and that the committee continues to work on practitioner forms, including elective share forms and an augmented estate worksheet.

One council member requested that when the committee is finished with these, they post the materials on the T&E website where they could be utilized by members of the section. Laurie mentioned that all of these are currently available on the Rules & Forms subcommittee homepage, and that practitioner forms will be included as a new tab in the Green Book.

Further discussion ensued about the possibility of adding a “Section Resources” tab on the main T&E section website, where COLA tables and forms like those discussed above could be posted for the use of all section members. A motion was made and seconded to create a new position – a Resource Editor for the section – with a job description of soliciting, screening and sending materials for inclusion as a Section Resource to the attention of Council. Council would then vote to include or not include them on the website. The motion passed unanimously.

Elizabeth Stewart of the T&E New Lawyers Subcommittee accepted appointment as the new Resource Editor.

11. Elder Law Section Liaison (Marco Chayet/Patrick Thiessen)

Patrick reported:

- a. The GAL joint committee with Family Law, Elder Law, Personal Injury and CTLA is generating a lot of discussion but making little progress.
- b. They annual NAELA national conference will be held in Denver in 2016.
- c. There is a newly-issued opinion on Rule 1.14 from the Ethics committee of the CBA.

12. Real Estate Section Liaison (David Kirch, Diana Wendel)

David reported that they are working on the revisions to the Supplemental Affidavit for Joint Tenancy property, and he mentioned that he would take a draft of the Determination of Heirship subcommittee’s work product to real estate whenever they are ready.

13. Probate Trial and Procedure Subcommittee (Herb Tucker)

No report.

14. *Colorado Estate Planning Handbook* (David Johns/Constance Wood/Julia McVey)

No report.

15. *Green Book* (David Johns)

No report.

16. New T & E Lawyers Subcommittee (Facilitator, Mark Masters/ Elizabeth Stewart)

No report.

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

David Kirch reported that he is in good shape with 5 articles for the year.

18. Media Liaison (Mark Masters)

No report.

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

No report.

20. Technology Subcommittee (Gene Zuspann)

No report.

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

Melissa reported on the Board of Governors meeting in May, including discussions on:

- a. Declining law school enrollments and bar passage rates
- b. Changes in unclaimed property rules (COLTAF accounts are exempt now)
- c. LLLT and increasing access to justice
- d. There is now an official “Cannabis Law” committee.

22. Miscellaneous/FYI

23. Adjournment

The meeting was adjourned at or about 4:01 p.m.

Respectfully submitted,

/s/ Darla L. Daniel
Darla L. Daniel

Council of the Trust and Estate Section of the Colorado Bar Association

Minutes of the August 20, 2015 Meeting

(as amended at the September 17, 2015 Meeting)

Council met on Thursday, August 20, 2015, at the Colorado Bar Association offices, 1900 Grant Street, Denver, Colorado. The meeting was called to order at approximately 3:00 pm.

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

Melissa R. Schwartz, Chair
Darla L. Daniel, Vice Chair
Kelly Cooper, Secretary/Treasurer
Elizabeth Bryant, Immediate Past Chair
Leia Ursery (2nd year)
Jarod Balson (2nd year)
Josie M. Faix (1st year)
Sumi Lee (1st year)

Also attending were: Jeremy Schupbach, David Kirch, Peggy Gardner, Clara Brown Shaffer, Casey Williams, Diana Wendel, Jamie Roth, Bette Heller, and Georgine Kryda.

Handouts – Letter from Frank P. Slaninger dated July 1, 2015 to Loren M. Brown (CBA President) and Janet S. Drake (DBA President)

1. Approval of Minutes of Prior Meeting

The Minutes of the May 20, 2015 council meeting were approved as well as the minutes of the August 6, 2015 special meeting.

2. Chair’s Report, Administrative Matters (Melissa Schwartz)

The Chair handed out a letter from Frank P. Slaninger regarding his concern with nationwide refusal by trustees to provide copies of trust, wills, inventories and accountings to beneficiaries.

General discussion was had and concerns were expressed that this is not a problem with the law, but beneficiaries finding attorneys to represent them and the practical application of the law.

Mr. Balson suggested that this matter be referred to the Procedure Committee and that Council invite Mr. Slaninger to attend a Procedure Committee meeting and express his concerns. Ms. Heller noted that a similar approach was taken last year when Mr. Stanton Rosenbaum sent a letter regarding the deposit of original wills for retiring attorneys and that issue was referred to Statutory Revisions.

The Chair will email Mr. Slaninger to invite him to the Procedure Committee to present his concerns.

The Chair next addressed the issue of whether a formal process should be in place for determining who is invited to the Council dinner held each year. The Council determined that it would be appropriate that the invitation list should include: (a) all sitting Council members and officers; (b) all liaisons and committee chairs; (c) immediate past chair of the Section; (d) those persons who are very active in the Section; (e) staff of the CBA who assist the Section in its work; (f) presiding judge in the Denver Probate Court; (g) Sterling Ambler Award Committee members, who are currently David Johns and Carl Stevens; (h) past Sterling Ambler Award winners; and (i) Mrs. Dorothy Ambler and Phil Keenan to escort her as needed.

The Chair also reported that Senator Woods is concerned about the apparent lack of regulation of public administrators and professional fiduciaries. Discussion ensued as to whether we should consider providing Senator Woods with alternative legislation to consider or whether we should wait to see a draft from Senator Woods. It was discussed that the current *Milstein* subcommittee might produce some draft legislation that could be used. It was noted that numerous protections exist in the Fiduciary Oversight legislation to protect the public, but Senator Woods appears to be concerned that the judges are not adequately supervising fiduciaries. Jeremy reported that it is a small group of people who are dissatisfied with their experiences in the system and are continuing to voice their concerns. The Chair reported that both Stan Kent and Marc Darling are unable to chair the committee on this issue. Melissa expressed that she does not believe that a currently sitting Public Administrator should chair the committee, but that they should be on the committee. Elder Law has nominated Marco Chayet and Spencer Crona as co-chairs. The Chair is going to try to arrange an initial meeting with Jeremy, Marc Darling (who is willing to serve as a spokesperson, but not as chair for the committee), Catherine Seal, Marco Chayet and Spencer Crona. Jamie Roth expressed interest in serving on the committee and it was suggested that Steve Brainerd should serve on the committee as the Legislative Liaison for the Section. It was suggested that the Ethics Section may have an interest in this potential legislation as well.

3. Secretary/Treasurer's Report (Kelly Cooper)

Financials for May, 2015 were approved.

It was reported that the Section's contribution to the printing of the Senior Law Handbook has already been paid.

The Section dinner is scheduled for September 17, 2015 at McCormick's in downtown Denver. Invitations went out earlier in the week.

4. Tax Section Liaison (Georgine Kryda)

It was reported that the Tax Section Luncheon is on September 9th and will be hosted by Ted Atlass. Ms. Kryda is going to follow up with Ms. Ursery on certain issues before the Statutory Revisions Committee.

5. Statutory Revisions Subcommittee (Clara Brown Shaffer)

It was reported that the Supplementary Affidavit statute was passed by the Real Estate Section and Statutory Revisions. Mr. Kirch explained that the change is because it is burdensome to not let co-tenant sign an affidavit. Council approved the statute. The change will be included in the Omnibus bill.

A busy year is anticipated in SRC due to *Milstein* issues and issues surrounding the deposit of original wills and that SRC will respond to issues as legislation develops.

6. Legislative Liaison (Steve Brainerd)

No report.

7. Council Notes (Julia McVey/Josie Faix)

It was reported that this is a great year for Council Notes and that they are continuing to focus on articles that are focused on the nuts and bolts of practice as opposed to academic articles. They have a year's worth of articles lined up.

8. CLE/Estate Planning Retreat (Darla Daniel)

It was reported that CLE is in good shape. There is a will contest seminar on September 11th and that the fall update is on November 6th and is focused on understanding public benefits.

Lunch seminars are lined up for September (Struthers and Judge Lucero on ethics), October (Josie Faix and Merry Balson on how to advise clients receiving donations with no formal structure) and November (Joel Russman and Beth Bryant on planning for the marijuana business).

Darla requests that anyone with ideas for lunches or for the retreat let Darla know.

9. Orange Book Forms Subcommittee (Leia Ursery/Peggy Gardner)

It was reported that Orange Book is working on a variety of projects this year: a joint trust nontax form, changes and updates for marital deduction and Clayton issues, updating family trusts for exemption amounts and working on directed trustee language.

10. Rules & Forms (Casey Williams)

It was reported that Rules & Forms is creating practitioner's forms that will go in the Green Book. Three forms have been approved so far – elective share and exempt and family allowance forms. The Committee is also working on calculators.

The Committee has developed a 10 page style manual to promote consistency, which they will share with the Probate Advisory Committee.

Peggy Gardner is chairing a deed form subcommittee and Diana Wendel is going to be involved to provide the real estate perspective. The deed forms will be submitted to Real Estate for approval once they are complete. There was discussion about whether various deed forms should be developed or if this project was better suited to developing Notes on Use for a standard deed form. Peggy's committee will look at that possibility.

11. Elder Law Section Liaison (Patrick Thiessen)

No report.

12. Real Estate Section Liaison (David Kirch/Diana Wendel)

David Kirch and Diana Wendel are sharing the liaison assignment. The title standards committee reviewed the proposed determination of heirship changes that are before SRC and they had a number of comments. Leia is going to try to meet with the title standards committee to get input and respond to comments.

An issue was raised in regard to individual making loans and being deemed mortgage originators. David and Diana were going to try to get more information on this issue and report back.

It was also reported that LTAC (a land title association) is looking at developing a registry of who authorized signers similar to how entities are handled through the Secretary of State. They will report back.

13. Probate Trial and Procedure Subcommittee (Herb Tucker)

Jarod Balson gave the report. The Procedure Committee is reviewing Milstein issues and the definition and use of the word accounting in the Probate Code as well as rights relating to an accounting, what information has to be provided and the difference between information and an accounting. Darla asked Jarod to follow up with Dennis Whitmer as chair of the UTC subcommittee to coordinate with the accounting sections of the UTC.

14. Colorado Estate Planning Handbook (David Johns/Constance Wood/Julia McVey)

No report.

15. *Green Book* (David Johns)

No report.

16. *New T & E Lawyers Subcommittee* (Facilitator Mark Masters/Sara Dietz)

No report.

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

David reported that he has several articles in the works:

Jim Wade on ways to deal with increased basis in trusts with a lot of unique law in Colorado; Kelly Cooper on statute of limitations in probate; Georgine Kryda on trusts as entities versus trusts as fiduciary relationships; Tom Clark on rules with respect with no contest clauses in trusts; and Kerri Klein on reformation.

Sumi Lee noted that she is working on the Young Lawyers section for the Colorado Lawyer and also looking for shorter articles on specific topics and she can be a resource for anyone looking to publish.

18. *Media Liaison* (Mark Masters)

Beth Bryant was interviewed by KOA radio to comment on a recent trust and estate article.

19. *Civic and Community Affairs Subcommittee of the Elder Law and T&E Sections* (Casey Williams)

No report.

20. *Technology Subcommittee* (Gene Zuspann)

No report.

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

No report.

22. *Miscellaneous/FYI*

There was a discussion regarding UFADA and how best to coordinate discussions between the Business Law Section and this Section. The general agreement is that the Section needs to speak with one voice and that Steve Brainerd should be involved as our Legislative Liaison.

23. *Adjournment*

The meeting was adjourned at or about 4:01 p.m.

Respectfully submitted,

/s/ Kelly Dickson Cooper

Kelly Dickson Cooper

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Council of the Trust and Estate Section of the Colorado Bar Association

Minutes of the September 17, 2015 Meeting

Council met on Thursday, September 17, 2015, at the Colorado Bar Association offices, 1900 Grant Street, Denver, Colorado. The meeting was called to order at approximately 3:35 pm.

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

Melissa R. Schwartz, Chair

Darla L. Daniel, Vice Chair

Kelly Cooper, Secretary/Treasurer

Elizabeth Bryant, Immediate Past Chair

Leia Ursery (2nd year)

Patrick Theissen (1st year)

Josie M. Faix (1st year)

Sumi Lee (1st year)

Also attending were: Jeremy Schupbach, Jennifer Spitz, Steve Brainerd, Stan Kent, Peggy Gardner, Clara Brown Shaffer, Jamie Roth, Connie Eyster, and Georgine Kryda.

Handouts – Letter from Melissa Schwartz to Frank P. Slaninger dated September 10, 2015.

1. Approval of Minutes of Prior Meeting

The Minutes of the August 20, 2015 council meeting were approved with the following amendment: The addition of the words “apparent” and “public administrators and” on page 2, fourth full paragraph, first sentence, so it now reads: “The Chair also reported that Senator Woods is concerned about the apparent lack of regulation of public administrators and professional fiduciaries.”

2. Chair’s Report, Administrative Matters (Melissa Schwartz)

Melissa prepared a letter to Frank Slaninger directing him to the Procedure Committee for consideration of the issues he raised in his July 1, 2015 letter (attachment to August meeting minutes). It was reported that Mr. Slaninger had come to the Procedure Committee meeting earlier that day in response to the Chair’s letter.

Jeremy Schupbach reported about the meeting with Senator Woods. Senator Woods is still working on a trigger bill. Jeremy would like four attorneys with elder law and trust and estate section experience as well as a receivership attorney to work with him and

meet with Senator Woods. Jeremy is working on setting up a meeting with Senator Woods with this smaller group of attorneys. The question will be whether to help Senator Woods develop an approach or whether to let Senator Woods introduce her bill and let the process take its course. Jeremy suggests we compile a list of names and treat it like a bar appointment - similar to LPC. We are waiting on a problem statement from Senator Woods (see minutes below for further information).

Melissa suggested Spencer Crona, Steve Brainerd and Elizabeth Bryant as possibilities. Jennifer Spitz suggested Michael Stiff. Melissa suggested reaching back out to Marc Darling to see if he is willing to participate in the meeting with Senator Woods.

Jeremy will reach out to Elder Law to get additional names to potentially participate in the meeting with Senator Woods.

The Probate Review Committee is currently being chaired by Spencer Crona and Marco Chayet. That committee will select a T&E co-chair at the next meeting.

Next week is quarterly meeting with Judge Leith and she is bringing Holly Panetta and Connie Lind.

If you have suggestions for the webpage, please let Melissa or the web page liaison – Elizabeth Stewart know and we can work to further develop the webpage.

Beth is going to work to preserve our institutional memory. If you are working on tasks for Council, please keep a list of to do items and send it to Beth so she can incorporate it into her work.

Melissa wants to work on diversity in the Section this year. If you have suggestions on outreach, please let Melissa know. Connie Eyster suggested reaching out to the minority bar associations. Melissa is considering reaching out to the law schools. Kelly volunteered to get diversity coordinator's information for University of Colorado School of Law for Melissa.

3. Secretary/Treasurer's Report (Kelly Cooper)

Financials for August, 2015 were approved.

The budget for 2015-2016 was proposed and approved. Kelly explained that she had updated this budget this year to include estimated Section dues so we could determine if the budget would be balanced or if we are overspending over inflows, which only constitute of Section dues and Section dinner payments.

Section dinner is scheduled for tonight at McCormick's (Sage Room) in downtown Denver.

4. Tax Section Liaison (Georgine Kryda)

Ted Atlass' talk was well attended and the Tax Section appreciate being able to share the information with us. Georgine has taken over the federal tax update for Council notes. Thanks were given to Susan Boothby for her service over the years.

5. Statutory Revisions Subcommittee (Clara Brown Shaffer)

Clara told us that SRC passed the Determination of Heirship and Milstein proposals. Council approved and discussion ensued regarding whether these proposals should be in the Omnibus bill. There are three proposals already approved and slated for inclusion in the Omnibus bill. Council agreed to discuss this further with Jeremy.

SRC may have one more matter for the Omnibus bill regarding Compensation and Cost Recovery technical amendments.

If necessary, Jennifer Spitz or Walt Kelly can present to LPC on the Determination of Heirship proposal if Leia is not able to due to her position on LPC.

6. Legislative Liaison (Steve Brainerd)

There was discussion regarding need for legislative summaries.

7. Council Notes (Julia McVey/Josie Faix)

Went out this week with a great article from Kerri Klein about the new probate rules. However, due to developments earlier today, the article may be moot. They have several articles lined up.

8. CLE/Estate Planning Retreat (Darla Daniel)

There are CLEs lined up through the fall and four confirmed topics for retreat in Snowmass in June 2016. The Committee is talking about four or five other topics and waiting to see the decision in the Wood Ris case, which may need to be a topic. If you have suggestions for lunch CLEs for next spring or retreat ideas, please send them to Darla.

9. Orange Book Forms Subcommittee (Leia Ursery/Peggy Gardner)

The Committee worked more on power of appointment items. Bette Heller is working on joint trust form and this will likely consume a huge amount of time.

10. Rules & Forms (Casey Williams)

No report.

11. Elder Law Section Liaison (Patrick Thiessen)

Channel 4 is running a four part series on Senator Woods and her project. This is part of Senator Woods' strategy and we should expect it is have a negative view of probate system.

There is a Medicaid subcommittee looking at issues relating to litigation with respect to people over 65 and their ability to contribute to pooled trust. HCPF says they can't do that. CFPD is litigating the case.

NAELA is coming to Denver in April for its annual conference.

12. Real Estate Section Liaison (David Kirch/Diana Wendel)

No report.

13. Probate Trial and Procedure Subcommittee (Herb Tucker)

Jamie Roth reported that the committee meet and continued its work.

14. *Colorado Estate Planning Handbook* (David Johns/Constance Wood/Julia McVey)

No report.

15. *Green Book* (David Johns)

No report.

16. New T & E Lawyers Subcommittee (Facilitator Mark Masters/Sara Dietz)

Sara introduced herself as new chair. The Committee is meeting once a month with a speaker and 30 minutes of discussion in a safe zone. They are continuing their study group on the first Thursday of each month and it is headed by Matt Tonda.

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

No report.

18. Media Liaison (Mark Masters)

No report.

19. Civic and Community Affairs Subcommittee of the Elder Law and T&E Sections (Casey Williams)

No report. It was noted that Senior Law Day is October 17th.

20. Technology Subcommittee (Gene Zuspenn)

No report.

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

The Board of Governors meets next month.

22. Miscellaneous/FYI

Senator Woods' response was read by Jeremy for consideration. Jeremy will clean this up and send it to Spencer for consideration by the Probate Review Committee.

Kelly read the note from Dorothy Ambler regarding the dinner this evening.

23. Adjournment

The meeting was adjourned at or about 4:45 p.m.

Respectfully submitted,

/s/ Kelly Dickson Cooper

Kelly Dickson Cooper

Council of the Trust and Estate Section of the Colorado Bar Association

Minutes of the October 15, 2015 Meeting

Council met on Thursday, October 15, 2015, at the Colorado Bar Association offices, 1900 Grant Street, Denver, Colorado. The meeting was called to order at approximately 3:15 pm.

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

Melissa R. Schwartz, Chair (by phone)

Darla L. Daniel, Vice Chair

Kelly Cooper, Secretary/Treasurer

Elizabeth Bryant, Immediate Past Chair

Leia Ursery (2nd year) (by phone)

Patrick Theissen (1st year)

Josie M. Faix (1st year)

Sumi Lee (1st year)

Dan Rich (2nd year) (by phone)

Also attending were: Jeremy Schupbach, Andrea Mueller Arias, Peggy Gardner, Clara Brown Shaffer, Steve Brainerd, David Kirch, Casey Williams, Diana Wendel, and Georgine Kryda.

1. Approval of Minutes of Prior Meeting

The Minutes of the September 17, 2015 council meeting were approved.

2. Chair's Report, Administrative Matters (Melissa Schwartz)

Melissa had a meeting with Judge Leith and Lori Hulbert. Judge Leith informed Melissa that the Chief Justice is proposing moving the probate rules to a probate rules committee similar to the Civil Rules Committee format with seven attorneys. Melissa said that she spoke with the Chair of Elder Law and they agreed that each Section would nominate three attorneys. Discussion ensued about potential nominees. Council agreed that statements of interest should be submitted to Casey Williams.

It was also reported that there are discussions ongoing about the current relationship between CLE and CBA and how the economics between the two entities should function. This could affect how the Section contributes funds for the Estate Planning Retreat.

The Chief Justice has decided to move the Probate Rules to a Probate Rules Committee similar to the Civil Rules Committee. There will be seven attorneys. The Section will select three and Elder Law will select three and another will need to be recommended. At this time, Judicial is not disbanding PAC and the goal is to have the first meeting in 30 days. The final decision on attorneys is the Supreme Court's. It was agreed that anyone who wishes to serve on the Committee should submit a statement of interest to Casey via email.

3. Secretary/Treasurer's Report (Kelly Cooper)

Financials for September, 2015 were approved.

4. Tax Section Liaison (Georgine Kryda)

Georgine reported that Josie and Merry did a great presentation and the circulation to the Tax Section along with T&E was helpful.

5. Statutory Revisions Subcommittee (Clara Brown Shaffer)

Clara reported that SRC passed the changes to Compensation and Cost Recovery Act. These changes will stop the fiduciary and the attorney for the fiduciary from receiving any compensation once a removal petition is initiated. These changes also amend the deadline to file for an order that an attorney's services were beneficial to an estate from 14 days to 35, lengthened the period for objections to 21 days, and clarified that a litigant has 7 days to file a reply. These changes were also approved by the Probate Trial and Procedure Committee. It was motion and seconded to approve the change. The motion passed.

Clara also reported that they are working on compiling omnibus bill and to get a sponsor. She also reported that Bette Heller is negotiating with the Secretary of State on the deposit of original wills statute.

6. Legislative Liaison (Steve Brainerd / CBA Jeremy Schupbach)

Jeremy reported that there is a meeting on October 20th with the Uniform Law Commissioners and that they will be considering the agenda for the 2016 legislature session. Jeremy is hopeful that this year will be less contentious than last year, but that the CBA is likely to oppose five different bills in whole or in part. There are three bills that affect our Section - decanting; voidable transactions; and substituted decision making. The LPC meeting is on November 2nd and there is also a training with liaisons and chairs of Sections to learn more about bill tracking, LPC policies and the CBA's procedure beforehand. After the LPC meeting is a reception with the Uniform Law Commissions and legislators with legal backgrounds. Jeremy reported that the Rule against Perpetuities may come up again this year. Senator Scheffel wanted to amend the Rule in the past, but has not approached the CBA this year.

Jeremy also reported that the meeting with Senator Woods went well, that Judiciary is now involved and there is continuing dialogue.

Jeremy also asked for commentary on the Probate Rules and Council agreed that Casey would send Jeremy feedback and comments.

Jeremy reported that the anticipated CBS4 stories will likely air on Monday.

7. Council Notes (Julia McVey/Josie Faix)

Josie reported that they have several articles, but are always looking for more articles. Josie reminded us that the articles are intended to be practical in nature and directed toward practitioners and are often shorter than a regular article. Josie said that she and Julia are still working with Judge Leith regarding the Judge's Corner section. There was discussion about whether an invitation to write for Judge's Corner should be extended to other counties with significant probate dockets. Josie and Julia always want feedback and ideas to improve Council Notes.

8. CLE/Estate Planning Retreat (Darla Daniel)

Darla reported that Peggy Gardner will be presenting on hot topics in litigation next month, Dylan Metzner will do a presentation on directed trustees and that Kelly will be hosting the Probate Practicum in the spring. Darla is looking for lunch topics starting in February.

Darla also reported that CLE is reviving guardianship/conservatorship basics in March 2016. Next week's lunch is on planning and administration for clients with marijuana issues. November 6th is the fall update with a focus on understanding public benefits.

Darla reported that the Estate Planning Retreat will be in Snowmass from June 9-11 and that Clary Redd is confirmed as the keynote speaker. There are six confirmed breakout sessions: (1) International estate planning – Josie/Merry Balson; (2) David Struthers/Melissa – unconscious bias; (3) Herb Tucker/ Kevin Millard – bullet proof will drafting; (4) Kelly/Pete Wall – discretionary distributions; (5) Randi Grassgreen/David Starbuck – tax issues; (6) David Johns – personal property issues. Darla also reported that the Wood Ris case will likely be a focus since a decision is expected in the spring and that digital assets are a possibility as a topic if there is any legislative movement.

9. Orange Book Forms Subcommittee (Leia Ursery/Peggy Gardner)

The Committee is continuing working on joint trust form.

10. Rules & Forms (Casey Williams)

Casey reported that the Committee felt a bit defeated today with the news about a new Probate Rules Committee, but that they are going to forge ahead with practitioner forms. Examples: challenge to revocable trust, augmented estate calculators, and supplemental fee disclosures. These forms will go in the Green Book.

11. Elder Law Section Liaison (Patrick Thiessen)

Patrick reported that at the breakfast with Judge Leith she expressed some interest in *Sorenson* issues and about public guardianships – how that might come about. Letty Maxfield and Spencer Crona are in the very early stages of working with CPAs to gain pro bono assistance for conservatorships; in particular, assisting individuals with completing reports.

12. Real Estate Section Liaison (David Kirch/Diana Wendel)

There was follow up reporting on the mortgage lender issue and this is being looked into further because it does appear that intra family loans may come under the statute and require registration. At this time, it is not clear what the resolution of this issue might look like.

13. Probate Trial and Procedure Subcommittee (Herb Tucker)

Kelly Cooper reported that the committee met and continued its work and approved revisions to Compensation and Cost Recovery.

14. Colorado Estate Planning Handbook (David Johns/Constance Wood/Julia McVey)

No report.

15. Green Book (David Johns)

No report.

16. New T & E Lawyers Subcommittee (Facilitator Mark Masters/Elizabeth Stewart)

Elizabeth Stewart, the New Lawyers Chair, reported. The Committee is working on ideas for the Section's website and will provide feedback to us.

17. Colorado Lawyer (David Kirch/Connie Smith)

David reported that our Section may exceed our quota this year. Jim Wade's article on basis planning will be in November. Doug Hoak is working on an article about substitutes for marital agreements. There are three other articles: (1) Kelly on statute of limitations; (2) Kristen Dittus on blended families; (3) Lucy Marsh on estate planning for people of Indian heritage.

18. Media Liaison (Mark Masters)

No report.

19. Civic and Community Affairs Subcommittee of the Elder Law and T&E Sections (Casey Williams)

No report. It was noted that Senior Law Day is October 17th and they are still looking for volunteers. They are also working on a Speaker's Bureau's training program on basic estate planning concepts. The plan is to record the program so others can watch later.

20. Technology Subcommittee (Gene Zuspahn)

Disbanded on a motion of Council.

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

The Board of Governors meets next weekend.

22. Miscellaneous/FYI

None.

23. Adjournment

The meeting was adjourned at or about 4:23 p.m.

Respectfully submitted,

/s/ Kelly Dickson Cooper

Kelly Dickson Cooper

**Council of the Trust and Estate Section of the Colorado Bar Association
Minutes of Special Meeting held November 10, 2015**

A special meeting of the Trust & Estate Section Council was held by telephone conference on November 10, 2015. The meeting was called to order at 8:00 a.m.

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

Elizabeth A. Bryant, Immediate Past Chair
Melissa R. Schwartz, Chair
Kelly Dickson Cooper, Secretary/Treasurer
Jarod Balson (2nd year)
Leia G. Ursery (2nd year)
Sumi Lee (1st year)
Josie Faix (1st year)

1. Matters for Discussion

Melissa informed Council that Elder Law's nominees are Marcie McMinimee, Shari Caton and Michael Kirtland. Melissa asked for discussion regarding nominees to the Colorado Supreme Court Probate Rules Committee. Discussion ensued. Council voted to recommend Casey Williams, Michael Holder, Charles Spence, and Patrick Thiessen to the Supreme Court.

2. Adjournment

There being no further business, the meeting was adjourned.

Respectfully submitted,

/s/ Kelly Dickson Cooper

Kelly Dickson Cooper

Council of the Trust and Estate Section of the Colorado Bar Association

Minutes of the November 19, 2015 Meeting

Council met on Thursday, November 19, 2015, at the Colorado Bar Association offices, 1900 Grant Street, Denver, Colorado. The meeting was called to order at approximately 3:30 pm.

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

Melissa R. Schwartz, Chair (by phone)

Darla L. Daniel, Vice Chair

Kelly Cooper, Secretary/Treasurer

Elizabeth Bryant, Immediate Past Chair

Leia Ursery (2nd year) (by phone)

Patrick Theissen (1st year)

Josie M. Faix (1st year)

Sumi Lee (1st year) (by phone)

Dan Rich (2nd year) (by phone)

Also attending were: Jeremy Schupbach, Andrea Mueller Arias, Peggy Gardner, David Kirch, Casey Williams (by phone), Bette Heller, Walter Kelly, Clara Brown Shaffer and Georgine Kryda.

1. Approval of Minutes of Prior Meeting

The Minutes of the October 15, 2015 Council meeting were approved as well as the minutes of the special meeting of Council on November 10, 2015.

2. Chair's Report, Administrative Matters (Melissa Schwartz)

There is a request from Kevin Millard for reimbursement of NCCUSL attendance. There was a motion to approve Kevin's request and the motion passed.

There was discussion as to whether Past Chairs have been invited to the Section dinner in the past. There was a motion to include the past 10 years of Chairs on the invite list for the Section dinner. The Motion passed.

Melissa reported on her diversity and inclusion project and sought input from the Council. Melissa talked with some of the specialty bars. Melissa attended the small firm roundtable at Center for Legal Inclusiveness and had a great conversation.

There was concern expressed by the specialty bars if this project had specific goals for progress in our Section. Melissa met with Patty Jarzowski, the president elect of the CBA, and she intends to focus on this issue. Melissa asked if it was worth forming a subcommittee to address these issues. Discussion ensued. A motion was made and second and was passed.

Melissa was contacted by the Young Lawyers Division of the DBA and asked if we are willing to partner to encourage involvement of young lawyers in the Section. Ideas were a mixer or a mentoring program. There was a suggestion that we provide a list of Ambassadors to the DBA that are willing to help mentor new attorneys and attend Section meetings. It was decided to post a request on the list serve, the membership list, and Council Notes and offer this to the New Lawyer's Committee.

A reimbursement to Kevin Millard for costs was approved.

3. Secretary/Treasurer's Report (Kelly Cooper)

The financials for October, 2015 were approved.

The revised budget was approved.

4. Tax Section Liaison (Georgine Kryda)

No report other than what is detailed below on the capital gains adjustment under Treasury Regulations 1.643(a)(3) and (b)(1). Georgine said she would ask the Tax Section if they are willing to form a joint committee on this issue.

5. Statutory Revisions Subcommittee (Clara Brown Shaffer)

John Burrus proposed a change to CRS 15-14-707 and it was approved by SRC. Clara asked whether it was appropriate to include in the Probate Omnibus bill since it didn't come from one of our Section members. However, it is amending the Probate Code. Jeremy recommended that we wait and develop the title for the bill before deciding whether to include in the Omnibus bill. It was decided that Clara would ask John for a redline version and that will be considered next month by SRC and then passed to Council.

SRC formed two new subcommittees, both chaired by Gene Zuspann. One is to address Uniform Power of Attorney Act issues and the other to address issues relating to Treasury Regulation 1.643(a)(3) and (b)(1).

David reported that guardian ad litem issues are now going to be addressed through a rule instead of a statute. Council determined that this subcommittee should not report to Rule and Forms instead of SRC.

6. Legislative Liaison (Steve Brainerd / CBA Jeremy Schupbach)

Jeremy reported that the Uniform Law Commissioners meet next week at the Capitol. Steve Brainerd and Cate Seal are scheduled to attend to testify about relevant bills. Everything is in motion for the upcoming Legislative session. Jeremy feels that the Section has done what it can to educate Senator Woods about our concerns. Elizabeth Bryant reported further on the meeting. Discussion ensued.

7. Council Notes (Julia McVey/Josie Faix)

Josie reported that they would add a request for Ambassadors for the Section. Josie also requested notices about awards or honors for Section members.

There was a request that Wade Ash lawyers be able to reprint their own lawyers' articles. Josie is going to check with Julia on past practices in this regard. The Winter Edition will include an article about common law marriage from Amy Rosenberg.

8. CLE/Estate Planning Retreat (Darla Daniel)

Darla said the marijuana presentation was great and it is available via webcast. Josie and Merry Balson did a great presentation on charitable issues. Peggy is doing hot topics in probate litigation next month. Dylan Metzner is doing a presentation on directed trustees. Next will be Chuck Kelvin on new mortgage goals and the effect on intra family loans.

Guardianship and conservatorship basics is coming up as well as the probate practicum.

Darla reported that we are in good shape for the retreat with 6 breakout topics.

9. Orange Book Forms Subcommittee (Leia Ursery/Peggy Gardner)

Leia reported that they continue to work on joint trusts, but they will only be working on it every other month.

10. Rules & Forms (Casey Williams)

No report. Jarod reported they were working on Certificate of Service examples. Melissa reported that she notified the Section's nominees to the new Probate Rules Committee.

11. Elder Law Section Liaison (Patrick Thiessen)

Patrick reported that Elder Law passed UFFADDA.

There was a change approved to the Uniform Power of Appointment proposed by Carl Stevens.

Patrick reported that the Ethics Committee is working on an opinion about representing a client when the subject of the representation is the client's capacity.

12. Real Estate Section Liaison (David Kirch/Diana Wendel)

Tonight is Willis Carpenter's last class and there is an informal gathering to honor him on the 3rd floor.

13. Probate Trial and Procedure Subcommittee (Herb Tucker)

The Committee continues to work on issues relating to accountings, disclosures to the beneficiaries and the deposit of original wills.

14. *Colorado Estate Planning Handbook* (David Johns/Constance Wood/Julia McVey)

No report.

15. *Green Book* (David Johns)

No report.

16. New T & E Lawyers Committee (Facilitator Mark Masters/Elizabeth Stewart)

The Committee elected a new secretary. They plan to host a December happy hour event with the DBA Young Lawyers Division after Super Thursday. In January, Clara Lee is going to attend the meeting and discuss fiduciary tax.

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

There is a new article coming about ILITs as alternatives to marital agreements and elective share issues. Rebecca Schroer is doing an article of the dangers on relying on trust language. We exceeded our quota this year for articles. Georgine is going to do an article on trusts as entities.

18. Media Liaison (Mark Masters)

No report.

19. Civic and Community Affairs Subcommittee of the Elder Law and T&E Sections (Casey Williams)

No report. Next month will be a debrief on Senior Law Day.

20. Board of Governors Representative (Melissa R. Schwartz)

Melissa will report next month.

21. Miscellaneous/FYI

None.

22. Adjournment

The meeting was adjourned at or about 4:48 p.m.

Respectfully submitted,

/s/ Kelly Dickson Cooper

Kelly Dickson Cooper

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Council of the Trust and Estate Section of the Colorado Bar Association

Minutes of the December 17, 2015 Meeting

Council met on Thursday, December 17, 2015, at the Colorado Bar Association offices, 1900 Grant Street, Denver, Colorado. The meeting was called to order at approximately 3:25 pm.

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

Melissa R. Schwartz, Chair

Darla L. Daniel, Vice Chair

Kelly Cooper, Secretary/Treasurer

Elizabeth Bryant, Immediate Past Chair

Leia Ursery (2nd year)

Jarod Balson (2nd year)

Josie M. Faix (1st year)

Sumi Lee (1st year)

Also attending were: Steve Brainerd, David Kirch, Clara Brown Shaffer, Andrea Mueller Arias and Jeremy Schupbach.

1. Approval of Minutes of Prior Meeting

The Minutes of the November 19, 2015 Council meeting were approved.

2. Chair's Report, Administrative Matters (Melissa Schwartz)

Melissa really wants everyone on Council to participate in the Ambassador program. If you want to be involved, you should email Clara or Melissa. We will find a way to post information about the program on the website.

Metro Volunteer Lawyers will be here to explain their program to us next month.

3. Secretary/Treasurer's Report (Kelly Cooper)

Kelly is working to formalize the Section dinner invitation list by category and a current invitation list.

4. Tax Section Liaison (Georgine Kryda)

Melissa gave the report. The Tax Section is asking if there is anyone who wants to join Gene Zuspann's subcommittee to consider DNI. The Tax Section is hosting a taxation of marijuana business CLE on February 10, 2016 at Davis Graham and Stubbs.

5. Statutory Revisions Committee (Clara Brown Shaffer)

Clara reported that Bette's original document subcommittee is going to continue its work and there is no need to vote today. Discussion ensued. It was decided that Melissa and Clara would talk with Bette about how best to move this important project forward.

There was discussion regarding expectations for subcommittee work. Melissa is going to work to gather information from long-time Section members about past expectations and work with Clara to formalize those expectations.

There was some concern from Elder Law regarding John Burrus' suggested change to the power of attorney statute.

The decanting statute will come up for a vote at next month's meeting.

6. Legislative Liaison (Steve Brainerd / CBA Jeremy Schupbach)

Jeremy and Clara are continuing to work on what proposals will be in the omnibus bill. We have sponsors for the omnibus bill.

7. Council Notes (Julia McVey/Josie Faix)

The latest edition of Council Notes went out. This edition added a list of public administrators and deputies by county. There was discussion about whether a list of judges with the probate docket, division clerks and registrars would be appropriate in Council Notes.

8. CLE/Estate Planning Retreat (Darla Daniel)

Darla reported that CLEs and the Retreat are in good shape. There are lunches scheduled through February. There are seven confirmed breakout sessions for the Retreat without one additional possibility.

9. Orange Book Forms Committee (Leia Ursery/Peggy Gardner)

Leia reported that the Committee passed digital asset language and started work on the power of appointment act. The Committee is switching back and forth every other month with work on joint trusts. The Committee will be working on drafting to address directed trusts.

10. Rules & Forms (Casey Williams)

No report. It was noted that the proposed probate rules are making rounds through the Section in advance of the January meeting of the newly formed Probate Rules Committee.

11. Elder Law Section Liaison (Patrick Thiessen)

No report.

12. Real Estate Section Liaison (David Kirch/Diana Wendel)

No report.

13. Probate Trial and Procedure Committee (Herb Tucker)

Kelly reported that the Committee reviewed the proposed probate rules and votes on three statutory changes to various accounting and inventory statutes. Letty Maxfield also asked for input on how best to handle the Voidable Transfer Acts and the choice of law provision. Council determined that Letty should go to the Uniform Law Commission meeting and voice our support of the Business and Real Estate Sections' opposition.

14. Colorado Estate Planning Handbook (David Johns/Constance Wood/Julia McVey)

No report.

15. Green Book (David Johns)

No report.

16. New T & E Lawyers Committee (Facilitator Mark Masters/Elizabeth Stewart)

No report. There is a New Lawyers reception this evening.

17. Colorado Lawyer (David Kirch/Connie Smith)

David reported that he has three articles promised to him in next three weeks.

18. Media Liaison (Mark Masters)

No report.

19. Civic and Community Affairs Subcommittee of the Elder Law and T&E Sections (Casey Williams)

No report.

20. Board of Governors Representative (Melissa R. Schwartz)

No report.

21. Miscellaneous/FYI

Jeremy reported that the Banker's Association is running a bill regarding HELOCs. This will allow the lender to release the lien on the property when the HELOC is paid down to zero. Council asked Darla to review the bill for any trust and estate issues.

Melissa asked that the Diversity Committee be added to the Agenda as a reporting committee. Melissa reported that the Committee met for the first time today and discussed issues, options and potential roadblocks. If you wish to join, send Melissa an email. Currently, the Committee is meeting at 10am on Super Thursday.

Darla announced that the Uniform Trust Code subcommittee will be discussing Section 105 next month. Section 105 contains the mandatory versus default provisions of the UTC.

22. Adjournment

The meeting was adjourned at or about 4:28 p.m.

Respectfully submitted,

/s/ Kelly Dickson Cooper

Kelly Dickson Cooper