

**NOTICE OF MEETING FOR THE PROBATE TRIAL AND PROCEDURE  
COMMITTEE OF THE TRUST AND ESTATE SECTION AND ELDER LAW SECTION  
OF THE COLORADO BAR ASSOCIATION**

**September 2, 2020 at 10 a.m.**

Online: <https://cba-cle.zoom.us/j/92945087505>

Meeting ID: 929 4508 7505

Call-in: 1 (929) 205 6099

Meeting ID: 929 4508 7505

Find your Local number: <https://cba-cle.zoom.us/u/azS2Y2wXE>

**AGENDA**

1. Welcome and Introductions
2. Review of Minutes from August 5, 2020/Approval
3. Chair's Report
  - a. Probate Bench Book – Kathy Seidel
4. New Business or Requests
5. Updates/Reports
  - a. In the Matter of Estate of Trevino
  - b. CRPP Rule 40(d). Submitted to Supreme Court for approval? Marcie McMinimee
  - c. Cost Recovery and Compensation Act; C.R.S. § 15-10-604 re procedure and process. Marc Darling/Marcie McMinimee
  - d. Due process concerns re “exploitation list” maintained by Departments of Human Services. Kathy Seidel/Norv Brasch
  - e. C.R.S. §15-14-714(8) Powers of Attorney and agent's duty to account. Marcie McMinimee
  - f. Elective share/incapacitated spouse/procedural issues. Zach Schlicting
  - g. Conservator's Annual Report - Tabled.
6. Adjournment

**NEXT MEETING: October 7, 2020 @ 10 a.m.**

**REMINDER: Join the Committee through CBA Membership Department – email [membership@cobar.org](mailto:membership@cobar.org)**

## **Probate Trial and Procedure Committee**

### **Minutes of the August 5, 2020 Meeting**

The Probate Trial and Procedure Committee met virtually on August, 2020. The meeting was called to order at approximately 10:00am.

The following members were present or participated by phone:

Lindsay Andrew – [Landrew@steenrod.com](mailto:Landrew@steenrod.com)

Norv Brasch – [norv@tealaw.com](mailto:norv@tealaw.com)

Gary Clexton – [gclext@m-s-lawyers.com](mailto:gclext@m-s-lawyers.com)

Spencer Crona – [scrona@brownandcrona.com](mailto:scrona@brownandcrona.com)

Lisa Dunn - [Lisa@LotusFiduciaryGroup.com](mailto:Lisa@LotusFiduciaryGroup.com)

Suzie Germany – [susie@coelderlaw.net](mailto:susie@coelderlaw.net)

Gunther Goetz – [gunther@goetzlawoffice.com](mailto:gunther@goetzlawoffice.com)

Keith Lapuyade - [keith.lapuyade@overtonlawfirm.com](mailto:keith.lapuyade@overtonlawfirm.com)

Letty Maxfield – [letty@tealaw.com](mailto:letty@tealaw.com)

Theresa Moore - [tmoore@tmmpc.com](mailto:tmoore@tmmpc.com)

Kayla Nelson – [kayla@siglerlawco.com](mailto:kayla@siglerlawco.com)

Margrit Parker – [margrit@lentparkerlaw.com](mailto:margrit@lentparkerlaw.com)

Sal Quintana – [s.quintana@qlegalservices.com](mailto:s.quintana@qlegalservices.com)

Patricia Rankin - [prankin99@gmail.com](mailto:prankin99@gmail.com)

Tom Rodriguez – [Tom@elderlawcolorado.com](mailto:Tom@elderlawcolorado.com)

Sandra Sigler - [sandra@siglerlawco.com](mailto:sandra@siglerlawco.com)

Courtney Smith – [courtney@lotusfiduciarygroup.com](mailto:courtney@lotusfiduciarygroup.com)

Amy Sreenan – [Asreenan@cobar.org](mailto:Asreenan@cobar.org)

Ernest Staggs - [estaggs@staggs-morris.com](mailto:estaggs@staggs-morris.com)

Douglas Traeger – [dtraeger@lathropgage.com](mailto:dtraeger@lathropgage.com)

Chelsea Ziegler – [chelsea@tealaw.com](mailto:chelsea@tealaw.com)

#### **1 Approval of Minutes of Prior Meeting**

The minutes of the March 4, 2020 meeting were approved.

#### **2 Chair's Report**

- a. Probate Bench Book – Project is moving forward. Several broad topic areas are complete or almost complete. Judge Leith has been very responsive with edits and feedback.

### 3 New Business or Requests

- a. In the Interest of Jean Howard. The Colorado Court of Appeals reaffirmed that C.R.S. 15-10-503(20 authorizes a court to act in nonemergency proceedings, but only after notice and hearing. In this case, the District Court denied a Petition for removal or modification of a guardian's power without a hearing.
- b. In the Interest of Marie Chavez. Appellant filed a notice of appeal and motion to determine jurisdiction after a jury verdict against him for breach of fiduciary duty, civil theft, unjust enrichment and surcharge, but prior to the court's determination of attorney's fees and prejudgment interest. The Court of Appeals held that the notice of appeal was premature and stated that "premature appeals create significant wastes of time and resources."
- c. In the matter of Joanne Black. This third CO Court of Appeals opinion in the Black case deals mostly with jurisdictional issues, and holds that the Colorado probate court properly exercised in rem jurisdiction over assets misappropriated from a Colorado Conservatorship and transferred into out of state trusts and over the former conservator.
- d. Senate Bill 20-129 : Concerning the Protection of Individuals Subject to a Fiduciary. This Bill, effective September 1, 2020, amends the emergency guardian and special conservator statutes by requiring the court to simultaneously appoint a court visitor if the person appointed is a professional without priority to serve, from protective services or a public administrator. The court visitor must file report within 14 days after the appointment. New section 15-14-113.5 is added which sets forth requirements of visitor's investigation and report and requires court to review the report and enter an order with specific findings within 7 days of receiving the report. Terms "member of the supportive community" and "supported decision making" are defined under 15-14-102. Finally, under an emergency review of a fiduciary's actions, the court must now rule on its own motion or interested person request within 14 days after the motion or request is made. Letty Maxfield reported that due to COVID 19 and visitor requirements under this act, there may need to be temporary procedural rules put into place.

### 4 Updates/Reports

- a. Litigation Updates – In the Matter of Estate of Trevino – Amicus brief from Trust and Estate Section submitted on May 29.
- b. Conservator's Annual Report – Tabled
- c. CRPP Rule 40(d) – Approved by Elder Law Section, SRC and T&E Council. No report.

- d. Due process concerns re “exploitation list’ maintained by Departments of Human Services – Spencer Crona reported that there have been no developments. It was suggested that we may need to enlist Andy White to contact Adult Protective Services and create a liaison between CBA and APS. Kathy Seidel agreed to send an email to interested persons to follow up.
- e. C.R.S. §15-14-714(8) re Powers of Attorney and Agent’s duty to report. No Update.
- f. Elective share of incapacitated surviving spouse. Zach Schlicting and Jody Pilmer. No report.
- g. Cost Recovery and Compensation Act. No meeting in August. Meetings will resume in September.

**5      Adjourment**

The meeting adjourned at approximately 10:35 am.