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MINUTES

Colorado Commission on Uniform State Laws

November 3, 2017, 1:30 p.m.

Committee Room: SCR 352

Determination of a quorum. Roll was taken and Commissioners Mielke, Shaffer, Steadman, and Wist were excused. Commissioners Gardner, Grimshaw, Levy, McGihon, Morris, and Pike were present. Commissioners Shaffer and Wist were present after the roll call.

1. **There was no public comment regarding items not on the agenda.**

2. **Consideration of ULC Acts for 2018 introduction:**

- a. **Uniform Trust Code** – *Steve Brainerd, CBA Trusts & Estates Section*, reported that all but one CBA section had approved the bar's proposed Colorado-specific amendments to the "Uniform Trust Code" and that the section's concerns could most likely be resolved through conforming amendments to the Code. He expects to have a list of proposed conforming amendments by the end of the month. Mr. Brainerd has been in contact with John Burrus, Independent Bankers of Colorado, regarding their concerns with the ULC act. The commission discussed referring to the CBA's proposal as the "Colorado Uniform Trust Code", which would let practitioners know that this is an attempt to harmonize Colorado law with uniform law in other jurisdictions. The commission also had questions regarding what types of conforming and substantive amendments to expect. Mr. Brainerd replied that some amendments concerned definitions and others would be cross-references to existing trust statutes remaining in place. The commission thanked Mr. Brainerd, his section, and the CBA for all of their hard work over the last year and for moving this act forward.

John Burrus, Independent Bankers of Colorado, confirmed that his organization has concerns about what a third party's duty is to determine an agent's authority when dealing with trustees. He believes that these concerns can be addressed through a few amendments to the act. The commission also thanked Mr. Burrus and the Independent Bankers for their work on the trust code.

The commission voted to call the act the "Colorado Uniform Trust Code". Commissioner Gardner then moved that the Colorado Uniform Trust Code be drafted for introduction as a commission bill. Commissioner Levy seconded and the motion passed without objection. Commissioner Gardner indicated that he would carry it as a Senate bill and Commissioner Wist agreed to be the House sponsor.

- b. **Directed Trust Act** – *Kevin Millard, CBA Trusts & Estates Section*. His section has been thoroughly reviewing the act and, although work is progressing in a timely manner, they do not expect to complete their review in time for a 2018 introduction date. Mr. Millard noted that the section expects to suggest changes to the act and, in addition, will need to review the

changes made in the recently released approved version of the act. His section requests that the commission wait until next year to consider the act for introduction in 2019. The commission asked if there might yet be a possibility of introducing it as a late commission bill during the 2018 session. Mr. Millard did not think that would be possible.

Commissioner Pike moved that the commission delay taking action on the Directed Trust Act until the 2019 legislative session. Commissioner Gardner seconded and the motion passed without objection.

- c. **Guardianship, Conservatorship, and Other Protective Arrangements Act** – *Brooke Brestel, CBA Elder Law Section*. Because of the substantive changes that the act makes to current law, the section wants to have more time to work with various stakeholders, those who will be most affected by the act's changes, and other CBA sections to make sure that the act works with the other areas of Colorado law impacted by its changes. Most importantly, the section wishes to make sure that the act is implemented as intended and therefore request that the commission issue a letter formally requesting a study and stakeholders group to work together for the next year to look at the law from all aspects, to report and advise how the act addresses ongoing concerns, and make recommendations accordingly. The commission acknowledged that they had received and reviewed the draft of such a letter.

Commissioner Gardner moved that the commission adopt and send the proposed letter to the bar for the formation of a study group. Commissioner Pike seconded and the motion passed with no objection.

John Burrus, Independent Bankers of Colorado, testified that his organization would be interested in the outcome of this study group, although he did not believe he needed to be included as a stakeholder. The commission also briefly discussed who might represent the commission in the study group.

- d. **Regulation of Virtual Currency Businesses Act** – There was no public testimony regarding this agenda item.

Commissioner Gardner moved that the commission table the Regulation of Virtual Currency Businesses Act until next year. Commissioner Wist seconded and the motion passed without objection.

- e. **Uniform Parentage Act** – There was no public testimony regarding this agenda item.

Before taking action on this act, the commission noted prior CBA objections to the act and requested that the CBA be open to discussions with the ULC drafting committee in addressing their concerns. The public testimony phase was reopened, and *Marie Avery Moses, CBA Family Law Section*, testified that, after further review, there may be support for implementation of some of the surrogacy portions of the act. Commissioner Levy agreed to work with the family law section in exploring this option.

Commissioner Pike moved that the commission table consideration on the Uniform Parentage Act indefinitely. Commissioner Gardner seconded and the motion passed without objection.

- f. **Model Veterans Treatment Court Act and Model Veterans Treatment Court Rules** – The commission noted that although testimony at the last commission meeting clearly indicated that the Colorado's Veterans Courts did not support this act's introduction in Colorado, there appears to be a non-commission bill under consideration. Because of this, there is a chance that the commission may yet need to take some sort of action on this act.

Commissioner Gardner moved that the commission table consideration on the Model Veterans Treatment Court and Rules indefinitely. Commissioner Pike seconded and the motion passed without objection.

Terry Scanlon, Legislative Liaison for Colorado Courts and Probation, confirmed that there is a bill being drafted related to Veterans Court. His office is reviewing that bill but has not yet taken a position on the bill or shared any feedback with the bill's sponsor. He reaffirmed that the Judicial Department is not looking for legislation regarding Veterans Courts.

- g. **Revised Uniform Unclaimed Property Act** – *John Burrus, Independent Bankers of Colorado*. His organization does have an interest in this act and asked if there was a public version of the act with Colorado's answers to the act's drafting questions. The commission noted that the Colorado draft from last session was not made public and encouraged Mr. Burrus to contact Commissioners Levy and Gardner regarding any recommendations he might have regarding these drafting questions, including a delayed effective date.

Commissioner Levy moved that the Uniform Unclaimed Property Act be drafted for introduction as a commission bill. Commissioner Gardner seconded and the motion passed without objection. Commissioner Gardner indicated that he would carry it as a Senate bill and Commissioner Wist agreed to be the House sponsor.

- h. **Uniform Wage Garnishment Act** – *John Burrus, Independent Bankers of Colorado*. His organization's only concern is the treatment of wages in bank accounts. Commissioner McGihon invited Mr. Burrus to join a ULC study committee regarding this subject.

Before taking action on the act, the commission noted that there seemed to be sufficient objections to the act to warrant tabling the bill for now. The commission also noted that there were some positive provisions within the act regarding notice that might be worth pursuing for Colorado, and Commissioner McGihon agreed to continue working with the newly organized ULC study group.

Commissioner Pike moved to table consideration on the Uniform Wage Garnishment Act indefinitely. Commissioner Gardner seconded and the motion passed 6 to 2.

3. **Update on Publication of official and Colorado comments** – The commission noted that there seemed to be consensus within the CBA that, rather than publishing official comments in the Colorado Revised Statutes (C.R.S.), the Revisor of Statutes should include a cross reference referring the reader to the ULC's website for the comments. The commission expressed concern about official comments already published in the statutes and the perception of inconsistency in handling official comments. The commission considered what would be required to bring about this policy change and what was required if it was decided to remove all the existing published official comments. *Greg Martin, Deputy Director for the CBA*, confirmed that the CBA is opposed to continuing to publish official comments in the statutes, not only due to the length of some of the comments but because the focus should be on the code itself.

Commissioner Pike moved that the CCUSL chair prepare a letter to the Committee on Legal Services requesting that the practice of publishing ULC official comments be discontinued and instead direct that cross references be used to refer readers to the online storage of any ULC official comments. Commissioner Gardner seconded and the motion passed without objection. The commission noted that it might be useful for the letter to include a comment that this policy change is not meant to have any effect on how the statutes are construed.

4. Additional Commission business.

- Remote participation of commissioners in meetings – The commission reviewed the July 18, 2017, letter from the Executive Committee of Legislative Council allowing commissioners to, in limited circumstances, participate in meetings remotely.
- The CCUSL did not schedule another meeting at this time.
- Election of CCUSL chair – By statute, the CCUSL chair terms are for one year or until a successor is elected. Commissioner Levy moved to extend Commissioner McGihon’s term as chair for another year. Commissioner Pike seconded and the motion passed without objection.
- The commission extended congratulations to Commissioner Morris for his reappointment as CCUSL secretary and appreciation for his continued service.

5. **Other business.** There was no other business discussed.