

Colorado Commission on Uniform State Laws

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MINUTES

September 25, 2019, 9:00 a.m.

Committee Room: HCR 0112

Roll was taken and Commissioners Gardner, Grimshaw, and Mielke were excused. Commissioners Duran, Levy, Morris, Pike, Scott, Tipper, and Whitfield were present. Commissioner Gardner was present after the roll call.

1. **Public comment regarding items not on the agenda.** *Meggin Rutherford, of the Rutherford Law Center, LLC and Vice-President of the Colorado Collaborative Divorce Professionals Association,* speaking only for herself, encouraged the commission to consider introducing the **Uniform Collaborative Law Act** in 2020. The act has been reviewed and approved in its current format by the Colorado Bar Association's (CBA) Family Law Section and is being reviewed by other sections for finalization and presentation to the commission. Collaborative law is a form of alternative dispute resolution that allows families to resolve divorce and dissolution proceedings outside of the courts. The uniform act would help address and clarify concerns of a Colorado legal ethics opinion regarding collaborative law, improve professional standards in Colorado, and increase the visibility of this option for families. Its passage would also be helpful in promoting trust and collaboration amongst the states, 21 of whom have already enacted it.

The commission provided some history on the 2011 act and asked about the legal ethics opinion and any potential CBA language changes. Ms. Rutherford replied that most of the suggested language modifications are to uphold current Colorado law on confidentiality in the proceedings and removing civil litigation language. *Marie Avery Moses, Co-chair of the CBA Family Law Section Legislative Committee,* affirmed that the section supports this act and that current revisions address limiting the act to family law cases and keeping it within Colorado's laws regarding disclosure and confidentiality. The commission's consensus was to revisit the act and the CBA's progress, including any specific language changes, at the next meeting. The commission expressed appreciation to the CBA for its thoughtful work on this act.

2. **Newly approved uniform acts for consideration as part of the 2020 legislative agenda:**
 - a. **Automated Operation of Vehicles Act** – There was no public testimony on this agenda item. The commission pointed out that Colorado passed Senate Bill 17-213, concerning automated driving motor vehicles, and that any new legislation would need to interact with the provisions of that bill. There was also some discussion regarding possible controversy around commercial vehicle jobs, the narrowness of the scope of the act, and concerns with certifying the software controlling the vehicles to meet state traffic laws. Commissioner Pike moved that the commission defer consideration of this act until the next meeting, Commissioner Tipper seconded, and the motion passed without objection.
 - b. **Electronic Wills Act** – *Darla Daniel, Co-legislative Liaison for CBA Trust and Estates Section,* stated that a joint committee of trust and estate and elder law sections is studying the act. She stated that the act makes significant changes to Colorado law and that the committee needs more time to examine it. The committee will not be finished in time for introduction during the 2020 legislative session. Current concerns include the

authentication of electronic documents and guarding against fraud and undue influence. The commission asked whether the committee is also looking at how other industries have dealt with authentication of electronic documents; Ms. Daniel confirmed that it is. The commission's consensus was to defer consideration of this act until the 2021 legislative session.

- c. **Registration of Canadian Money Judgments Act** – There was no public testimony on this agenda item. The commission's consensus was to submit it for drafting as a commission bill with Commissioner Gardner as the contact.
 - d. **Amendments to the Uniform Probate Code (UPC)** – *Darla Daniel, Co-legislative Liaison for CBA Trust and Estates Section*, stated that most of the UPC revisions relate to definitions from the 2017 Uniform Parentage Act, which Colorado has not adopted. The committee needs more time to study the act. The commission asked whether the CBA would consider outside input during the review process and briefly discussed whether the UPC amendments could recognize familial relationships regarding rights of inheritance independent of the Uniform Parentage Act. Commissioner Scott expressed interest in assisting with any research or drafting on the act. The commission's consensus was to defer consideration of this act until the next meeting.
- 3. Prior year uniform acts for consideration as part of the 2020 legislative agenda:**
- a. **Revised Limited Liability Company Act** – There was no public testimony on this agenda item. The commission reminded the public that any member of the General Assembly could introduce a uniform act without commission involvement. The commission briefly discussed current Colorado law on this subject and noted that 20 states have enacted the uniform law. Commission consensus was to defer consideration of this act until the next meeting. The commission invited the CBA Business Section to review the act and provide feedback or testimony regarding support or opposition.
 - b. **Revised Limited Partnership Act** – There was no public testimony on this agenda item. Commission consensus was to defer consideration of this act until the next meeting. The commission invited the CBA Business Section to also review this act and provide feedback or testimony regarding support or opposition.
 - c. **Partition of Heirs Property Act** – *Charles Calvin, CBA Legislative Policy Committee*, speaking only for himself, indicated that clearing title of fragmented property ownership does not seem to be an issue in Colorado and that he is not aware of the CBA reviewing the act. He will bring the act to the attention of the CBA Real Estate Section to see whether they wish to take a position on it. The commission had questions regarding the protections provided within the act regarding dispossession of real property. The commission's consensus was to defer consideration of this act until the next meeting.
- 4. Carry-over uniform acts for consideration as part of the 2020 legislative agenda:**
- a. **Revised Athlete Agents Act (2015) and 2019 Amendments** – There was no public testimony on this agenda item. The commission reported that it followed up with the Governor's office regarding the Governor's veto of the act and sensed continuing opposition to the act. The commission discussed filing a sunrise application to see whether that would address the Governor's concerns. The commission will attempt to get more information and the consensus was to defer consideration of this act until the next meeting.
 - b. **Revised Law on Notarial Acts** – There was no public testimony on this agenda item. Commissioner Gardner indicated that it may be best to delay introduction until the

data privacy issues are resolved. There were concerns expressed that a non-uniform and less comprehensive bill may be introduced and enacted in the meantime. The commission's consensus was to defer consideration of this act until the 2021 legislative session.

- c. **Parentage Act** – *Marie Avery Moses, Co-chair of the CBA Family Law Section Legislative Committee*, reported that the section continues to oppose the act. Some concerns include limiting the ability for some to assert parental rights, the parental rights registry, some of the methods for determining parental rights, and the possibly of losing the standard of the "best interests of the child". Ms. Moses referred back to a previous question of the commission regarding surrogacy law in Colorado and stated that her section has not taken a position on moving forward with the surrogacy laws, but some surrogacy law practitioners could see a benefit in incorporating sections 801 to 812 into existing statutes. Sections 813 to 818 may conflict with state adoption and parentage laws. The commission observed that surrogacy is an area in which medical breakthroughs are moving faster than the law.

The commission pointed out that the impetus behind the act was to make state laws gender neutral, incorporating the constitutional right of same-sex marriages, and legitimizing the children of same-sex marriages. The commission asked how the act affects the standard of the "best interests of the child". Ms. Moses replied that some of the bureaucratic requirements of the act shift the decision away from the court focusing its decision solely based on best interest. There are also changes regarding the burden of proof and the act limits who can assert the presumption of parentage. Colorado already has robust laws regarding the legal rights of same-sex parents and the establishment of parentage outside of marriage. The commission thanked the CBA for their continued input on the act and shared that state and federal child enforcement offices are interested in moving forward with the act. Commissioners Tipper and Scott will work with stakeholders and the commission's consensus was to defer discussion on this act until the next meeting. The commission again briefly discussed drafting the UPC amendments as a stand-alone bill, but the consensus was not to do so at this time.

- d. **Nonparent Custody and Visitation Act** – *Marie Avery Moses, Co-chair of the CBA Family Law Section Legislative Committee*, reported that, in answer to the commission's request for additional feedback, the section contacted other groups and other interested parties and that there is strong opposition to the act. There is confusion regarding how the act interacts with current Colorado law and it may either restrict some individuals from asserting visitation rights or cause confusion. The act is intended to work in tandem with the Uniform Parentage Act, which has not been enacted in Colorado, and enacting this act without the Uniform Parentage Act will cause problems. The commission's consensus was to defer action on this act for now and to continue to monitor it for future introduction.
- e. **Criminal Records Accuracy Act** – There was no public testimony on this agenda item. The commission explained that the act creates an internal process to clean up inaccuracies in information gathered during criminal proceedings. The act addresses very relevant issues, as the consequences for individuals with incorrect records is high. There will be costs and training involved. Information-taking will transition entirely to an electronic format and incorporate records and other information from national databases. There may be data privacy concerns. The commission wants more input from police and motor vehicle departments throughout the state, as well as from state and national database holders. It is a comprehensive piece of legislation that would require most law enforcement agencies to change the way records are created and kept.

Commissioner Whitfield moved that the commission proceed with drafting the act, Commissioner Tipper seconded, and the motion passed without objection. Commissioner Whitfield will act as contact on the draft, along with Commissioners Gardner and Tipper. Once drafted, the commission will share with various stakeholders for feedback and in order for the commission to get a better idea of the projected cost of implementation.

5. Colorado Bar Association reports regarding:

- a. **Guardianship, Conservatorship, and Other Protective Arrangements Act** – *Brooke Brestel, Chair of the CBA Elder Law Section* discussed the proposed act with current law. Colorado enacted the 1997 Uniform Guardianship and Protective Proceedings act in 2000-2001 and subsequently passed various laws regarding fiduciary oversight, cost and compensation, post-adjudication right to counsel, rights of wards with appointed guardians, audits, protected proceedings monitoring, and the court's broad authority to review the actions of any fiduciary. There is a call for guardianship reform and this act is appropriate for states that have not enacted the previous act or otherwise addressed guardianship concerns. It is similar to current Colorado law and, in some respects, inferior to Colorado law. The subcommittee, working with stakeholders, identified four areas from the bill to address in Colorado: a bill of rights, a bench book to ensure uniformity of treatment, fiduciary regulation oversight, and supportive decision-making.

The commission asked whether there were any other provisions in the act that the group has considered implementing in Colorado. Ms. Brestel replied that other provisions of interest include some of the terminology, notice provisions, guardianship for minors, and emergency proceedings. The commission asked that the subcommittee continue to work with stakeholders regarding possible changes to improve Colorado's laws. As the changes to the law, as reported, would no longer constitute a uniform act, the CBA will need to work with interested legislators regarding any proposed legislation. The commission thanked Ms. Brestel and her subcommittee for their time and diligence on the review of this act. Commissioner Pike moved to defer action on the Guardianship, Conservatorship, and Other Protective Arrangements Act and remove it from the agenda, Commissioner Scott seconded, and the motion passed without objection.

- b. **Fiduciary Income and Principal Act** – *Darla Daniel, Co-legislative Liaison for CBA Trust and Estates Section*, reported that the subcommittee working on this act has approved the first three sections and is currently on section four. The subcommittee is working with the banking community and other stakeholders on its review. The subcommittee would like to report back at the next commission meeting before committing to introducing the act this session.

The commission asked about introducing part five of the Uniform Trust Act as an addition to the Fiduciary Income and Principal Act. *Brooke Brestel, CBA Elder Law Section*, reported that the CBA has made progress towards that goal and could report progress at the next meeting. Commissioner Pike moved that the commission defer consideration of the Fiduciary Income and Principal Act until the next meeting, Commissioner Whitfield seconded, and the motion passed without objection.

6. Other business. There was no other business discussed at this meeting.

- 7. Next CCUSL meeting.** The next commission meeting was scheduled for Monday, December 9 at 9:00 a.m.