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MINUTES

Colorado Commission on Uniform State Laws

September 22, 2017, 1:30 p.m.

Committee Room: SCR 352

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

1. **There was no public comment regarding items not on the agenda.**
2. **Acts considered at the 2017 annual Uniform Law Commission conference but not adopted this year:**
 - **Amendments to Uniform Commercial Code Articles 1, 3, and 9** – No comments were offered.
 - **Civil Remedies for Unauthorized Disclosure of Intimate Images Act** – Commissioner Levy is on the drafting committee. The act received good feedback after the first reading and the committee expects to have it ready for adoption next year.
 - **Criminal Records Accuracy Act** – Commissioner Shaffer is on the drafting committee. There is still a lot of work to be done on this act and the plan is to have an updated draft ready for the next annual meeting.
 - **Fiduciary Principal and Income Act** – No comments were offered.
 - **Non-Parental Child Custody and Visitation Act** – No comments were offered.
3. **Updates on Colorado Bar Association discussions regarding:**
 - a. **Uniform Commercial Real Estate Receivership Act** – *Charles Calvin and Joey Lubinski, CBA Real Estate Section.* The CBA's understanding is that the CBA's proposed changes make the Colorado version of this act nonuniform and no longer a commission bill. Should another sponsor be interested in adopting portions of the act in Colorado, the CBA would be willing to continue to work on this and formalize their position on it.
 - b. **Uniform Trust Code** – *Steve Brainerd, CBA Trusts & Estates Section.* Three years ago, the CBA was charged with exploring the possibility of adopting the Uniform Trust Code, or portions of it, in Colorado. The section proposed substantive changes include omitting part 5 of the Uniform Law Commission (ULC) act dealing with creditor rights and keeping Colorado's laws instead and highlighting alternative dispute resolution (ADR) and its potential use in resolving disputes. The section plans to take another look at incorporating the omitted part 5 in the future. Other changes were to incorporate large chunks of Colorado law such as trust registrations, pet trusts, costs and compensation, and court tools for dealing with

breaches of trusts. He believes that other sections of the bar support the Colorado version of the act, but has not yet received formal bar approval. He proposes that it be referred to as “The Colorado Trust Code” and is pleased to announce that the Colorado version has received approval from the ULC as a uniform act and recommends against including ULC official comments. The commission asked whether banker organizations had been involved in the drafting process and whether the CBA had insight into what type of opposition could be anticipated to the act, and thanked them for their hard work.

John Burrus, Independent Bankers of Colorado (IBC), stated that the IBC was not involved in discussions and does not anticipate issues, but would like to see a draft.

- c. **Revised Uniform Residential Landlord and Tenant Act** - *Charles Calvin, CBA Real Estate Section*, stated that the CBA did provide a comprehensive comparison document last year for the commission’s consideration. The commission expressed appreciation to the CBA for their work on the comparison document and observed that there does not seem to be legislative interest in pursuing this at this time.

4. Preliminary discussion items for proposed 2018 legislative agenda:

a. Acts newly adopted by the Uniform Law Commission

- i. **Directed Trust Act** - *Steve Brainerd, CBA Trusts & Estates Section*, the act is being studied and considered by the section and requests the commission not proceed with this act this year. The Directed Trustees Act was adopted by the Colorado legislature in 2014 and the CBA would like more time to see how it and this act would fit together. He would like the commission to wait until the 2019 legislative session.
- ii. **Guardianship, Conservatorship, and Other Protective Arrangements Act** – *Catherine Seal, CBA Elder Law Section*. As an ABA advisor to the ULC drafting committee on this act, she is aware of the need for guardianship reform and is a proponent of this act. Although the final language of the act has not yet been released, the CBA is trying to determine what conforming amendments may be necessary, what other language changes may be needed to conform with current law, what portions of the law should be left in place, and what court forms need to be changed. This process will take more than a few months and she requests that the commission not proceed with the act this year. The commission wondered if a possible approach might be to adopt the act but delay the effective date so that there is a body in law in place, given the public demand for change, to help preempt other, less comprehensive legislation from being passed. The commission also wondered if the CBA had thoughts on how to inform the public and legislature that future legislation is in the works. The commission suggested the possibility of introducing the bill, knowing that it will not pass, to give focus to the CBA’s reform work and raise legislative and public awareness that their calls for reform are being addressed. Ms. Seal was concerned about repealing some aspects of Colorado law that should be retained and the public perception that might result from a bill not being enacted.

Letitia Maxfield, CBA Elder Law Section, added that this act affects adult and minor guardianships and conservatorships. It focuses on “least restrictive means” which constitutes a significant change to the current process. It would require courts to make very specific decisions about a person’s distinct abilities, more stringent evaluations, and re-writing most court forms regarding this area of law. The section does not support introducing the act for public education purposes and would be concerned about being blamed for the act’s failure and being perceived as being against reform when they do support it. She added that the CBA has a group available to make public presentations

where needed. The commission suggested that there may also be merit to introducing the bill and not allowing it to pass this session to gather more information from stakeholders and to get a better idea of the fiscal note impact.

- iii. **Protected Series Act** – There was no public testimony on this act. The commission noted that there have been numerous past objections to series in Colorado and there does not seem to be support for this act in Colorado at this time.
- iv. **Regulation of Virtual Currency Businesses Act** – *Jeremy Schupbach, CBA Director of Legislative Relations*. The bar is looking at this act and would like the commission to wait to introduce it. The commission noted that there was significant controversy surrounding this act at the annual meeting and suggested that it might be worthwhile to introduce this act this year to determine stakeholders and to move the discussion along. The act is being actively pushed in other states for passage this year.
- v. **Uniform Parentage Act** - *Marie Avery Moses, CBA Family Law Section*. This act is similar to the 2002 version but updated to deal with civil unions and surrogacy. The section believes that this act is not needed in Colorado as a well-established body of law dealing with parentage and how to establish it already exists in Colorado. In addition, she noted issues in the act with regard to notice, the termination of parental rights, and establishing the presumption of parentage. The commission questioned whether current Colorado law adequately addresses any of the surrogacy issues, which was one of the major reasons for the act. Ms. Moses suggested that the surrogacy provisions of the uniform act could perhaps be incorporated separately.
- vi. **Model Veterans Treatment Court Act and Model Veterans Treatment Court Rules** – *Judge David Shakes, Fourth Judicial District in El Paso and Teller Counties*. Colorado is a national leader in Veterans courts, was one of the first states to deal with felonies in these courts, has six Veterans Trauma Courts, and is a national mentor court to other states. The act is a good act and would be helpful for states wanting to create such courts. But Colorado does not need it. It already has almost 10 years of experience with Veterans courts, the statutory authority to create them, and has been successful at developing these courts through local collaborative efforts that reflect the needs of the communities involved. In addition, the state court administrator office has an accreditation program in the works. The commission wondered whether Colorado has developed rules or guidelines, similar to the rules in the model act, for Colorado courts and whether the courts might have written materials regarding how their courts work that could be shared with the ULC. Judge Shakes stated that Colorado does not have rules and that he may be able to give the ULC some insight into Colorado's process.

b. Acts previously adopted by the Uniform Law Commission:

- i. **Revised Uniform Unclaimed Property Act** - *John Burrus, Independent Bankers of Colorado*, stated that, if the act proceeds to introduction, the effective date should be far enough in the future to allow for the adequate retraining of personnel. He also expressed concerns regarding the act allowing the state to subcontract with non-state entities in the examination of records. The commission suggested that there may be interest in proceeding with the act this year and should the act move forward, the commission would certainly continue to involve interested parties.
- ii. **Uniform Wage Garnishment Act** – *Tom Romola, Associated Collection Agencies of Colorado, Wyoming, and New Mexico*, feels that Colorado already has some of the best wage garnishment statutes in the nation and does not need this act. Concerns with the act

include some of the notice requirements, the additional information required from employers on forms, and the increase in time needed for employers to respond to the additional questions. *Scott Allely, Associated Collection Agencies of Colorado, Wyoming, and New Mexico and as a local business owner*, stated that although this act may benefit large payroll processing companies, it would be more burdensome and costly to employers doing their own payroll, to creditors, and to consumers. There are more notices, calculations, and tracking required on the multiple writs the act would allow. The commission noted that there are also bigger picture items to be considered in the act, including notifying debtors of the garnishment amounts and allowing service in Colorado to debtors living in another state.

- iii. **2016 amendment to RULONA regarding electronic notarization** - *Charles Calvin, CBA Real Estate Section*. The Secretary of State's (SOS) office has a task force working on a bill draft in the process and that the ULC act may no longer be necessary. The CBA does have some concerns with the SOS's bill and are addressing them with the SOS. The commission noted that the ULC is also making amendments to the act, technology demands are moving this act forward very quickly, and that the three-year process of the ULC may be a problem with regard to these issues.

5. Additional commission business:

- a. **Publication of official and Colorado comments** - *Jeremy Schupbach, CBA Director of Legislative Relations*, stated that the Bar's preference is to not publish ULC official comments and to refer to any available official comments to electronic storage. The commission noted that there would also be no publication of any Colorado comments and believes that these directions can be handled through instructions to the Office of Legislative Legal Services (OLLS) and will not require any statutory changes.
- b. **Potential addition of a "pre-conference" meeting to CCUSL's regular meeting schedule** – The commission explained that the thought behind this concept was to see if it would be possible for the OLLS to have time to review and brief the commission on ULC acts prior to the commission attending the annual ULC meeting and voting.
- c. **Potential Statutory Revision Committee (SRC) consideration of ULC-approved technical correction to the Uniform Trust Decanting Act, SB 16-085** – The SRC has already taken care of this issue by passage of SB 17-124.

6. Other Business

Next meeting – The commission will want to make decisions on which acts to draft for 2018 introduction at this meeting and, in the interest of time, may want to limit public testimony to anything not covered today. The commission would continue to work with interested stakeholders outside of commission meetings. The commission considered dates in late October and early November with a final decision to be announced.

Special note: During the meeting, the commission recognized and thanked former Commissioner Stan Kent for his work with the Bar Association and for his service to the commission.