

**MINUTES**  
**DSBA ESTATES AND TRUST SECTION**  
**April 3, 2007**

In accordance with notice duly given, a meeting of the Estates and Trusts Section of the Delaware State Bar Association was held at the offices of Connolly Bove Lodge & Hutz LLP, 1007 N. Orange Street, Nemours building, 9<sup>th</sup> Floor, Wilmington, Delaware, on Tuesday, April 3, 2007, commencing at 3:30 p.m.

In attendance were: Gregory J. Weinig, John M. Amalfitano, F. Peter Conaty, Jr., Charles J. Durante, Todd A. Flubacher, Richard W. Nenno, Richard J. A. Popper, Thomas R. Pulsifer, Beverly J. Wik, Kimberly M. Gill, Thomas P. Sweeney, Peter S. Gordon, Francis S. Babiarz, Sheriden Black, Trisha W. Hall, Douglas R. MacGray, Scott E. Swenson, Denise D. Nordheimer, Dorothy Scarlett, Jeffrey C. Wolken, Mary B. Hickok, Richard G. Bacon, Anne L. Stallman and Edward R. McNamara (via telephone).

Gregory J. Weinig, Chair, called the meeting to order.

1. Minutes. Subject to the correction of a typographical error, the minutes of the March 6, 2007 meeting were unanimously approved.

2. Legislation and Rule Committees.

a. Uniform Principal and Income Act – Report of Committee. No report.

b. Section 529 Plans – Report of Committee. No report.

c. Chancery Court Rules 117 and 132 – Report of Committee. No report.

d. Delaware Elective Share Statute – Report of Committee. Ms. Wik presented the proposed legislation that would amend Section 902 to clarify the contribution provisions of the elective share statute. Copies of the proposed legislation were circulated prior to the meeting. After a thorough discussion and upon motion duly made and seconded, the proposed legislation passed with one abstention.

e. Estate Administration Committee – Report of Committee. No report from the Committee, but in response to a question regarding the proposed increase in New Castle County probate fees from 1.25% to 1.75%, Mr. Weinig reported that the New Castle County Council passed this proposal, effective as to decedents dying on after July 1, 2007.

f. DSBA Technology Committee – Report of Committee. No report.

g. By-Laws – Report of Committee. Mr. Weinig reported that he, with assistance from Peter Conaty and perhaps others, will be reviewing the by-laws of the Section and will present any proposed changes to the Section.

h. Last Remains Statute – Report of Committee. No report.

i. Trust Act 2007 – Report of Committee. Mr. Nenno reported that the draft legislation presented at the last Section meeting by Mr. Popper and Mr. Pulsifer will be combined into a single bill before sending to the Executive Committee for approval.

Thereafter, Mr. Pulsifer reiterated the proposed legislation prepared by the Trust Act 2007 Committee. Copies of this proposed legislation were circulated prior to the meeting.

With regard to the proposed legislation, Mr. Pulsifer explained as follows:

1. The proposed revised Section 3313(e), relating to directed trustees, clarifies the scope and nature of directed trustee fiduciary duties by providing for specific limitations on the extent of these duties;

2. The proposed revised Section 3528(a), relating to decanting authority of a trustee, allows for a general or limited power of appointment to be granted by the trustee to any beneficiary entitled to an outright distribution;

3. The proposed revised Section 3536, relating to spendthrift trusts, clarifies the nature and extent of beneficiary and creditor rights in a discretionary trust;

4. The proposed revised Section 3547, relating to virtual representation, permits presumptive remaindermen to represent successor remaindermen, and the parents and guardians of minor and incapacitated beneficiaries to represent all trust beneficiaries in certain circumstances; and

5. The proposed revised Section 6104(a), relating to income, clarifies when assets become part of a successor trust for purposes of making income distributions from the successor trust.

Mr. Pulsifer also explained that the proposed legislation, if adopted, would become effective on August 1, 2007, and would apply to trusts whenever created.

After a thorough discussion and upon motion duly made and seconded, the proposed legislation passed with one abstention.

Thereafter, Mr. Bacon discussed other proposed legislation prepared by the Trust Act 2007 Committee. Copies of this proposed legislation were circulated prior to the meeting.

With regard to the proposed legislation, Mr. Bacon explained as follows:

1. The proposed revised Section 3325 is to revise the printer's error;

2. The proposed revised Sections 3570 and 3574, clarify that a trust agreement governed under the Qualified Dispositions Act may provide that the trust can pay for post-death expenses of the transferor without such payment being considered a retained interest by the transferor;

3. The proposed revised Section 3944, relating to guardianship accountings, permits the court to waive guardianship accountings and permits the court to extend the time to file guardianship accountings;

4. The proposed revised Section 3592, corrects a gap in the current legislation; if a trust failed for any reason and had to be disposed of, the common law result would have the assets revert back to the settlor of the trust and pass by intestacy; the proposed statute would have the assets pass in accordance with the settlor's Will, or if none, pass by intestacy;

5. The proposed revised Section 1308(a), relating to caveats, clarifies that a caveat shall be filed prior to entry of probate order;

6. The proposed revised Section 3333, provides that payment from trust funds of attorney fees incurred by counsel hired by a fiduciary does not per se waive the attorney-client privilege;

7. The proposed revised Section 3522, clarifies that if a trustee is not required to file an accounting for a trust, an inventory is not required either; and

Mr. Bacon also explained that Sections 1-5 and 7 of the proposed legislation, if adopted, would become effective on August 1, 2007, and would apply to trusts, estates or guardianships whenever created; Section 6 would apply to caveats filed after the date of enactment; and Section 8 would be effective as of August 1, 2005.

After a thorough discussion and upon motion duly made and seconded, the proposed legislation passed with one opposed to Section 7 and one abstention.

j. Unauthorized Practice of Law – Report of Committee. Mr. Gordon reported that further actions are being taken against Mr. Estep.

k. Family Law/Estates and Trusts Joint Committee – Report of Committee.  
No report.

3. Old Business.

a. Memorial for David J. Garrett. Mr. Weinig reported that the Executive Committee formally approved naming the Fundamentals Seminar after Mr. Garrett. The Section also voted and unanimously approved that its end-of-year balance would be donated to the Combined Campaign for Justice in Mr. Garrett's memory.

4. New Business.

a. Recent Developments. Mr. Gordon reported on several matters involving Masters in the Court of Chancery and their signing of orders. First, regarding possible constitutional issues with respect to orders signed by Masters over the last few months, the Chancellor and Grover Brown are consulting regarding a procedure, possibly involving the entry of one or more *nunc pro tunc* orders. Second, the Court has begun to address the issues going forward via amendments to Chancery Court Rules 143 and 144. Third, Mr. Gordon is exploring

the possibility of inviting one or both Masters to speak to the Section about signing orders and other matters that come before the Master.

b. Other New Business. Mr. Weinig reported that the June meeting of the Section would be on June 5th at 12 p.m. and lunch would be provided by the Section. Per the Section's vote earlier in the meeting, any funds remaining in the Section's account after the lunch would be donated to the Combined Campaign for Justice in memory of David Garrett.

Mr. Weinig reported that Miguel Pena had volunteered to chair a Section committee to research the issue of whether a statute should be enacted allowing parents to express a preference in their durable powers of attorney or advance health care directives for guardians of the person or property to be appointed for minor children if the parents are incapacitated, paralleling the current statute that allows parents to express such a preference in their wills in case the parents die.

There being no further business, the meeting was adjourned at approximately 5:10 p.m.

Respectfully submitted,

Anne L. Stallman, Vice Chair/Acting Secretary