

MINUTES
DSBA ESTATES AND TRUST SECTION
FEBRUARY 6, 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, 9th Floor, Wilmington, Delaware, on Tuesday, February 6, 2007, commencing at 3:30 p.m.

In attendance were: Gregory J. Weinig, Anne L. Stallman, Michael R. Stein, Francis S. Babiarz, Sheridan T. Black, Julia P. Coombs, Mary M. Culley, Julie M. Donoghue, Thomas Varley (by invitation), Michael A. Friedberg, Peter S. Gordon, Trisha W. Hall (via telephone), Mary B. Hickok, George W. Kern, Edward R. McNamara (via telephone), Richard W. Nenno, Denise D. Nordheimer, Richard J. A. Popper, G. Michael Richwine, Diane Clarke Streett, and Thomas P. Sweeney.

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

Mr. Weinig made a motion that Thomas Varley be allowed to attend the meeting by invitation. The motion was seconded and passed unanimously.

1. Minutes. The minutes of the January 2, 2006 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. Mr. Gordon reported that proposed legislation prepared by the Committee had been distributed prior to the meeting for review by the Section. Thereafter, Mr. Gordon briefly summarized the proposed legislation. He commented that the primary purpose of the proposed legislation is to amend the current statutes relating to Section 529 plans to allow and recognize a trust as a permissible owner of a Section 529 plan. Mr. Gordon explained that the proposed legislation amends the current statutes to provide, among other things, (i) that a trust account is included in the definition of “account,” (ii) that a trustee is included in the definition of “account owner,” (iii) a definition of the term “trust” for purposes of the statutes and (iv) other general provisions relating to a trust as an owner of a Section 529 plan. Mr. Gordon requested that the members of the Section review the proposed legislation with the intent of receiving comments and/or voting on it at the next meeting.

Ms. Stallman noted that there is current legislation pending that would allow Delaware residents to receive a \$5,000 income tax deduction for contributions made to Section 529 plans.

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

d. Delaware Elective Share Statute – Report of Committee. Mr. Weinig reported that the Committee met last month and will meet again this month as it continues to prepare proposed legislation.

e. Estate Administration Committee – Report of Committee. No report.

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

g. By-Laws – Report of Committee. No report.

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

i. Trust Act 2007 – Report of Committee. Mr. Nenno reported that the Committee met four times since the last Section meeting, and noted that proposed legislation had been distributed for review by the Section.

Mr. Popper then reported on the proposed new Section 3927, regarding fees for guardians of property. Mr. Popper explained that the proposed legislation is intended to alleviate any ambiguity between the use of Rule 132 and the fee schedules of corporate fiduciaries. Mr. Popper noted that the fees for guardians would not just be for investment services, but also for other services performed by guardians. Subsequently, there was a brief discussion relating to whether the Court of Chancery would react favorably to the legislation. It was suggested that Mr. Popper speak to Master Glasscock about the proposed legislation.

Thereafter, Mr. Nenno gave a brief summary of the remaining provisions of the proposed legislation. Mr. Nenno explained that the proposed new Sections 3303(a) and (b) contain changes intended to (i) confirm that the expressed intent of a settlor relating to the diversification of assets, as set forth in a governing instrument, should be followed and (ii) allow a settlor establishing a noncharitable purpose trust to have standing to enforce the trust or to appoint someone else to enforce the trust. Mr. Nenno also explained that the proposed new Section 3536(c) relates to tax distributions from a spendthrift trust. In addition, Mr. Nenno explained that the proposed new Section 3541 is intended to expand the doctrine of *cy pres* to noncharitable purpose trusts. Moreover, Mr. Nenno explained that the proposed new Section 3543 is intended to allow an executor or trustee to make distributions directly to the beneficiaries of a new trust to be established under a will or otherwise, instead of making the distributions to the trustee of the new trust.

Mr. Nenno also explained that the proposed new Section 3549 was drafted in response to the *Sowder* decision, and is intended to save poorly drafted marital deduction trusts. Further, Mr. Nenno explained that proposed new Section 3572(a) is intended to prevent an asset protection trust from being set aside with respect to a future creditor, if the trust was not established with the actual intent to defraud the creditor. Subsequently, there was a brief discussion relating to how this statute would affect a bankruptcy proceeding. It was also discussed that other proposed legislation might be available during the March meeting.

j. Unauthorized Practice of Law – Report of Committee. Mr. Gordon reported that there were three actions currently pending against Ralph Estep. These actions are (i) a contempt proceeding in the Supreme Court with respect to a cease and desist order allegedly

not being followed by Mr. Estep, (ii) a receiver's action and (iii) an action being brought by the Attorney General's Office. Subsequently, there was a discussion regarding Mr. Estep's current activities.

Mr. Gordon thanked the members of the Section who are assisting him with the receiver's action by representing clients who previously received services from Mr. Estep. In addition, Mr. Gordon was acknowledged for all of his hard work in handling the receiver action.

k. Family Law/Estates and Trusts Joint Committee – Report of Committee. Mr. Gordon reported that draft legislation is under consideration by the Committee.

3. Old Business.

a. Memorial for David J. Garrett. Mr. Weinig reported about the status of establishing a memorial for David J. Garrett. Subsequently, upon motion duly made and seconded, it was unanimously approved, subject to the approval of the Executive Committee, that the fundamentals seminar would be named after Mr. Garrett, and that a charitable donation, comprised of a portion of any excess funds available to the Section at the end of each year, would be made by the Section on an annual basis (and in an amount to be determined by the Section on an annual basis) in Mr. Garrett's name.

4. New Business.

a. Recent Developments. Mr. Sweeney reported that Fred Kreppel, an Estate Tax Agent for the Internal Revenue Service who had been assigned to this area, is on an extended leave of absence and his cases are being reassigned. Also, there was a brief discussion with regard to the practice of Section members relating to whether more than one original will is prepared, and regarding the photocopying of a will immediately after its execution.

b. Other New Business.

1. Nominating Committee. Mr. Weinig reported that for many years David Garrett had been the standing Chair of the Nominating Committee and that his death caused a vacancy in this position. It was noted that the By-Laws are silent with respect to this issue. Mr. Sweeney commented that in the past, the Nominating Committee was made up of the three most-recent past Chairs of the Section, with the past Chair whose term ended longest ago serving as the Nominating Committee Chair, which system allowed for continuity. Upon motion duly made and seconded, it was unanimously approved that the Nominating Committee henceforth will be comprised of the three most-recent past Chairs of the Section, with the past Chair whose term ended longest ago serving as the Nominating Committee Chair.

There being no further business, the meeting was adjourned at approximately 4:45 p.m.

Respectfully submitted,

Michael R. Stein, Secretary