

MINUTES
DSBA ESTATES AND TRUSTS SECTION
January 2, 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 North Orange Street, Nemours Building, 9th Floor, Wilmington, Delaware, 19801, on Tuesday, January 2, 2007 commencing at 3:30 p.m.

In attendance were: Gregory J. Weinig, Anne L. Stallman, Todd A. Flubacher, Richard J.A. Popper, Mary B. Hickok, Richard W. Nenno, Thomas P. Sweeney, Michael A. Friedberg, David N. Williams, Bruce Tigani, Charles J. Durante, T. Hunting Worth, Sheriden T. Black and Edward McNamara (by telephone).

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

1. Minutes. The minutes of the December 5, 2006 meeting were unanimously approved with one amendment to Section 4(a)(2) to add the name of Master Kim E. Ayvazian to this section of the minutes.

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. Greg Weinig reported that the Committee has scheduled a meeting the week of January 15th to revise the draft 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 Committee. Dick Nenno reported that the Committee will be meeting twice in January to review potential legislation.
- j. Unauthorized Practice of Law – Report of Committee. Mr. Weinig reported that Peter Gordon will be filing a report with the Court of Chancery regarding Mr. Estep's cases. A discussion ensued whether the Attorney General should be notified of this situation.

k. Family Law/Estates and Trusts Joint Committee – Report of Committee.

No report.

3. Old Business.

a. Fundamentals Seminar. The Fundamentals Seminar was held on December 13, 2006 and was attended by approximately 80 people. After a brief discussion, it was decided to schedule the next Seminar around the same time in December, 2007.

b. Accountings Filed with Register in Chancery. Tom Sweeney reported that he contacted Pat Randolph at Mr. Kiger's suggestion and received immediate results on the accountings that his firm had filed. Mr. Weinig reported that he had had a discussion with Ms. Randolph regarding the accountings and she indicated that they are trying to reduce the backlog. Her office is sending accountings filed in New Castle County to the Register offices in Kent County and Sussex County to help alleviate the backlog. Ms. Randolph also reported that they will be training more people in New Castle County to review accountings.

c. Memorial for David Garrett. Mr. Weinig reported that he was continuing to explore suggestions to honor Mr. Garrett. The current ideas are: (1) an annual fund with DVLS or the Combined Campaign for Justice; (2) renaming the Fundamentals Seminar in his honor; (3) doing both 1 & 2; or (4) making a donation to the United Way.

4. New Business.

a. Recent Developments. None.

b. Other New Business.

1. Mr. Sweeney reported that DSBA and the St. Thomas More Society will be sponsoring a CLE seminar titled "Enhanced Ethics and Delaware Practice". The seminar will be held on January 19th from 8:30 – 4:30 at the Doubletree Hotel in Wilmington. Registration is through the DSBA.

2. Todd Flubacher followed up on Will Lunger's comments at the December 2006 Section meeting regarding Masters signing petitions. Mr. Flubacher indicated that Master Ayvazian is in New Castle on Tuesdays and Thursdays to review and sign petitions. If a petition is needed to be signed in a rush a Vice Chancellor should be available on other days.

3. Mr. Weinig reported that Janice Myrick of the DSBA had received a telephone call from the Honorable Charles Keil, retired, who asked for list of the members of the Estates and Trusts Section to see who is still active. After a brief discussion it was decided to recommend that Judge Keil review the Section minutes that are public (on the Section website) to see who is active.

4. Mr. Weinig reviewed a letter that had been forward to him from Beverly Wik. The letter was from the Delaware Healthcare Facilities Association and

written to the Division of Medicaid. The letter discussed how joint property is allocated when applying for Medicaid. A copy of the letter is attached to these minutes and incorporated herein by reference.

There being no further business, the meeting was adjourned at 4:00 p.m.

Respectfully submitted,

Anne L. Stallman, Acting Secretary



Delaware Health Care Facilities Association

726 Loveville Road • Suite 3000
Hockessin, Delaware 19707-1536
(302) 235-6895 Fax (302) 235-6899
Email: waldrony@dhcfa.org
Web: www.dhcfa.org

November 20, 2006

Sharon L. Summers
Policy and Program Development Unit
Division of Medicaid and Medical Assistance (DMMA)
1901 North DuPont Highway, P.O. Box 906
New Castle, Delaware 19720-0906

Dear Ms. Summers:

I write on behalf of the Delaware Health Care Facilities Association and offer the following comments and questions with regard to the Public Notice announcing Proposed Changes to the Long Term Care Medicaid- Retirement Funds that appeared in the Delaware Register of Regulations on 11/1/2006.

First, we note that the changes being proposed to amend a rule in the Division of Social Services Manual (DSSM) used to determine eligibility for Medicaid do not appear to be related to the Deficit Reduction Act of 2005, and in fact no reference is made to the DRA in the summary of the proposed change. DHCFA writes seeking confirmation that our interpretation is correct.

Secondly, DHCFA would like to receive clarification on the following points:

- a) What defines a "certain pre-determined age? What age will you use to determine this change?
- b) What is the definition of an "ineligible spouse" Does this mean the community spouse?

Long Term Care Medicaid. This guidance is based on (1) Social Security Policy Brief No. 2006-01, dated March 2006 and, (2) POMS SI 01330.120.

Key points of amended DSSM 20330.4 include:

- **Defined Contribution Plans will be counted as a resource in the eligibility process.**

- **Defined Benefit Plans will be excluded as a resource until the recipient achieves a certain pre-determined age. At that point, the funds become a countable resource.**
- **Neither Defined Contribution nor Defined Benefit Plans owned by an ineligible spouse are a countable resource.**

Finally, due to the fact that the following, highlighted proposed changes, by DHSS/Division of Medicaid and Medical Assistance (DMMA) will affect hundreds of Delaware Citizens and Providers of Medicaid Services we believe that a Public Hearing should be held so that those who will be affected can be aware of these changes. At a minimum, we respectfully suggest/request that a roundtable discussion be held for all parties that submit comments and questions with the goal of avoiding future confusion, litigation, etc.

20330.2 Financial Institutions Accounts

Financial institution accounts which include savings accounts, checking accounts, certificates of deposit, etc., are an individual's resource if the individual owns the account and can use the funds for his or her support and maintenance. We determine whether an individual owns the account and can access the funds by looking at how the account is titled.

If an individual is designated as sole owner by the account title, all of the funds are that individual's resource unless legal restrictions preclude the owner from using the funds for his or her support and maintenance. We do not provide an opportunity for the owner of an individually-held account to rebut the presumption of 100% ownership.

If the account is in the name of a Medicaid applicant/recipient and another Medicaid applicant/recipient, assume all account funds belong to each individual in equal shares. If the account is in the name of a Medicaid applicant/recipient and another individual who is not applying for Medicaid or who is not a Medicaid recipient, then assume all of the funds belong to the Medicaid applicant/recipient.

Respectfully,

Yrene E. Waldron

Yrene E. Waldron, NHA
Executive Director

CC: Board of Directors
Harry Hill
Liza Zimmerman