

**MINUTES**  
**DSBA ESTATES AND TRUST SECTION**  
**MARCH 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, 9<sup>th</sup> Floor, Wilmington, Delaware, on Tuesday, March 6, 2007, commencing at 3:30 p.m.

In attendance were: Gregory J. Weinig, Michael R. Stein, John M. Amalfitano, F. Peter Conaty, Jr., Kathleen DeLacy, Julie M. Donoghue, Charles J. Durante, Todd A. Flubacher, Trisha W. Hall (via telephone), William H. Lunger, Edward R. McNamara (via telephone), Richard W. Nenno, Richard J. A. Popper, Thomas R. Pulsifer, Diane Clarke Streett, John M. Stull, Leonard S. Togman, Beverly S. Wik and Charles T. Williams, III.

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

1. Minutes. Subject to the correction of a typographical error, the minutes of the February 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. Mr. Weinig reported that there were no changes made to the proposed legislation that was circulated prior to the last meeting of the Section on February 6, 2007. Mr. Weinig asked if there were any comments to the proposed legislation, and there were none. Thereafter, upon motion duly made and seconded, the proposed legislation passed unanimously.

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 will be meeting again this month and may have proposed legislation to present during the April meeting.

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. Popper reiterated the purpose of the new proposed Section 3927 relating to fees for guardians, that was circulated prior to the last meeting of the Section on February 6, 2007. There being no further comments with regard

to the proposed legislation, upon motion duly made and seconded, the proposed legislation passed unanimously.

Thereafter, Mr. Nenno reiterated the purpose of the changes set forth in the proposed legislation concerning Sections 3303(a), 3536(c), 3541, 3543, 3549 and 3572(a), that was circulated prior to the last meeting of the Section on February 6, 2007. Mr. Nenno also explained that that the effective date of the proposed legislation would be August 1, 2007, and would apply to trusts whenever created. Thereafter, there was a brief discussion relating to the proposed legislation. Subsequently, upon motion duly made and seconded, the proposed legislation passed unanimously.

Mr. Nenno recommended that Mr. Weinig present all of the proposed legislation, as approved by the Section, to the Executive Committee, the Court of Chancery and the Bankers Association. Mr. Weinig stated that in light of other legislation that may be approved by the Section, he would contact the Executive Committee to determine if the proposed legislation should be on the March or April agenda for approval by the Executive Committee

Thereafter, Mr. Pulsifer 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. 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.

Mr. Nenno also reported that the Committee may present more proposed legislation in April.

j. Unauthorized Practice of Law – Report of Committee. Mr. Weinig reported that as a result of the contempt proceeding brought against Mr. Estep in the receiver action, Mr. Estep was removed as trustee of the trusts which he prepared for his former clients, and that Mr. Gordon was named as his successor. Ms. Hall stated that the Unauthorized Practice Section of the Delaware County Bar Association sent Mr. Estep a cease and desist letter. Mr. Weinig also reported that 74 of 284 of Mr. Estep's former clients are being serviced by new attorneys. Mr. Weinig commented that many *pro bono* hours have been given to Mr. Estep's estate planning "clients" by those volunteers who are on the rotating panel to provide assistance to such persons.

3. Old Business.

a. Memorial for David J. Garrett. Mr. Weinig reported that the Executive Committee generally approved the forms of memorial for Mr. Garrett, as approved by the Section during the meeting on February 6, 2007, but that the Executive Committee approval relating to the name of the Fundamentals Seminar may be subject to reconsideration.

4. New Business.

a. Recent Developments. Mr. Weinig reported that the County Council of New Castle County was going to entertain a proposal to raise probate fees from 1-1/4% to 1-3/4%. The proposal would be presented at a meeting scheduled to occur on March 13, 2007, and would be voted on at a meeting scheduled to take place March 27, 2007. Mr. Weinig also reported that Michael Strine was the person who should be contacted on behalf of the County Council with regard to the proposed increase.

Thereafter, there was a lengthy discussion regarding the proposed increase. Generally, it was discussed that the proposed increase could initiate many residents of New Castle County to cause their assets to be held in a non-probate vehicle, which may have the effect of reducing the overall amount of fees to be received by the County. In addition, the increase may have the effect of impacting only the estates of decedents who could not afford to implement appropriate estate planning which would have allowed them to avoid the fees. It was also discussed whether the Section should take a position on the proposed legislation, or at least send a letter to the County Council informing it of the potential effects of the increase. Subsequently, upon motion duly made and seconded, and by a vote of 11 to 7 (with 1 abstention), it was approved that Mr. Weinig, on behalf of the Section, should send a letter to Mr. Strine of the County Council explaining the potential effects of the proposed increase.

b. Other New Business. Mr. Weinig requested that any guests attending a Section meeting should let him know in advance of their attendance. Mr. Weinig also requested that if any guests would be attending more than one meeting, they should consider joining the Section.

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

Respectfully submitted,

Michael R. Stein, Secretary