

MINUTES
DSBA ESTATES AND TRUST SECTION
MAY 1, 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, May 1, 2007, commencing at 3:30 p.m.

In attendance were: Gregory J. Weinig, Anne L. Stallman, Michael R. Stein, Denise D. Nordheimer, Thomas A. Varley, Edward R. McNamara (via telephone), Dorothy K. Scarlett, Norris P. Wright, Jeffrey C. Wolken, Charles T. Williams, III, Miguel D. Pena, Richard J. A. Popper, William H. Lunger, George W. Kern, Scott Swenson, Joanna Reiver, John M. Amalfitano, and Sheriden T. Black.

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

1. Minutes. The minutes of the April 3, 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 the proposed legislation from this Committee, as well as from the Elective Share and Trust Act 2007 Committees, was sent to the Chancellor in mid-April with a request that any comments be provided by May 1, 2007, and that no comments had yet been received. Mr. Weinig also commented that the legislation would be presented to the DSBA Executive Committee on May 10, 2007.
 - c. Chancery Court Rules 117 and 132 – Report of Committee. No report.
 - d. Delaware Elective Share Statute – Report of Committee. See report for Section 529 Plan Committee.
 - e. Estate Administration Committee – Report of Committee. No report.
 - f. DSBA Technology Committee – Report of Committee. No report.
 - g. By-Laws – Report of Committee. Mr. Weinig reviewed the proposed amendments to the By-Laws that had been circulated to all Section members by the required ten-day period prior to the meeting. It was discussed that the By-Laws, as revised, are silent with regard to the amount of notice required with respect to voting upon any proposed legislation. It was noted that the general principle followed by the Section is to have proposed legislation presented and discussed at a monthly meeting of the Section, and then vote upon the proposed legislation at the next monthly meeting. Though there have been exceptions in the past due to time constraints and other circumstances, the Section reaffirmed the general

principle, while affirming that the revised By-Laws should continue to allow this flexibility. Upon motion duly made and seconded, the amendments to the By-laws passed unanimously.

Mr. Weinig stated that he would present the amended By-laws to the Executive Committee on May 10, 2007. Mr. Lunger thanked Mr. Weinig for his efforts in drafting the amendments to the By-Laws.

- h. Last Remains Statute – Report of Committee. No report.
- i. Trust Act 2007 – Report of Committee. See report for Section 529 Plan Committee.
- j. Unauthorized Practice of Law - Report of Committee. Mr. Varley reported that he understood that Mr. Estep would be discussed at the May 24, 2007 meeting of the Chester County Estate Planning Council.
- k. Family Law Estates and Joint Trust Committee – Report of Committee. No report.
- l. Power of Attorney/Health Care Directive Committee – Report of Committee. Mr. Pena reported that the Committee was going to meet on May 2, 2007.

3. Old Business.

- a. Mr. Weinig reported that the next meeting of the Section on June 5, 2007, would be a lunch meeting, which would occur at noon instead of 3:30.
- b. Mr. Weinig reported that the DSBA recently had purged its e-mail list of addresses so that it would match entirely the membership list of the Section. In case anyone's e-mail address was accidentally removed from the e-mail list during that process, he recommended that anyone who believed they were not receiving the appropriate e-mails contact Janice Myrick at DSBA to have the situation corrected.

4. New Business.

- a. Report of Nominating Committee. Mr. Lunger, Nominating Committee Chair, reported that the Nominating Committee met and unanimously nominated the following officers for the Section for 2007-2008: Chair: Anne Stallman, Vice-Chair: Michael R. Stein, Secretary: Neal J. Howard. It was discussed that that election of officers would take place during the June 5, 2007 meeting of the Section.

(Subsequent to the Section meeting on May 1, 2007, Mr. Howard informed the Nominating Committee that he would not be available to serve as Secretary. Thereafter, the Nominating Committee met on May 7, 2007 and unanimously nominated Miguel D. Pena to serve as Secretary. Mr. Pena has agreed to serve if elected. Thus, the slate of officers to be voted upon at the June 5, 2007 meeting is as follows: Chair: Anne Stallman, Vice-Chair: Michael R. Stein, Secretary: Miguel D. Pena.)

b. Recent Developments. Mr. Popper reported that in a recent opinion issued by the Court of Chancery, *In Re: Bernice T. Palecki*, 2007 WL 1229498, the Court discussed whether an unsigned document constituted a valid codicil to a will. In this matter, the decedent prepared a holographic will while a resident of New Jersey. The will provided that all of the decedent's assets would go to her sister. The contingent beneficiary was left blank. There was a separate sheet of paper, however, which named some of the decedent's siblings (all of whom predeceased the decedent), and some of the decedent's nieces and nephews, as the contingent beneficiaries. This sheet of paper, which the Court referred to as a codicil, was not signed. A motion for summary judgment was brought to uphold the codicil by a nephew named in the codicil. The motion was opposed by five other nieces and nephews who were not named in the codicil, but who stood to inherit a portion of the decedent's estate as intestate beneficiaries in the event that the codicil was not upheld. The Court of Chancery determined that the codicil was not valid under Delaware law, even though it may have been valid under New Jersey law.

As a result of this opinion, Mr. Popper suggested that the Section form a Committee to look at the statutes relating to the execution requirements for wills to determine if any amendment was necessary. Mr. Popper agreed to be the Chairperson of that Committee. Accordingly, the formation of the Committee was authorized. Any Section member who desires to be on the Committee should contact Mr. Popper.

c. Other New Business.

1. Mr. Weinig reported that the Bench & Bar Conference would be held on June 6, 2007, and he encouraged all Section members to attend.

2. Mr. Weinig reported that he was contacted by a representative from Brandywine Senior Transitions, LLC. The representative inquired if she could meet with the Section as a group. It was discussed that a group meeting would not be appropriate. Mr. Weinig offered to provide the information he received with regard to Brandywine Senior Transitions, LLC to any Section member upon request.

There being no further business, the meeting ended approximately 4:05 p.m.

Respectfully submitted,

Michael R. Stein, Secretary