

MINUTES
DSBA ESTATES AND TRUSTS SECTION
SEPTEMBER 5, 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 Wednesday, September 5, 2007, commencing at 3:30 p.m.

In attendance were: John M. Amalfitano, Sheriden T. Black, Mary Elizabeth M. Browder, Noel C. Burnham, F. Peter Conaty, Charles J. Durante, Todd A. Flubacher, Kimberly M. Gill, Peter S. Gordon, Neal J. Howard, Richard C. Kiger, William H. Lunger, Richard W. Nenko, Miguel D. Pena, Thomas R. Pulsifer, Joanna Reiver, G. Michael Richwine, W. Donald Sparks, II, Anne L. Stallman, Michael R. Stein, Diane Clarke Streett, Thomas P. Sweeney, Scott E. Swenson, Vincent Thomas, Bruce W. Tigani, Leonard S. Togman, Gregory J. Weinig, David Williams, John Williams, Jeffrey C. Wolken and Norris P. Wright.

Anne L. Stallman, Chair, called the meeting to order.

1. Approval of Minutes. Upon motion duly made and seconded, the minutes of the June 5, 2007 meeting were unanimously approved.
2. Committee Reports
 - a. Uniform Principal and Income Act – Report of Committee. Mr. Wright reported that the Committee, consisting of Mr. Wright, Mr. Stein and Richard G. Bacon would be reconstituted and that a report would be submitted at a later date.
 - b. Section 529 Plans – Report of Committee. Mr. Gordon reported that the legislation regarding which the Committee had been formed had been passed by the legislature, therefore the purpose of the Committee had been fulfilled and that the Committee would be decommissioned.
 - 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 legislation regarding which the Committee had been formed had passed by the legislature, therefore the purpose of the Committee had been fulfilled and that the Committee would be decommissioned.
 - e. Estate Administration Committee – Report of Committee. Mr. Kiger reported that a report would be submitted at a later date.
 - f. DSBA Technology Committee – Report of Committee. No report.

g. By-laws Committee – Report of Committee. Ms. Stallman reported that new by-laws had been approved last year and therefore the purpose of the Committee had been fulfilled and that the Committee would be decommissioned.

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

i. Trust Act 2007 – Report of Committee. Mr. Nenno reported that he is in the process of forming the Trust Act 2008 Committee. Mr. Nenno also reported that the Trust Act 2008 Committee will review the proposed Uniform Power of Attorney Act in addition to its traditional duties.

j. Unauthorized Practice of Law – Report of Committee. Mr. Gordon reported on recent developments regarding the matter of Ralph V. Estep, including the recent decision issued by the Supreme Court of the State of Delaware; In the Matter of: Ralph V. Estep, No 647-2006, (August 15, 2007), in which the Court found Mr. Estep to be in contempt of a previous cease and desist order, and imposed monetary sanctions against Mr. Estep in excess of \$35,000. Mr. Gordon noted that in its decision, the Court did not define what constitutes the “unauthorized practice of law.”

k. Family Law/Estates and Trust Joint Committee – Report of Committee. Mr. Gordon reported that a report will be submitted at a later date.

l. Power of Attorney/Health Care Directive Committee – Report of Committee. Mr. Pena reported that a report would be submitted at a later date.

m. Will Formalities Committee – Report of Committee. No report.

3. Old Business. Ms. Stallman reported that S.B. 139, the Uniform Prudent Management of Funds Act (“UPMFA”), had been passed by the State legislature. The bill amended Chapter 47 of Title 12. Ms. Stallman noted that UPMFA applies only to assets being managed by a charitable organization such as the Delaware Community Foundation, and not generally to trusts. Mr. Flubacher noted that UPMFA has been met with general approval by charitable organizations. Mr. Flubacher further noted that the provisions of UPMFA would apply in the case of a trust of which a charitable organization is serving as trustee of a trust.

4. New Business.

a. Recent Developments. See report of the Unauthorized Practice of Law Committee.

b. Other New Business.

(i) Letter in Response to IR-2007-127. Mr. Pulsifer circulated among the Section an updated draft of a letter to the Internal Revenue Service submitting comments on behalf of the Section, the Delaware State Bar Association, the Delaware Bankers Association,

the Chicago Bar Association, the New York Bar Association and the American Bar Association in response to IR-2007-127, in which the Service requested comments on a series of private letter rulings (the "Distribution Committee PLRs") relating to the gift tax treatment of distribution from trusts employing distribution committees. Mr. Pulsifer explained that the Distribution Committee PLRs generally conclude that distributions from trusts which employ distribution committees would not be considered to be taxable gifts by the individual distribution committee members, and that the letter was being submitted to the Service in support of this conclusion.

Mr. Pulsifer indicated that the comments were due to the Service by early October and requested that the Section approve the letter at the meeting so that it could be submitted to the Executive Committee of the Delaware State Bar Association at its meeting on Monday, September 10, 2007.

The final paragraph of page 3 of the draft letter contains a request to the Service that if the Service changes its current position (as evidenced by the Distribution Committee PLRs) regarding the gift tax treatment of distributions from trusts employing distribution committees, that the Service announce that its new position will apply only to trusts created after the publication of IR-2007-127.

Mr. Togman suggested that the final paragraph of page 3 of the draft letter be revised to request that in the event the Service changes its current position, that its new position will apply only to trusts created after such change in position becomes effective.

Mr. Pulsifer noted that the organizations named in the second paragraph of the first page of the draft letter (Delaware State Bar Association, the Delaware Bankers Association, the Chicago Bar Association, the New York Bar Association and the American Bar Association) may change, and that perhaps the American College of Trust and Estate Counsel may also agree to support the comments set forth in the letter.

Following discussion by the Section members, motion was duly made, seconded and unanimously passed to authorize the letter to be submitted to the Service on behalf of the Section, subject to the aforementioned comments by Mr. Togman and Mr. Pulsifer.

(ii) Uniform Estate Tax Apportionment Act. Mr. Nenno called the Section's attention to the proposed Uniform Estate Tax Apportionment Act and suggested that a committee be formed to review this act. Mr. Durante, Ms. Reiver and Mr. Sweeney agreed to serve as members of the Uniform Estate Tax Apportionment Act Committee.

(iii) Checklist of Procedures for Petitions on Consent. Mr. Gordon alerted the Section to new procedures and a checklist issued by the Court of Chancery for consent petitions relating to trust matters.

(iv) Fundamentals Program. Following inquiry from the Section, Ms. Stallman indicated that the Fundamentals Program is currently scheduled for December 13, 2007.

5. Adjournment. There being no further business, the meeting adjourned at approximately 4:35 p.m.

Respectfully submitted,

Miguel D. Pena, Secretary