

MINUTES

DSBA ESTATES AND TRUSTS SECTION MEETING

November 7, 2017

In accordance with notice duly given, a meeting of the Estates and Trusts Section of the Delaware State Bar Association was held on November 7, 2017, beginning at 3:30 p.m. at the offices of Bessemer Trust Company of Delaware, N.A., 1007 N. Orange Street, Suite 1450, Wilmington, Delaware 19801.

In attendance were: Mark E. Doyle, Elizabeth W. King, James J. Gallagher, J. Zachary Haupt, Richard J. A. Popper, and Jeff Wolken.

In attendance via conference call were: Jocelyn Margolin Borowsky, Kristin C. Collison, Mark M. Dalle Pазze, Matthew P. D'Emilio, Michael A. Friedberg, Peter S. Gordon, Mary B. Hickok, William M. Kelleher, Darlene M. Marchesani, Joseph L. Melican, Harold W.T. Purnell, W. Donald Sparks, Vincent C. Thomas, and Elizabeth Verney Vannote.

Mark E. Doyle, Chair, called the meeting to order.

1. Minutes. Upon motion duly made and seconded, the minutes of the meeting of October 3, 2017 were unanimously approved.
2. Committee Reports and Activity.
 - a. Estate Administration Committee – Report of Committee. Mr. Doyle reported that Alex J. Mili contacted him to let him know that the Committee has no report this month.
 - b. Trust Act Committee – Report of Committee. On behalf of the Committee, Mr. Sparks reported that the Committee has prepared and circulated among its members a first draft of the 2018 Trust Act. Mr. Doyle reported that Richard Nenno sent him an email noting that the Committee's next meeting will be November 28, and Section members with ideas for Trust Act 2018 should contact Mr. Nenno, Ms. Borowsky, or another Committee member.
 - c. CLE Committee – Report of Committee. Mr. Doyle reported that Scott Swenson contacted him to let him know that the Committee has no report this month.
 - d. Notice Committee – Report of Committee. On behalf of the Committee, Ms. Borowsky reported that Vince Thomas will be succeeding her as the chair of the Committee.
 - e. Access to Digital Assets Committee – Report of Committee. No report.
 - f. Publications Committee – Report of Committee. No report.

- g. Power of Attorney/Health Care Directive Committee – Report of Committee. No report.
- h. Trust Accountings Committee – Report of Committee. No report.
- i. Guardianship Committee – Report of Committee. On behalf of the Committee, Mr. Purnell reported that the Committee has coordinated with the Court of Chancery’s Guardianship Rules Committee with regard to the draft legislation regarding guardianships that was considered by the Section earlier this year. The two committees are planning a working meeting, tentatively scheduled for November 29, to discuss the draft legislation.
- j. Trust Litigation Committee – Report of Committee. On behalf of the Committee, Mr. Kelleher stated that there was no report this month. Mr. Kelleher did issue a standing offer for any Section member interested in presenting a recent case for discussion to contact him, as that person is welcome to “take the floor” for a portion of the Committee’s report in a future month.
- k. Electronic Wills and Trusts Committee – Report of Committee. On behalf of the Committee, Mr. Haupt reported that the Committee had an initial meeting and is dividing the labor on a review of guidance on this issue. Any Section members interested in joining the Committee should contact Mr. Haupt at 302-351-9424 or zhaupt@mnat.com.

3. Old Business.

- a. Draft Guardianship Legislation. Mr. Doyle reported that the Section will table any further action on the draft legislation, pending a report on the meeting of the Guardianship Committee and the Court of Chancery’s Guardianship Rules Committee as described above and the completion of any action that is pursued by those committees following the meeting.

4. New Business.

- a. Uniform Laws Feedback.
 - i. Substitute Decision-Making Documents. No Section members submitted any feedback regarding the Uniform Recognition of Substitute Decision-Making Documents Act.
 - ii. Powers of Appointment. Mr. Doyle reported that Richard Nenno sent him an email in response to the solicitation for comments regarding the Uniform Powers of Appointment Act. Mr. Nenno stated that Chapter 5 of Title 25 of the Delaware Code has been reviewed periodically over the years in light of changes that have been made to the Uniform Power of Appointment Act; therefore no additional review is needed at this time.

- iii. Directed Trusts. Mr. Doyle reported that Richard Nenno sent him an email in response to the solicitation for comments regarding the Uniform Directed Trust Act. Mr. Nenno noted that he, Peter Gordon, and Todd Flubacher frequently attended meetings of the ULC committee in charge of this Act, and none of them felt that Delaware should adopt this Act. Mr. Gordon mentioned a few items in this Act that he thinks could be considered in future Trust Acts – e.g., making it express that directors and advisors, upon their appointment, submit to Delaware jurisdiction solely for trust matters. But Mr. Gordon agreed with Mr. Nenno, stating that his experience has been that Section members who were well-versed with this Act were not interested in adopting it in Delaware.

- b. Open Topics. Mr. Doyle reminded the Section members that the Section was a co-sponsor of the Delaware Tax Institute, scheduled for Friday, December 1 at Widener Law School. Further information regarding the Delaware Tax Institute was attached to the agenda circulated for the November Section meeting.

Mr. Doyle also reported that he was contacted by Kristine Vavala, Chief Deputy of the Sussex County Register of Wills. Ms. Vavala reported that the Register is still experiencing issues with practitioners getting accustomed to electronic filing. Despite electronic filing to open an estate, practitioners still need to follow up by submitting all original estate documents directly to the Register. Until original documents are submitted, the Register will not formally open an estate.

There being no further business to come before the meeting, the meeting was adjourned at 3:45 p.m. The next meeting of the Section is scheduled for Tuesday, December 5, 2017, 3:30 p.m., at the offices of Bessemer Trust Company of Delaware, N.A., 1007 N. Orange Street, Suite 1450, Wilmington, Delaware 19801.

Respectfully submitted,

James J. Gallagher, Secretary