

## MINUTES - ANNOTATED

### DSBA ESTATES AND TRUSTS SECTION MEETING

September 11, 2018

In accordance with notice duly given, a meeting of the Estates and Trusts Section of the Delaware State Bar Association was held on September 11, 2018, beginning at 3:30 p.m. at the offices of Young Conaway Stargatt & Taylor, LLP, located in Rodney Square at 1000 North King Street, Wilmington, DE 19801.

In attendance were: David A. Diamond, James J. Gallagher, Trisha W. Hall, J. Zachary Haupt, Elizabeth W. King, Kimberly G. McKinnon, Alex J. Mili, Jennifer E. Smith, Vincent C. Thomas, Gregory J. Weinig, and Michael Neri

In attendance via conference call were: Lydia E. York, Michael A. Friedberg, John L. Williams, Harold W. T. Purnell, II, Robert M. Kleiner, Steven E. Kleiner, and David J. Ferry, Jr.

Elizabeth W. King, Chair, called the meeting to order.

1. Minutes. Upon motion duly made and seconded, the minutes of the meeting of June 5, 2018 were unanimously approved.
2. Committee Reports and Activity.
  - a. Estate Administration Committee – Report of Committee. On behalf of the Committee, Mr. Mili presented a proposed bill to establish a process by which a person can enter a safe deposit box for the sole purpose of obtaining the original Will of a decedent and/or a declaration of last remains. The prior version of the bill that had been emailed to the Section did not include provisions for a declaration of last remains. Mr. Mili circulated a memorandum summarizing the provisions of the bill and providing contextual background. The Section discussed this potential legislation, including whether documents in lieu of a death certification should be allowed and whether there should be a more neutral person required to transfer the original Will from the bank to the Register of Wills. The proposed legislation has been vetted and approved by the Estate Administration Committee. Mr. Mili reviewed the bill with several bank general counsels, but has not yet taken it to the DBA. Mr. Mili requests that members review the bill and direct comments to him.
  - b. Trust Act Committee – Report of Committee. On behalf of the Committee, Mr. Weinig reported that the Committee will accelerate its meeting schedule with the goal of having the Section vet a draft of the 2019 Trust Act at the January meeting instead of February. All members of the Section are encouraged to send suggestions for the new Trust Act to a member of the Committee.

- c. CLE Committee – Report of Committee. On behalf of the Committee, Ms. Hall and Mr. Mili reported that a fundamentals CLE is scheduled to be held at the DSBA on October 17, with last year’s presenters returning.
- d. Notice Committee – Report of Committee. On behalf of the Committee, Mr. Thomas reported that the Committee held a meeting in the spring and is planning to meet in October with the goal of having a draft bill next year.
- e. Access to Digital Assets Committee – Report of Committee. On behalf of the Committee, Ms. Hall reported that there was no report this month.
- 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 stated that there was no report this month.
- j. Trust Litigation Committee – Report of Committee. No report.
- k. Electronic Wills and Trusts Committee – Report of Committee. On behalf of the Committee, Mr. Haupt reported that the Uniform Law Commission (ULC) circulated its draft of a uniform act in June which was then emailed to the Section. The Committee reviewed the ULC draft at its meeting in July. The Committee determined not to include the ability for wills to be witnessed and notarized remotely because of a perceived lack of demand, on the one hand, and the potential for issues, on the other. The Committee has decided to focus its efforts on two primary areas: (1) how an electronic will would be registered with the Register of Wills, and (2) how would an electronic will signed in another state be validated in Delaware if it doesn’t meet Delaware’s execution requirements. The Committee will meet again in the next month or so. All Section members are encouraged to send comments to Mr. Haupt.

### 3. Old Business

- a. Trust Act 2018. Ms. King reported that Trust Act 2018 was signed by the Governor in July.

### 4. New Business.

- a. Revocation upon divorce statute. Ms. McKinnon reported on a recent U.S. Supreme Court decision which upheld a Minnesota’s court’s ruling that its statute automatically revoking a beneficiary designation on a life insurance policy due to divorce could be applied retroactively (in a case involving a divorce that predated the statute’s enactment). While Delaware has a

similar statute for wills and last remains, Delaware does not have one governing non-probate assets. Ms. McKinnon will contact the Family Law section to determine whether legislation should be pursued. Mr. Ferry will assist, and would be willing to serve on a Committee if one is formed.

- b. Guardianship statute. Mr. Ferry discussed new Chancery Court rules that allow for the possibility of a limited guardianship. Legislation for limited guardianships should now be proposed. (A limited guardianship would be used in specific situations, for example, when a person needs to apply for Medicaid or transfer from a hospital to a residential facility, but otherwise has no assets warranting a full guardianship.) Mr. Purcell noted that the Section has a Guardianship Committee, as does the Elder Law Section. After a discussion, a motion was made and seconded to form a joint Committee with the Elder Law Section, contingent on the Elder Law Section approving same.
- c. No other new business was presented for discussion.

There being no further business to come before the meeting, the meeting was adjourned at 4:12 p.m. The next meeting of the Section will be held on October 2, 2018, at 3:30 p.m. at the offices of Young Conaway Stargatt & Taylor, LLP, located in Rodney Square at 1000 North King Street, Wilmington, DE 19801.

Additional details will be circulated on the Section listserv as the meeting date approaches.

Respectfully submitted,

Trisha W. Hall, Secretary