

## MINUTES

### DSBA ESTATES AND TRUSTS SECTION MEETING

December 5, 2017

In accordance with notice duly given, a meeting of the Estates and Trusts Section of the Delaware State Bar Association was held on December 5, 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, James J. Gallagher, Jocelyn Margolin Borowsky, William H. Lunger, and Jeremy Riley.

In attendance via conference call were: Mark M. Dalle Pазze, Michael A. Friedberg, William M. Kelleher, Robert M. Kleiner, Steven E. Kleiner, Alexander Lyden-Horn, Michael R. Stein, Richard W. Nenno, Denise D. Nordheimer, Harold W.T. Purnell, W. Donald Sparks, Bruce W. Tigani, Beverly J. Wik, and Lydia E. York.

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

1. Minutes. Upon motion duly made and seconded, the minutes of the meeting of November 7, 2017 were unanimously approved.
2. Committee Reports and Activity.
  - a. Estate Administration Committee – Report of Committee. No report.
  - b. Trust Act Committee – Report of Committee. On behalf of the Committee, Mr. Nenno reported that the Committee met in the last week of November and has compiled ideas to be implemented in the draft 2018 bill. There will be two subsequent meetings in January with the goal of presenting the draft bill to the Section at the February meeting, with the full Section voting on the bill at its March meeting.
  - c. CLE Committee – Report of Committee. Mr. Doyle reported that Scott Swenson contacted him to let him know that the Committee is preparing a program for the spring. The topic is “Fiduciary Litigation Update,” and the Committee is working jointly with the Fiduciary Litigation Committee to prepare the agenda. Any members interested in participating in the CLE should contact either Mr. Swenson or Mr. Doyle.
  - d. Notice Committee – Report of Committee. No report.
  - 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. On behalf of the Committee, Mr. Lunger reported that the Committee is confirming its membership roll and planning to meet in the coming months with representatives from the Attorney General’s office to assess what future projects should be undertaken.
- i. Guardianship Committee – Report of Committee. On behalf of the Committee, Mr. Purnell reported that there was a formal meeting with the Court of Chancery’s Guardianship Rules Committee held on November 29. The two committees met to reconcile their respective draft bills regarding guardianships. The Committee is receptive to adding a provision governing the creation of investment management trusts by guardians and has reviewed a Texas statute for guidance on this issue. The Committee has had some discussion on the investment management trust authorization language in the Court committee’s bill and is contemplating alternatives. The Committee’s goal is to have a revised draft bill that addresses the Court committee’s comments presented to the full Section at the January meeting.
- j. Trust Litigation Committee – Report of Committee. On behalf of the Committee, Mr. Kelleher provided a report on the Douglas du Pont v. Wilmington Trust Company opinion. In this action, a trust beneficiary petitioned the Court of Chancery for the removal of a corporate trustee, as the terms of the trust instrument did not clearly provide for fiduciary removal and replacement. The Court granted the corporate trustee’s motion to dismiss, finding insufficient cause for removal under section 3327(3). Mr. Kelleher stated that this decision has not, to the Committee’s knowledge, been appealed by the petitioner.
- k. Electronic Wills and Trusts Committee – Report of Committee. Mr. Doyle reported that Zachary Haupt contacted him to report that the Committee is up to five members and is compiling member comments in order to consider its future course of action.

3. Old Business.

- a. Uniform Laws Feedback. Mr. Doyle reminded Section members that the November meeting notice included copies of the Uniform Law Commission draft acts regarding (i) Recognition of Substitute Decision-Making Documents; (ii) Powers of Appointment; and (iii) Directed Trusts. Mr. Doyle is collecting Section comments on the desirability of Delaware adopting the provisions included in these uniform acts, including those comments that were discussed at the November meeting. Section members are encouraged to submit further comments to Mr. Doyle.

4. New Business. No new business was discussed.

There being no further business to come before the meeting, the meeting was adjourned at 3:40 p.m. The next meeting of the Section is scheduled for Tuesday, January 2, 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