

## MINUTES - ANNOTATED

### DSBA ESTATES AND TRUSTS SECTION MEETING

October 2, 2018

In accordance with notice duly given, a meeting of the Estates and Trusts Section of the Delaware State Bar Association was held on October 2, 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: Jocelyn Margolin Borowsky, James J. Gallagher, Elizabeth W. King, Alex J. Mili, and Richard J.A. Popper.

In attendance via conference call were: Barbara Snapp Danberg, Mark Edward Doyle, David J. Ferry, Jr., Mary B. Hickok, William M. Kelleher, Robert M. Kleiner, Steven E. Kleiner, Darlene M. Marchesani, Richard W. Nenno, Miguel D. Pena, Steven Schwarz, W. Donald Sparks, and Scott E. Swenson.

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

1. Minutes. Upon motion duly made and seconded, the minutes of the meeting of September 11, 2018 were unanimously approved.
2. Committee Reports and Activity.
  - a. Estate Administration Committee – Report of Committee. On behalf of the Committee, Mr. Mili discussed the revised draft bill for access to safe deposit boxes. The four changes made to the draft bill that was reviewed at the September meeting were as follows: (i) two deletions of redundant provisions; (ii) adding an option to obtain access to a box by showing “other satisfactory proof” if a death certificate is not available; (iii) providing that the financial institution, not the accessor, submit any will held in the box to the Register of Wills; and (iv) restricting the submission obligation described in item (iii) to only cases in which the decedent is Delaware domiciled. Mr. Mili expressed concern that the banks would ask for item (iii) to be removed but thought that the requirement to leave a copy of the will in the box would provide a positive safeguard to protect against the destruction or loss of the will. Mr. Mili will send the current draft bill to the Delaware Bankers Association to determine if the group has any concerns or suggested revisions. Barring a delay caused by this process, the bill will be submitted for vote at the November Section meeting.
  - b. Trust Act Committee – Report of Committee. On behalf of the Committee, Ms. Borowsky reported that the Committee has already held two meetings as part of its accelerated schedule for Trust Act 2019. Section members are encouraged to send suggestions for the new Trust Act to Ms. Borowsky,

Gregory J. Weinig, or another member of the Committee as soon as possible.

- c. CLE Committee – Report of Committee. On behalf of the Committee, Mr. Swenson reported that the CLE program on Fundamentals of Will Drafting and Estate Administration would be held at the DSBA on October 17, with the same presenters and agenda from the Spring 2017 presentation.
- d. Notice Committee – Report of Committee. Ms. King stated that Vincent C. Thomas contacted her to report that the Committee is planning an October 8 meeting to discuss possible legislative changes.
- 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 Mr. Lungler and the rest of the Committee, Mr. Popper reported that the Committee members have been working to determine a time for their next meeting.
- i. Guardianship Committee – Report of Committee. No report.
- j. Trust Litigation Committee – Report of Committee. On behalf of the Committee, Mr. Kelleher discussed a blog post he authored regarding In re Trust FBO Samuel Frances DuPont, in which the Court found that a power holder’s agreement to exercise a testamentary power of appointment was not legally binding. Mr. Kelleher also mentioned that the Committee would be presenting at the Delaware Trust Conference and is considering expanding this presentation into a mock trial CLE.
- k. Electronic Wills and Trusts Committee – Report of Committee. Ms. King stated that J. Zachary Haupt contacted her to report that the Committee will meet later in October, and a synopsis of the Committee meeting will be provided to the full Section at the November meeting.

### 3. Old Business

- a. Revocation Upon Divorce Statute. Mr. Ferry reported that he will contact Kimberly Gill McKinnon to follow up on the discussion at the September Section meeting regarding draft legislation that will automatically revoke a spousal beneficiary designation on a life insurance policy upon divorce.
- b. Limited Guardianship Statute. Ms. King reported that she spoke with representatives of the Elder Law Section regarding the formation of a joint committee to work on limited guardianship legislation. Mr. Robert Kleiner

stated that he is serving as the Chair of the Elder Law Section this year, and that Section did approve proceeding on this joint committee project. Mr. Ferry and Mr. Sparks and the rest of the Guardianship Committee will work with the Elder Law Section on this legislation.

4. New Business. Mr. Popper discussed a problem that occurred in obtaining a closing letter from the Internal Revenue Service. A first request letter went unanswered, and in response to the second request the Service sent a letter to the client only stating that no Form 2848 was on file to allow them to process the closing letter request. Upon reviewing the Form 706 instructions, Mr. Popper noted that there was a change such that filing the 706 alone no longer made the preparer an authorized representative for these purposes, and a separate Form 2848 is now required. Ms. Danberg stated that she has seen the same result on recent matters, also noting that the check box used on the Form 706 was only valid for one year from filing anyway.

There being no further business to come before the meeting, the meeting was adjourned at 4:00 p.m. The next meeting of the Section will be held on November 13, 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. Ms. King pointed out that the next meeting will fall on the second Tuesday of the month, as the first Tuesday is Election Day.

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

Respectfully submitted,

James J. Gallagher, Vice Chair