

MINUTES

DSBA ESTATES AND TRUSTS SECTION MEETING

September 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 September 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, Mark M. Dalle Pазze, Trisha Williams Hall, W. Donald Sparks, Bruce W. Tigani, and Gregory J. Weinig, and associate member Sue D. Lomas

In attendance via conference call were: Valerie M. Carr, David J. Ferry, Michael A. Friedberg, J. Zachary Haupt, William M. Kelleher, Richard W. Nenno, Harold W.T. Purnell, Thomas A. Uebler, and John L. Williams.

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

1. Minutes. Upon motion duly made and seconded, the minutes of the meeting of June 6, 2017 were unanimously approved.
2. Committee Reports and Activity.
 - a. Estate Administration Committee – Report of Committee. Mr. Doyle reported that, on behalf of the Committee, Alex Mili sent an email notifying the Section that the Committee will hold a September meeting and hopes to have a substantive report at the October meeting. One item on the Committee’s agenda is an amendment to Section 2304 of Title 12, as described in Section 3 below.
 - b. Trust Act Committee – Report of Committee. On behalf of the Committee, Mr. Nenno reported that the Committee met in the last week of August. Richard Bacon, Neal Howard, Leonard Togman, and Norris Wright have stepped down from the Committee, and the Section thanked them for their efforts over the years. Jocelyn Borowsky will be the new Chair of the Committee, and Mr. Weinig will be the new “chief scrivener,” handling the preparation of draft legislation for future Trust Acts and reporting to the Section on the nature of proposed amendments. Section members with ideas for Trust Act 2018 should contact Mr. Nenno or another Committee member.
 - c. CLE Committee – Report of Committee. Mr. Doyle reported that, on behalf of the Committee, Scott Swenson sent an email notifying the Section that the Committee hopes to have a substantive report at the October meeting.

- d. Notice Committee – Report of Committee. Mr. Doyle reported that, on behalf of the Committee, Ms. Borowsky sent an email notifying the Section that the Committee is looking to schedule an upcoming meeting to discuss items that remain open from spring.
- e. Access to Digital Assets Committee – Report of Committee. Ms. Hall reported that the Committee will continue to monitor progress on the General Assembly’s consideration of the Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA).
- f. Publications Committee – Report of Committee. No report.
- g. Power of Attorney/Health Care Directive Committee – Report of Committee. Mr. Doyle reported that, on behalf of the Committee, Kristen Bennett sent an email recommending that the Section consider supporting adoption of the Supported Decision-Making draft legislation (Title 16, chapter 94A). This draft legislation allows for an adult to appoint an individual to have access to his or her health care information without conveying decision-making authority as well.
- 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 Elder Law Section approved draft legislation regarding guardianship matters and has submitted the draft legislation to the Executive Committee. The draft legislation was discussed by the Estates and Trusts Section at a previous meeting, and differences of opinion among members led the Section to take no position. The Committee recommends that the Section reconsider the draft legislation as approved, and Mr. Doyle stated that the Section will reconsider the draft legislation at the October meeting.
- j. Trust Litigation Committee – Report of Committee. Mr. Kelleher reported that the Committee is off to a strong start, and he has received emails from over 20 Section members expressing interest. The Committee will work to collect cases, concerns, and impressions of Section members who are active in trust and estate litigation matters.

An initial concern that has already been explored by the Committee was the potential for modifications to the Chancery Rule 144 for Master cases that would streamline the reporting process. The current procedure calls for up to three reports to be issued in order to produce a final decision of the Court. Some Committee members report that clients find this procedure costly, also burdensome as it increases the opportunities for exception and appeal. Mr. Kelleher has spoken with the Court informally in an attempt to find solutions. He reports that the Court feels that Masters – who are not Constitutionally appointed judges – should be subject to heightened

oversight, and the multiple report requirement provides for corrections to be made in a timely fashion, leading to a cleaner final report. Mr. Weinig pointed out that the parties may enter a stipulation to bypass certain of these reports, and Mr. Kelleher reported that the Court also recommended this approach be used where appropriate. Other practitioners reported that they would favor checking the box on the case memo to request a case not be assigned to a Master, although this selection is merely precatory and not always followed barring good reason. It was the experience of Section members that reduction of party costs is not usually deemed by the Court to constitute good reason for this purpose. Mr. Ferry reported that he is aware that the Rules Committee of the Court is reviewing this procedure as well and is working on a letter to Master Zurn on the topic.

Mr. Kelleher mentioned that this discussion provides a fine example of the type of brainstorming that the Committee should encourage. Section members were encouraged to provide additional suggestions and concerns relating to litigation matters to Mr. Kelleher.

3. Old Business.

- a. Trust Act 2017 – Mr. Doyle reported that Governor Carney signed both House Bill 169 (Trust Act 2017) and House Bill 154 (amendment of nonclaim statute) into law on August 30.
- b. Proposed Amendment to 12 Del. C. § 2304 – In light of the repeal of the Delaware estate tax, the Estate Administration Committee will be overseeing draft legislation to clean up a reference to the “no estate tax” affidavit. The legislation will add a subsection (c), stating that the other subsections of the statute will not apply to the estates of decedents dying after December 31, 2017.

4. New Business.

- a. Delaware Wills for Heroes Program – October 13, 2017 – Mr. Doyle reported that he was contacted by Mary Scanlon of Ballard Spahr, who is arranging the next Wills for Heroes program. This fall’s program is for first responders and was motivated by the memory of Stephen Ballard, whose widow is an attorney. The event will take place at Troop 2 Barracks in Newark. In addition to volunteers needed to attend the event, Ms. Scanlon will need four attorneys with will drafting experience to assist, including providing direction to volunteers even if they are unavailable to attend on the 13th. Interested Section members should contact Ms. Scanlon at 215-864-8912 or Mr. Doyle.
- b. Delaware Tax Institute – Friday, December 1, 2017 – Mr. Doyle reminded the Section members of the date and time of this year’s Delaware Tax Institute.

There being no further business to come before the meeting, the meeting was adjourned at 3:55 p.m. The next meeting of the Section is scheduled for Tuesday, October 3, 2017, 3:30 p.m., at the offices of Bessemer Trust Company of Delaware, N.A.

Respectfully submitted,

James J. Gallagher, Secretary