

MINUTES OF THE **AUGUST 11, 2010** MEETING OF THE
MD STATE BAR ASSOCIATION ESTATE AND TRUST LAW SECTION COUNCIL

Pursuant to notice, the Section Council met on Wednesday, August 11, 2010 at the offices of DLA Piper, Mount Washington, Maryland. The following Section Council members were present: Matthew Mace (Chair), Sharon Ritter (Chair Elect), Eileen O'Brien (Secretary), Lynn Sassin (Past-Chair, nonvoting), Bill Sauser, Jon Eisner, David Dembert, Brian Della Rocca, and Danielle Cruttenden.

The following Section Council members attended by conference call: Natalie Sherman, Anne Covington, Frank Baldino, Debbie Cohn, Ed Fee (Past-Chair, non-voting), Jack Edgar (Past-Chair, voting), and Bob Young (Past-Chair, non-voting).

The following Section Council members had excused absences: Mary Beth Beattie and Agnes Powell.

The meeting was called to order by Matthew Mace, Chair.

I. Minutes of Prior Meetings

A. Minutes of the June and July meetings were approved and will be posted on the Section Council website.

II. Report of the Chair: Matthew's comments were primarily reserved for discussion during the review of proposed legislation, though he noted the fact that as the result of certain problems with the listserv, Ed Fee has not been receiving meeting notices. Whether any other past Chairs have been dropped will be explored.

III. Standing Committee Reports

A. Liaison with the Register of Wills and Orphans' Court Judges.

Matthew reported that he had been contacted by Richard Montgomery, inquiring about what the Section Council had done or would be willing to do to support Baltimore City's desire for effecting the legislation requiring Judges of the Baltimore City Orphans' Court to be members of the Bar. Matthew commented that the Section Council had testified in favor of the legislation, which will need to be approved as a Constitutional Amendment. The legislation was passed by both Houses and as a procedural matter, will be placed on the ballot in November. It was concluded that the Section Council can support and testify about such legislation but cannot do much more. It also was noted that the proposed amendment will appear on the state-wide ballot, even though the current issue only effects the Orphan's Court for Baltimore City.

It was noted that Prince George's County also wishes to follow the lead of Baltimore City in requiring Orphan's Court Judges to be attorneys.

It was also noted that Karen Friedman was appointed to the District Court for Baltimore City at the end of July, resulting in a vacancy on the Orphans' Court for Baltimore City. Jon Eisner will follow up with Allan Gibber and Terry Lawler to see if anyone has filed for election to this seat, or whether the vacancy would be filled by the Governor. The next joint meeting of the Register of Wills and Judges is expected to take place in September.

B. Website and Technology.

Brian reported that he will work to correct the omission of names of past-chairs from the listserv and that the corrected list will be circulated to the Section Council. He also will have the June and July Minutes posted on the website.

Matthew also requested that Brian arrange for the Power of Attorney and other statutory forms to be put on the website. Brian noted that when provided with appropriate links, he would be happy to post more information, such as notices of future educational meetings, and he drew the members' attention to the "other useful materials" link that already exists. He also will be reviewing that link and deleting material that is outdated. Brian also asked the members to suggest additional links which should appear on the website. Whether this can be extended to journal articles is something that Brian will also explore. The members participating the meeting were in favor of getting more Section members to take advantage of the website.

C. Educational Programs.

Frank reported some resistance from Andrea Terry with regard to a proposed presentation dealing with the new Power of Attorney forms, in response to which, she suggested that the program be postponed until early 2011, given current staff limitations. The role of the Section Council and the Bar in general in stepping into the void left by MICPEL in order to arrange for programs was discussed.

Further programs noted by Frank include the following:

October, 2010 Jay Eisenberg -- a Power of Attorney program for the Montgomery County Bar Association. Frank will follow up with him. The Montgomery County group is also planning a future program on estate planning for veterans.

November, 2010 – The three-day Advanced Tax Institute at Martin's West. Eileen will arrange, as in the past, for the Section Council to have a side room for conducting its November meeting that evening. Matthew will be following up on involvement of the Bar Association with this program.

November, 2010 – Asset Protection Planning

December, 2010 – Angela Valerio’s Basic Estate Tax Planning, though the possibility of delaying this program pending congressional action on federal estate tax reform was suggested, an arrangement that might enable the Power of Attorney program to be held in December instead. Frank will explore this possibility with Andrea Terry. It was noted that the Elder Law Section’s Hot Topics program in July was sold out, evidencing a strong interest in the Power of Attorney issue.

March, 2011 – Trust Drafting

April, 2011 – The planned program on client capacity involving Jason Frank was noted as clearly overlapping with issues raised in connection with Powers of Attorney.

Also discussed was the possibility of presenting a co-sponsored program with the Elder Law Section. It was thought that such an arrangement would increase attendance and provide different perspectives, two benefits that also might come from other co-sponsored programs. This would help to resolve Andrea Terry’s concern with regard to whether attendance justifies programs.

May 2011 – Advanced Estate Planning

Lastly, it was noted that Allan Gibber will be presenting a probate update timed to coincide with the issuance of the newest edition of his probate treatise, sometime during the first half of 2011.

D. Meetings.

Eileen suggested that the October dinner meeting (October 13, 2010 – subsequently scheduled for October 12, based on venue availability) take place at King’s Contrivance, in Columbia. She also reminded Section Council members that those who wish to enjoy wine or other similar beverages at the dinner meeting will need to make a contribution to the Section Council’s “SIP Fund,” given the fact that the Bar Association has a budget for meals but not alcohol consumption. The contribution for current members of the Section Council is \$40, with a contribution by prior Chairs of \$30. Contributions to the SIP Fund for the 2010-2011 season should be sent to Eileen as follows:

Eileen D. O’Brien, Esq.
Saul Ewing LLP
P.O. Box 17050
Baltimore, MD 21297

As for regular meetings, the decision was made to hold September’s meeting on September 15 (instead of September 8) and to hold it again at the PNC Operations Center in Annapolis.

E. Estate and Gift Tax Study Group.

Danielle has been contact with Victoria Grace but not yet with Lisa Stern regarding upcoming programs. Brian inquired whether it would be possible for people outside of the Baltimore area to attend the meetings of the Study Group by teleconference. Brian will work out whether connections of this nature can be arranged.

F. Legislation - UTC

Jack announced that as a result of two recent conference calls a number of additional changes and modifications had been made, as reported in Minutes that have been circulated. Articles 1 – 4 have been addressed, Article 5 has been deferred for the time being, and the discussions to date have involved a portion of Article 6. The next telephone conference is to take place on August 17. As before, the participants are continuing to work with the banker's comments. Article 5 is expected to raise some additional difficulties, with the bankers reportedly considering rewriting that Article. Jack will be following up on this point with John Cogar. The remaining issues appear to pose no major points of disagreement.

A subcommittee has been formed to integrate the Uniform Trust Code into the existing Maryland Trust Code. Charles is leading this effort and has spoken with Susan Russell at Legislative Services. She has suggested creating Title 14.5 to serve as the UTC and to use cross-references to existing provisions, such as those in Article 15. The interrelationship between the trust provisions in Section 15-102 was discussed, and Bill reported that he had once prepared a comparison of the applicable provisions of the UTC and Section 15-102. This issue will be addressed at the next meeting of the subcommittee, of which Danielle is also a member.

In terms of timetable, the Section Council is anxious to provide information to Susan Russell by September in order to get the bill in proper form for submission, though Matthew expressed the concern that the bankers' issue with potentially rewriting Article 5 could be a problem in this regard. Jack will continue to press the matter forward, particularly with regard to rewriting Article 5.

Given the smaller group involved in the recent teleconferences, it was concluded that the Section Council should ratify the finalized version as soon as possible in September. As a result, an additional September meeting or phone conference will take place on September 29. While this conflicts with Hashanah Raba, the Section Council decided to schedule the meeting and consider a change only if an observant member of the group indicated that it would not be possible to participate. It is hoped that this meeting will enable us to meet Susan Russell's September deadline.

The participants at the meeting agreed that passage in the first year of introduction is questionable, but that it is important to get the ball rolling as soon as possible. Jack will emphasize this point in speaking with John Cogar.

Bill also suggested, as a pre-emptive measure, that a discussion should be posted on the listserv to begin the process of educating those who might otherwise have issues or objections.

The Section also began the discussion of identifying those individuals who will serve as sponsors.

Jack will be preparing an article on the UTC for the Section's November newsletter in order to educate the members on the UTC.

G. Other Legislation

(i) With regard to other legislation, the Section Council agrees that because of the enormous task faced with regard to the UTC, other submissions should be limited. Debbie noted, however, that we should reintroduce the recordation exemption bill, though the Real Estate Section will not act until receiving clearance from MSBA (which is anticipated). Matthew will follow up with Richard Montgomery in this regard, and then Debbie will make contacts with the Real Estate Section. All were in agreement that having another section on board would be extremely desirable.

(ii). The Forced Share Bill has not been the subject of any discussion subsequent to last spring. The members present voiced the continuing feeling that this is a change that is not needed and that the only state which has a forced share is even considering changing it. The possibility of approaching the problem with other alternatives, such as changes in the family allowance, was noted, and it was also noted that Angela was to be addressing some of these issues.

(iii). The bill dealing with the relocation of Charitable Trusts did not receive a favorable review last year. Natalie will be reviewing this statute in order to educate the Section Council on what this statute might be needed at all.

Subsequent to the approval of the July Minutes, Danielle noted that that those Minutes did not address the inheritance tax allocation issue where there are both charitable and non-charitable remainder beneficiaries. The members present agreed that this is something that should be addressed as a matter of drafting in tax clauses, not through legislation.

H. Good and Welfare: Birthday cake celebrating the shared birthdays of Matthew Mace and Bill Sauser was enjoyed by all present.

III. Adjournment

There being no further business, the meeting was adjourned at 5:00 p.m., though post-adjournment discussion among Matthew, Sharon, Dave, Danielle, Eileen, Brian and Jon involved questions of how to improve in-person attendance by Section Council

members. With an expanded plan to hold meetings in sites outside of Baltimore City, the following locations are tentatively set for the coming months:

September - PNC Operations Center, Annapolis

October – Kings Contrivance, Columbia

November – Martin’s West

December – a Montgomery County location TBD

January – TBD

February – dinner at a location in Annapolis

March and April – TBD

May – Section Dinner, tentatively at Elkrige Furnace Inn again.

Respectfully submitted,
Eileen D. O’Brien
Secretary