

MINUTES OF THE AUGUST 10, 2011, MEETING OF THE MARYLAND STATE BAR
ASSOCIATION ESTATE AND TRUST LAW SECTION COUNCIL

The Section Council met on Wednesday, August 10, 2011, at Ober, Kaler, Grimes & Shriver, Baltimore, Maryland. The following Section Council members were present (in person): Sharon J. Ritter (Chair), Deborah A. Cohn (Chair-Elect), Mary Beth Beattie (Secretary), Matthew A. Mace (Past Chair, voting), Jack P. Edgar (Past Chair, voting), Richard T. Wright (Past Chair, voting), Charles S. Abell, Walter S. B. Childs, Anne W. Coventry, Danielle M. Cruttenden, Michael W. Davis, Brian R. Della Rocca, David C. Dembert, Jay M. Eisenberg, Jonathan D. Eisner, Natalie B. Sherman, and Mary Alice Smolarek. Past Chairs present were Edwin G. Fee, Jr., Robert C. Young, and Lynn B. Sassin (by teleconference). Members with excused absences: Eileen D. O'Brien and Frank S. Baldino. Member with unexcused absence: Angela M. Vallario.

The meeting was called to order by Sharon Ritter at 3:15 p.m. EDT.

Minutes. Minutes from the June meeting held at the annual meeting in Ocean City were approved. Mary Beth will contact Eileen about circulating the minutes from the May meeting.

Publications. Mary Alice reported that the final issue of the newsletter went out and the deadline for the next newsletter is October 30, 2011.

Website/Technology. No report.

Liaison to Orphans' Court/Register of Wills. Jon summarized the duties of the liaison to the Orphans' Court and Register of Wills and volunteered to chair the committee, take minutes at the joint meetings, and report back to the Section Council. Jay Eisenberg volunteered to assist Jon with this committee. Sharon noted that the Registers have their own committee which sends representatives to the joint meetings while the attendance of Orphans' Court judges is more random. The judges also meet (MAJOC) without the Registers.

Educational Programs. Sharon reported that the Estate Planning Day of the Advanced Tax Institute is scheduled for November 9, 2011. Also planned for November is "Using and Drafting Trusts" and "Fiduciary Litigation." Speakers for the program on Fiduciary Litigation are Fred Franke and Steve Widdes. The Council discussed whether to move the Drafting Trusts program to a later date so that all three programs would not be scheduled for the same month. Frank's committee is planning to meet with the MSBA CLE committee.

Sharon had distributed to the Council copies of the CLE Program Guidelines approved by the MSBA Board of Governors and an email from Richard Stolker, Chair of the Consumer Bankruptcy Section, with some concerns about the guidelines. The Council discussed the guidelines and agreed with some of Mr. Stolker's concerns, particularly the requirement that a speaker sign an agreement with the MSBA relating to copyrights to any printed material. Concern was also raised that the guidelines had been approved without input from the MSBA Sections.

Dinner Meetings and Section Council Meetings. Sharon has distributed a schedule of meetings. Mary Beth requested that the October dinner meeting be moved to an earlier evening due to the start of the ACTEC meeting in California the next day.

Probate Rules. Sharon received a packet of proposed probate and guardianship forms and will follow up with Allan Gibber on any rule changes. The Rules Committee meets on October 7, 2011. Mary Alice reported that she had received one of the forms, an Acknowledgment of Responsibilities, from the Baltimore City Register of Wills after filing a petition for probate in that jurisdiction.

Elder Law Section Liaison. No report.

Estate and Gift Tax Study Group. Brian and Danielle reported that they are getting speakers and setting dates for the meetings of the study group. They are also arranging for the meetings to be held in Baltimore (at Ober Kaler) and in Rockville (at Shulman Rogers) with a live program at one location and a teleconference in the other. Beginning in January, a third location, the Judicial Courthouse in Annapolis, will be added. The meetings will be held on the third Thursday of each month. Brian will send an email announcement by the end of August about the meetings and their new format.

Legislation. The following was reported:

- Jack reported that the Maryland Trust Act “Summer study” will be a “Fall study” and that Bob Enten is working on getting meetings scheduled in September. Charles will distribute to the Council two charts he has drafted comparing portions of the proposed Maryland Trust Act to the Uniform Act.
- Chairman Vallario has requested the Council’s views on HB 471, which would provide for a record to be made at the Orphans’ Court level with an appeal to the Court of Special Appeals, rather than the current trial de novo at the Circuit Court level. Debbie will talk to attorneys at her firm involved in the case giving rise to the legislation, touch base with Kathleen Dumais, and provide the Council with further background information.
- The Pension Board is supporting HB 633 which would change the Power of Attorney Act to prohibit attorneys in fact from changing beneficiaries on retirement plans. Rich reached a compromise with the Pension Board but the current plan is to make all changes to the Act with one legislative proposal. Mike Davis offered to chair this proposed legislation and will begin by soliciting comments from Section members via the listserv. Mike expects to have a list of proposed amendments to the Act by the September meeting.
- Debbie noted that Florida has a new law prohibiting a surviving spouse from inheriting in certain situations where a marriage was procured by undue influence or fraud. She will speak to Angela Vallario and send a message to the Florida ACTEC Fellows to get feedback on this new law.

- Debbie also noted the concern that the Uniform Principal and Income Act "90/10" rule on income and principal from a retirement plan could cause a trust named as the beneficiary of a retirement plan to fail to qualify for the marital deduction. Discussion was had, and Brian was assigned to look into this issue.
- Ed noted that Grace Connelly proposed a rule based on Pennsylvania law which would require the banks to report joint accounts held with persons who would be subject to the inheritance tax. This issue will be addressed at the joint meeting of the Orphans' Court judges and the Registers of Wills.
- The Council discussed the issue of inheritance tax repeal or an exemption for nieces and nephews. Also noted was the need for domestic partners to make an affidavit of domestic partnership during life in order to receive the exemption for joint real estate at the death of one of the partners.
- Rich noted that the trustees' commissions on sales of real estate are dependent on local rules which either no longer exist or cannot be located and should be changed to state a uniform rate. Concern was noted that the bankers may object to any change made to the statute on trustees' commissions, but Rich will draft a proposal for an amendment.
- Lynn Sassin suggested that the Council consider proposing a decanting statute. The Council discussed whether the statute would be part of the Maryland Trust Act or proposed as separate legislation. Rich agreed to draft a proposal based on Delaware and/or New York law, and Lynn agreed to help him with this project.
- The dollar limit for a small estate was mentioned, and it was determined that this issue should be addressed at the joint meeting.

New Business. The following new business was discussed:

- Bob received an email from Norm Evans asking his counsel on whether Section 7-309(b)(2) of the Tax General Code requires a change in the allowable unified credit from \$345,800 to \$330,800 on line 10 of Schedule B of the 2010 MET1. Discussion ensued, and it was suggested that returns have already been filed for decedents dying in 2010, so that a change to the form now would be inequitable. Charles agreed to contact Norm and discuss this with him, and Bob agreed to hand over the baton to Debbie and Charles as Norm's "go to" people.
- Sharon mentioned that the MSBA President had created the Special Committee on Law Reform and is looking for the Sections to solicit ideas and suggest committee members. The Council had a brief discussion on the possible goals of the Special Committee, and Walter agreed to volunteer to be the Section's representative on the committee.
- Walter mentioned that Anne Arundel County has a pilot project for probate accountings using an Excel spreadsheet and offered to circulate the form among the Council members.

The meeting was adjourned at 5:25 p.m. The next Section Council meeting will be at 3:00 p.m. on September 14, 2011, at Walter's office in Annapolis.