

MINUTES OF THE **FEBRUARY 9, 2011**, MEETING OF THE
MD STATE BAR ASSOCIATION ESTATE AND TRUST LAW SECTION COUNCIL

The Section Council met on Wednesday, February 9, 2011, at the Severn Inn, Annapolis, Maryland. The following Section Council members were present: Matthew Mace (Chair), Sharon Ritter (Chair-Elect), Eileen O'Brien (Secretary), Rich Wright (Past Chair, voting), Anne Coventry, Jon Eisner, Deborah Cohn, Mary Beth Beattie, Mary Alice Smolarek, Angela Vallario, Natalie Sherman, Brian Della Rocca, Dave Dembert, Charles Abell, Walter Childs, and Lynn Sassin (Past Chair, non-voting).

Excused Absences: Frank Baldino and Danielle Cruttenden

The meeting was called to order by Matthew Mace at 4:15 p.m. EST.

I. Minutes.

Minutes from January 18, 2011, were unanimously approved.

II. Publications.

Mary Alice reported that the newsletter is now on the website, and hard copies will be mailed shortly. It was also noted that because "listserv" is a trademarked term, the website now refers to the "e-mail list."

III. Liaison with Registers of Wills and Orphan's Court Judges.

Sharon and Jon reported on the most recent joint meeting of the Registers and Judges, at which pending legislation was a primary topic. Other issues involved the following:

1. The extent to which Orphans' Court Judges are requiring supporting information in connection with petitions for counsel fees and whether practitioners are or should be attaching timesheet summaries even if fees are within statutory limits.

2. The status of the Baltimore City Orphans' Court where a newly elected Judge is precluded from serving by the recently passed Constitutional amendment that requires all Judges in Baltimore City to be attorneys. To date, that individual has not filed suit, and the Governor has not acted. Mary Alice will pursue this issue with MSBA.

3. The fact that Anne Arundel County is now requiring \$25,000 bonds. It was noted that local agents will not sell bonds in lower amounts. The possibility that this could force attorneys located elsewhere to pay higher premiums when opening estates in Anne Arundel County was discussed.

4. The role of Orphans' Courts in handling guardianships of the person.

IV. Website/Technology. Brian reported that he is continuing to update the website and add links.

V. Programs. In Frank's absence, the group generally discussed upcoming meetings and whether to plan a presentation for Ocean City in June (possibly on the new tax act, but aimed at a broader audience):

VI. Meetings.

Eileen will finalize plans for the Section dinner during the first week of May now that possible conflicts have been identified.

VII. Probate Rules. No report.

VIII. Elder Law. No report.

IX. Study Group. It was noted that no meetings or speakers are scheduled for the rest of the year.

X. Legislation.

Sharon reported on our legislative booklet for this year's legislative agenda and the bills included. The group discussed these bills and others that have been introduced:

(a) MTC (now called the Maryland Trust Act) – SB745 and HB 750. Senator Stone is listed as sponsor in the Senate, and Delegate Simmons may be the sponsor in the House. Jack reported that some of the original wording has been "Marylandized" to match wording in other statutes. He will compare the revisions to the original to be sure that there have been no substantive changes. Rich reported Doug Nester's feeling that the MTA will be the subject of a legislative summer study group. The first hearing on the MTA will take place on March 2.

(b) Transfer and Recordation Bill – SB 328 and HB521. Further discussions have taken place with Senators Frosh and Kasemeyer, and responses to the bill have been mostly favorable.

(c) Potential changes in LLC statutes – SB 790 and HB 637. The consensus was that because such entities are based on contract, members should be free as to how to structure their agreements, but that fiduciary duties should be the default.

(d) §14-113 – Transfer to Trust of Property held as Tenants by the Entirety – SB 696 and HB 799. (tenants by the entireties).

(e) Proposed changes in last year's Power of Attorney Act – SB 529 and HB 247. Rich has met with Delegate Simmons to confirm that we agree with the bankers that the proposed changes simply correct oversights.

(f) Sharon reported that the State Retirement Agency is separately pursuing emergency legislation (Senate Bill 481) dealing with how it deals with Powers of Attorney. The discussions expanded into other potential changes, use in practice of the short and long forms and effect of proposed changes on Powers already signed.

(g) Guardianship of the Person – Jon reported that the Orphans’ Court Judges are split as to whether the Court should have jurisdiction in such matters but that they are united in opposing any requirements that effectively create two classes of Judges, with certain matters being reserved only for Judges who are attorneys. The group recognized the interplay of legislators’ opinions, issues for counties which may lack an attorney/Judge, whether guardianship proceedings properly belong in family law courts, the existing docket burden in family law courts, the burden on Register of Wills of dealing with Guardianship cases and Orphans’ Courts in smaller counties, and the fact that the characterization of such cases varies among the jurisdictions (e.g., treatment as a family law issue in Montgomery County, but as a civil law issue in Baltimore City and Baltimore County).

(h) Constitutional Amendment to require all Prince George’s County Orphans’ Court Judges to be attorneys – SB 832. – Matthew reported that Senator Frosh is supportive. It was noted that this may become a trend for larger counties but could be difficult for smaller counties.

(i) HB471 (appeal from the Orphans’ Court to Circuit Court to be on the record and not de novo). Issues discussed included the differing approaches to the rules of evidence in the two courts, possibly necessitating greater discovery in the Orphans’ Court. Matthew was not optimistic as to the fate of this bill in the Senate.

(j) SB 673 (attorneys’ fees in contingency cases). This bill is in response to Courts with a backlog of small fee petitions relating to asbestos cases.

(k) MET bills – The Section Council will take no position.

(l) No immediate action will be taken on suggested legislation dealing with the use of parole evidence in determining a testator’s intentions.

XI. New Business:

Reports that banks are rejecting non-statutory powers of attorney will be monitored.

Bill Sauser has resigned from the Section Council. His term would have ended in May. The Section Council agreed to defer his replacement until there will be a second slot to fill when Matthew goes off the Council. Discussion also addressed the geographic areas from which new members should be sought, and the names of several potential candidates were mentioned.

The meeting was adjourned at 6:15 p.m., after which the Section Council socialized and dined.

Respectfully submitted,
Eileen D. O’Brien

Secretary