

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

The Section Council met on Wednesday, March 9, 2011, at Saul Ewing LLP, Baltimore, Maryland. The following Section Council members were present: Matthew Mace (Chair), Sharon Ritter (Chair-Elect), Eileen O'Brien (Secretary), Frank Baldino, Danielle Cruttenden, Anne Coventry, Jon Eisner, Deborah Cohn, Mary Beth Beattie, Mary Alice Smolarek, Dave Dembert, Charles Abell, Walter Childs, Allan Gibber (Past Chair) and Bob Young (Past Chair).

Attending by phone: Brian Della Rocca, Natalie Sherman, and Ed Fee (Past Chair).

The meeting was called to order by Matthew Mace at 3:00 p.m. EST.

I. Minutes.

Minutes from February 9, 2011, were unanimously approved and will be posted on the website with the addition of the names of past chairs who attended.

II. Publications.

Mary Alice requested articles for the spring issue (due date April 30).

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

Although there are no new developments to report from meetings, Matthew reported that Judge Evans (Baltimore County) had requested the Section Council's support for a bill to require all Baltimore County Orphans' Court Judges to be attorneys. It was also noted that Prince George's County wants similar legislation. Mary Alice noted that MSBA has not expressed an opinion on these bills.

Discussion also covered 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. Jon will pursue this issue with MSBA, and it was suggested that Matthew write to the Judicial Appointments Secretary to stress the need to have a full bench in Baltimore City.

IV. Website/Technology. Brian reported that he will post the October and February Minutes and will update and revise the list of current Section Council members and their addresses.

V. Programs. Frank reported on the following:

2/28/11 Power of Attorney (sold out), with Rich Wright and speakers from Real Estate, Business, and Elder Law.

3/15/11 Allan Gibber on recent developments (webcast)

5/13/11 Advanced Estate Planning Institute – Topics:

1. Drafting under the new tax act – Jon, Bob, Kristin, Matthew
2. Drafting to avoid Will contests and defending Will contests – Richard Lyons and Charles Bagley

June – MSBA Annual Meeting – Possibly a potpourri of the new tax act, powers of attorney, revised Uniform Anatomical Gift Act, and the Section’s Legislative agenda.

VI. Meetings.

Eileen will finalize plans for the Section dinner on May 4 now that possible conflicts have been identified and will then transition this responsibility to Natalie. Speaker and potential topics were discussed but not resolved.

VII. Probate Rules. Allan reported progress and noted the Courts’ continuing interest in having guidelines for hearing guardianships of the person.

VIII. Elder Law. Danielle reported on the most recent (3/8) meeting of the Elder Law Section:

1. Jason Frank is interested in working with our Section to present a CLE program this fall on what serving as a Trustee entails, including types of trusts, the role of practitioners serving as a fiduciaries, how to select a Trustee, fiduciary duties, balancing the needs and wishes of the income beneficiary and remaindermen, making investments, and the Principal and Income Act. Matthew suggested that including this as part of the Advanced Tax Institute would expose CPAs to these issues.

2. Elder Law wants our support for SB 888/HB 1277 dealing with preserving Special Needs Trusts in light of the withdrawal of COMAR regulations. Absent action, the assets of disabled individuals will face greater exposure to being taken by the State in cases where the disabled individual creates the trust after receiving assets by inheritance, court settlement or the termination of an UTMA account. Danielle will follow up with Bill Gering of Elder Law. Matthew reminded those present that we can support what is already current law. Charles noted that the bill is more aimed at other Sections, given the fact that the one referenced Section of the Estates and Trusts Article will be abolished by the MTA when passed. Whether the bill would apply to some or all third-party trusts was a question raised.

IX. Study Group. It was noted that on March 24, Posner will give a presentation on the new tax act. The desirability of online access for attorneys outside of Baltimore was noted. Also noted was the Section Council’s past active role in helping to recruit speakers.

X. Legislation.

Sharon reported on our legislative agenda and the bills included. The group discussed these bills and others that have been introduced:

1. MTA Act – SB745 and HB 750. The House bill has been withdrawn for summer study, but the preliminary sense is that the response is generally positive.
2. Transfer and Recordation Bill – SB 328 and HB521. Matthew will speak at the March 17 hearing
3. Potential changes in LLC statutes – SB 790 and HB 637. Dave will follow up on its current status.
4. §14-113 – Transfer to Trust of Property held as Tenants by the Entirety – SB 696 and HB 799. Reported favorably in the House. Rich testified in both the House and Senate. Matthew will follow up with Rich to see if additional amendments were added.
5. Proposed changes in last year’s Power of Attorney Act – SB 529 and HB 247. Reported favorably, but Matthew will follow up with Rich to see if additional amendments were added.
6. The State Retirement Agency’s emergency legislation (Senate Bill 481), on how it deals with Powers of Attorney. This bill has been withdrawn in the House, presumably to avoid piecemeal changes to the statute.
7. Non-Attorney Judges To be Able to Hear Guardianship of the Person (SB 853; HB 351) – Sharon will attend the Senate hearing and provide written testimony on the House side. Support seems to vary among legislators, Judges and Registers and also by jurisdiction.
8. Constitutional Amendment to require all Baltimore County Orphans’ Court Judges to be Attorneys. – Sharon will follow up with David Hayes in the Attorney General’s Office to find out why there are two separate House bills.
9. HB471 (appeal from the Orphans’ Court to Circuit Court to be on the record and not de novo). This bill has received an unfavorable response. The underlying issues, including abuse in the present system, may be the subject of a summer study.
10. 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.
11. MET bills – The Section Council will take no position.
12. HB 315 – Bill to Require Howard County Orphans’ Court to Determine When it Will Hold Sessions. Apparently introduced late. Bob Young will follow up with Howard County delegation.
13. SB726 – Providing for Appointment of Temporary Limited Guardian of Hospitalized Disabled Persons. Bill Gering will be asked if this is an Elder Law bill.
14. HB 885 and HB 834 – Dealing With Change to Name of Orphans’ Court. Unfavorable report.

XI. New Business:

1. The Business Law Section has requested our support for changes in the makeup of the Board of Governors that would give transactional lawyers and their interests greater representation. The Section Council voted in favor of sending a supportive letter to the Board of Governors.

2. Mary Beth raised the issue of recognizing specialization in Maryland legal practices, as in Florida. Issues noted included abuse and poor practice by lawyers lacking needed skills.

3. The next meeting will take place on Thursday, April 21, at the PNC Operations Center in Annapolis.

The meeting was adjourned at 5:15 p.m., after which the Section Council socialized and dined.

Respectfully submitted,
Eileen D. O'Brien
Secretary