MINUTES

MSBA PROBATE & TRUST LAW
SECTION COUNCIL MEETING

December 20, 2007

Meeting held at Dorsey & Whitney, LLP
50 So. 6th St.; Suite 1500
Minneapolis, MN

Members Present: Melinda Greer, Mary Shearen, Joyce James, Susan Link, Peter Hatinen, Tom Rauenhorst, Jane Kiker, Dale Schoonover, Jennifer Anderson, Scott Nelson, Rick Bunin, Brad Hanson, Julie Frommelt, Bob McLeod, Tom Woessner, Michael Cowles, Drew Baese.

Others Present: Al Silver, Chair of litigation committee.

1. Meeting called to order; 3:33 p.m.

2. Minutes of November 15, 2007 meeting were approved.

3. **Treasurer's Report**. Tom Woessner filed a report through the period ended October 31, 2007 and said report was approved.

4. **Education Committee**. National speakers are scheduled for the annual seminar and include Conrad Teitell, Doug Siegler, Wendy Goff and Richard Robinson. Bill Wernz will do an hour long ethics seminar. 30 break-out sessions are confirmed. The summer seminar is on track. The <u>Margolis</u> CLE noon-time program went very well with over 200 participants and many persons calling in for the teleconference. The technology will be examined to try to determine if there is a way of getting background noise off the phone as many people do not place their phones on "mute" during the call making it hard to hear. Rick Bunin discussed the technology seminar that is being put together for January 31, 2008. Another probate seminar is planned for the spring, perhaps around April and topics include the possibility of probate registrars presenting on issues relevant to them. Al Silver also discussed a potential seminar regarding litigation in the probate area and is open for topics. Appeal issues was offered as a potential topic.

5. **Legislation Committee**. Mary Shearen and Joyce James provided an update on legislation matters. The Probate legislation was approved by the MSBA Assembly at its December meeting. It is anticipated that our Section may have to separately pay for part of Lloyd Grooms' time as most of his contract with the MSBA will be used on judicial election matters and tax on lawyer fee matters.

Also, the gift tax valuation bill will have to be presented as a Section only bill and not a bill approved by the MSBA at large.

6. **Newsletter Committee**. Peter Hatinen reports no new changes but he is looking for someone to start helping with the newsletter and to eventually transfer it over to a new person.

7. **Federal Taxation Committee**. Scott Nelson's report will continue to be published on the practicelaw.org page at the MSBA website. The details are attached at the end of these minutes.

8. **Consumer Protection Committee**. Robert McLeod reported no new developments.

9. **Ethics Committee**. Jane Kiker reported that a seminar may be presented in April on ethics.

10. **Greater Minnesota Committee**. Brad Hanson reported that the study group is working well and the Wills for Heroes program is going very well in Central Minnesota and training continues along with accumulating volunteers.

11. **Technology Committee**. The technology seminar was also discussed when the education committee reported, above.

12. **Gene Daly Award**. No report.

13. **Litigation Committee**. Al Silver reported on trying to schedule a new seminar (discussed in education above) and is looking for topics.

14. **Wills for Heroes Committee**. Susan Link reports that 45 lawyers and 61 data entry volunteers have been trained and training continues once a month. Drafting sessions for the program are scheduled out into the year 2009. Additional efforts are being made to acquire more hardware. 248 plans have been completed in 3 months. Discussion of a policy to determine when someone can hold themselves out as a volunteer for the program.

15. **Old Business**.

    a. The Bar Task Force on Foreign Language Translations is still building the committee.

16. **New Business**.

    a. The next meeting is scheduled for January 10, 2008.

There being no further business, the meeting adjourned at 4:30 p.m.

Federal Tax Update

AMT Relief. Congress has sent the "Tax Technical Corrections Act of 2007" to the President for signature which raises the AMT exemption levels for 2007, and prevents 20 million taxpayers from incurring unintended AMT tax. However, it will also delay processing of early filed returns in January, and delay refunds for probably a month or more. The 2007 AMT exemption will increase to $66,250 for joint filers and $44,350 for single filers. The Act also (1) liberalizes the rules for claiming the refundable AMT credit, (2) revises the rules for a shareholder basis reduction on account of contributions of appreciated property by S corporations, and (3) revises several important tax rules dealing with the definition of active business income under Code §355 and computing the foreign earned income exclusion.

Charitable Remainder/Lead Trusts Forms. The IRS will be releasing a new Form 5227, Split-Interest Trust Information Return, toward the end of December which will incorporate information previously reported on Form 1041-A, and includes a new schedule requesting information about donors and assets donated.

Tax Court Opinions. On its web site, the Tax Court now has archived TC and Memorandum opinions from 09/25/95, along with the Summary Opinions from 01/01/01.

Inherited IRA's. Beginning January 1, 2008 the IRS has said that all qualified plans, 403(b) plans and 457 plans must provide an inherited IRA alternative for non-spouse beneficiaries. Previously the Service had said in Notice 2007-7 that this was optional for qualified plans to provide. Some practitioners, including Natalie Choate, have pointed out that the subsequent IRS announcement to make this mandatory in 2008 is still subject to possible change because (1) the announcement was made "pursuant to an impending technical correction" in Congress that did not ultimately get enacted, and (2) a recent IRS notice of "2007 Cumulative List of Changes in Plan Qualification Requirements" simply makes reference to the earlier Notice 2007-7. If the plan does allow the use of inherited IRA's, the assets should be moved by December 31 in the year following the owner's death, so that the beneficiary can use a life expectancy payout option (with payments beginning in the year after death). If the rollover is not timely, the beneficiary still can use an inherited IRA account but is stuck with the payout options available under the plan (probably less favorable).

Estate Tax History. The IRS published a 90 year history of the estate tax, which can be found at its web site at http://www.irs.gov/pub/irs-soi/ninetyestate.pdf.

Employer-owned Life Insurance. The IRS has issued temporary regulations to provide immediate guidance on the information reporting required on employer-owned life insurance contracts under Code §6039I. This applies to the requirement that employers treat death benefits from such insurance on many employees as taxable income, for contracts issued after August 17, 2006. The new regulations apply for tax years ending after November 13, 2007. It is expected that the IRS will provide more substantive direction as to the time and manner a return must be filed in other less formal guidance, such as revenue rulings or procedures, or in its forms and instructions.

Appraisers. The IRS has issued a general legal memorandum concluding that there is no statute of limitation on assessing penalties against an appraiser under §6695A. The statute applies to appraisals prepared after May 25, 2007 that are used in connection with an estate or gift tax return or claim for refund or credit that results in a gross valuation misstatement.

Tax Exempt E-Notice Rule. For tax years beginning after 2006, tax-exempts with gross receipts under $25,000 (who are not currently required to file a Form 990 with the IRS), must begin filing an annual notice, Form 990-N, Electronic Notification for Tax-Exempt Organizations. The requirement does not apply to §401 plans (qualified pension, profit-sharing, and stock bonus plans) or religious and apostolic organizations. The IRS will provide a simple-to- use internet based process that does not require special software, and the returns will be due by the 15th day of the fifth month after the close of the year (May 15th for calendar year tax-exempt organizations).

Estate Tax Value Reduced by Built-in Gain Tax. In Estate of Frazier Jelke III, the 11th Circuit agreed with the taxpayer that the estate tax value of a closely-held C corporation should be reduced by the entire built-in capital gain as of the date of death. The dissent adopted the view of the Tax Court that the built-in capital gain should be discounted to reflect when it is reasonably expected to be incurred. Because other circuit courts have allowed some but not full reduction for built-in capital gain, it is expected to eventually go to the Supreme Court if the IRS continues to litigate this issue.

S Stock to a Charitable Lead Trust. In PLR 200747001, the IRS has favorably ruled on a charitable lead trust funded with S corporation stock. The ruling provides a blueprint for how to structure a charitable lead trust funded with S stock in such a way that the trust will qualify as a permissible S shareholder and its grantor or grantors will simultaneously achieve an income tax deduction for the lead interest going to charity.

Business Mileage. Rev. Proc. 2007-70 contains the 2008 limits for transportation costs, and announces the 2008 business mileage rate of 50.5 cents per mile, a charitable contribution rate of 14 cents per mile, and medical/moving rates of 19 cents per mile.