

MINUTES

MSBA PROBATE & TRUST LAW SECTION COUNCIL MEETING

December 18, 2008

Meeting held at MSBA Offices
Minneapolis, MN

Section Council Meeting

Members Present: Dale Schoonover, Bob McLeod, Tom Woessner, Susan Link, Peter Hatinen, Drew Baese, Scott Nelson, Mary Shearen (and by phone: Drew Baese).

Others Present: Meaghan Harper, Bridget Logstrom Koci, Joel Sommers, and Letty Van Ert

1. Meeting called to order: 3:37 p.m.
2. Minutes of November 20, 2008 meeting were approved.
3. **Treasurer's Report.** Period ending September 30, 2008 approved.
4. **Education Committee.** Tom Woessner reports that:

On December 15, 2008, the Probate and Trust Section sponsored a Litigation Panel at the Minneapolis Grand Hotel. The feedback on the luncheon was extremely positive, and Tom is working on lunch presentations for early 2009.

The Section conference this summer is coming together. If anyone has suggestions for breakout sessions, they should get in touch with Tom.

5. Legislation Committee. Scott Nelson reported on the matters and the committee members that are working on the 2009 Legislative Session:

- **Uniform Power of Attorney.** Committee Members: Lynn Lindsay; Jennifer Lammers; Lori Skibbie; Drew Baese; Scott Nelson; and Mavis Van Sambeek
- **Children Defined.** (Assisted Reproduction/Gestational Carrier Act UPC, this is a Multidisciplinary task force with Family Law). Committee Members: Sheryl Morrison; Sonny Miller; Steve Snyder; Jane Godfrey; Kara Tyler
- **Various Chapter 501B Trust Matters.** (Tangible personal property lists, Successor trustee liability, deposits of trust funds, spousal rights in divorce, discharge/release,

protection for ILIT trustees). Committee Members: Shane Swanson; Joseph Thiegis; Jolene Cutshall; Lynn Lindsay; Jason Schuller; and Mavis Van Sambeek

- **Statute Of Limitations.** Committee Members: Peter Hatinen; Bob McLeod; and Scott Nelson
- **Uniform Probate Code.** Committee Members: Andrea Breckner; Joe Thiegis; Mavis Van Sambeek; Kara Tyler; Jason Schuller; and Jolene Cutshall
- **Uniform Estate Tax Apportionment Act.** Committee Members: Peter Hatinen; Drew Baese; Jennifer Lammers; and Kara Tyler
- **Uniform Principal and Income Act.** (Also define short-term capital gain for REIT/RIC). Committee Members: Bill Kuhlmann; Lynn Lindsay; Jason Schuller; and Drew Baese
- **Rules Changes.** (References to “illegitimate,” Rule 417.02(g), Rule 404). Committee Members: Sonny Miller and Sheryl Morrison

6. Newsletter Committee. No Report.

7. Federal Taxation Committee. Richard Hawke reports:

- **2009 Standard Mileage Rates.** The IRS announced the new 2009 optional standard mileage rates for the use of a car starting January 1, 2009. They will be \$0.55 per mile for business mileage, \$0.24 per mile for medical or moving mileage, and \$0.14 per mile for charitable purposes. 2008 was \$0.50.5 per mile for the first half and \$0.58.5 for the second half. The medical and moving rate was \$0.19 per mile and \$0.27 per mile. Revenue Procedure 2008-72.
- **Income Tax Deduction - Bundle Fees for Trusts and Estates.** The IRS announced in Notice 2008-116 that for tax years beginning before January 1, 2009, that trusts and estates will not be required to divide bundled fees paid to a fiduciary between those expenses that are fully deductible and those that are subject to the two (2%) percent exclusion. Instead, taxpayers may deduct the full amount of such fees; however, payments to third-parties for expenses subject to the two (2%) percent rule must be reported separately on the appropriate line.
- **Tax-preparer Penalty Guidance Issued.** The IRS has issued a series of items regarding the new tax return preparer penalties. Amended IRC Section 6694 now divides the definition of “unreasonable position” into a general category, a disclosed positions category and a tax shelter/reportable transactions category, each with its own standard to determine whether or not a penalty applies. Final regulations are announced in T.D. 9436, and updated interim guidance is issued in Notice 2009-5. Rev. Proc. 2009-11 identifies the categories and the returns that fall within the different categories.

- **Required Minimum Distributions Suspended for 2009.** The Worker, Retiree, and Employer Recovery Act of 2008 was approved by Congress on December 11, 2008, and suspends the required minimum distributions requirements for 2009. The Act also delays changes and suspends other requirements to ease retirement plan funding burdens on employers for 2008 and 2009.

The Act clarifies that all employer plans must permit rollovers of decedents' accounts out of the plan for non-spouse beneficiaries, giving us the benefit which everyone except the IRS understood was included in the Pension and Protection Act of 2006. This provision is effective for plan years beginning after December 31, 2009.

The Act also clarifies that all reimbursements from a state or local government-sponsored health plan under IRC Section 105 payable to either the participant or a deceased participant's beneficiaries shall be income tax free.

8. Professional Responsibility/Consumer Protection Committee. No Report.

9. Greater Minnesota Committee. No Report.

10. Technology Committee. No Report.

11. Gene Daly Award. There was a discussion about if the award should be given this year. Dale will talk to Andrea Breckner about what was discussed at the meeting.

12. Litigation Committee. Bridget Logstrom Koci reported:

On the details of the December 15, 2008 CLE. She also talked about ACTEC's Arbitration Task force and the possibility of compiling a list of Probate and Trust mediators.

13. Wills for Heroes Committee. Susan Link reports that:

- Letter were sent to approximately 50 Minnesota corporations, trust companies, and law firms requesting donations to fund 2009 events.
- The program has served 1417 responders to date

14. Old Business.

Dale reported on the MSBA Council Member Budget Meeting. He noted that Sections that regularly have large amounts in their respective bank accounts are being encouraged to reduce the amounts that they have on deposit. A short discussion of possible solutions to that issue followed.

15. New Business.

Dale brought the council up to date on some recent developments with regard to the proposed Trust for Pets Legislation which had previously been circulated to the committee. Dale gave a brief history of the legislation and questioned whether or not our section should take a position on this legislation. It was agreed that conceptually our section does not have a problem with the Trust for Pets legislation, and that our section will remain neutral assuming we can get our concerns resolved with the Animal Law Sections. Bob McLeod will be meeting with the Animal Law Section to work out the technical concerns our section has with respect to the legislation.

General Meeting adjourned at 4.27 p.m.