

MINUTES

MSBA PROBATE & TRUST LAW SECTION COUNCIL MEETING

March 20, 2008

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

Members Present: Melinda Greer, Peter Hatinen, Tom Rauenhurst, Dale Schoonover, Julie Haseman, Jennifer Anderson, Derrick Doerr, Brad Hanson, Bob McLeod, Drew Baese, Michael Cowles, Julie Frommelt, Todd Andrews and Mary Shearen.

Others Present: N/A.

1. Meeting called to order; 3:30 p.m.
2. Minutes of February 21, 2008 meeting were approved with correction.
3. **Treasurer's Report.** Report for January 31, 2008 was submitted and approved.
4. **Education Committee.** The seminar scheduled for possibly May 19, 2008 to include probate registrars and possibly a Referee regarding Minnesota probate issues is moving forward. Planners are trying to coordinate schedules to finalize a date.
5. **Legislation Committee.** Mary Shearen provided an update on legislation matters.
 - a. The Minnesota Department of Revenue continues to plan to push the alternate valuation bill that will allow the State to use their own valuations in the absence of a federal estate tax closing letter. The Tax Omnibus Bill, which contains this legislation, will apparently pass both houses and become law.
 - b. H.F. 3125 is the House version of our Section probate bill. The bill was introduced and heard in the Senate but procedural measures are needed for it to be heard in the House.
 - c. The Uniform Disclaimer Act was introduced but did not get a hearing and is probably dead for this year.
 - d. The Uniform Power of Attorney Act is also being withheld from introduction by legislators to allow further review of the bill.
 - e. Scott Nelson will be the next co-chair of the legislation committee.
6. **Newsletter Committee.** Peter Hatinen reports that the next news letter will be published after the next legislative session.

7. **Federal Taxation Committee.** Scott Nelson's report will continue to be published on the [practicelaw.org](http://www.practicelaw.org) page at the MSBA website. The details are attached at the end of these minutes.
8. **Consumer Protection Committee.** A press release from the Minnesota Attorney General that summarizes the AG's lawsuits against abusive annuity sales persons and companies and the lawsuit against the American Family Legal Plan can be found at [www.ag.state.mn.us/Consumer/Press Release/080207AmericanEquityCase.asp](http://www.ag.state.mn.us/Consumer/Press%20Release/080207AmericanEquityCase.asp). Some of the cases have been settled.
9. **Ethics Committee.** No report.
10. **Greater Minnesota Committee.** Brad Hanson reported that the study group program is still working well and that the Wills for Heroes program is also going very well in Central Minnesota with sessions planned throughout May, June and July. Attorneys in Alexandria, Minnesota are eager to get involved. Training continues along with accumulating volunteers and the volunteers have begun some drafting projects.
11. **Technology Committee.** Todd Andrews is writing an article for the newsletter regarding the probate forms and the new HotDocs program to create probate forms.
12. **Gene Daly Award.** There are no plans to give the award this year.
13. **Litigation Committee.** No report.
14. **Wills for Heroes Committee.** Brad Hanson reported for Susan Link. Brad reports that over 464 wills have been written and drafting sessions are scheduled into the year 2011. Andrea Bischoff and Susan went to Rochester to train 14 lawyer volunteers. A new logo has been designed for the program. The Wills for heroes program is now in 11 states.
15. **Old Business.**
 - a. The Foreign Translation Committee will be examining whether the Bar should be providing translation services or resources or other forms of support for non-english speaking residents of this State. The committee's next meeting is scheduled for April of 2008.
16. **New Business.**
 - a. The Mock Trial Program was looking for donations to send the high school team to Nationals. Since that program is not really part of the Probate & Trust practice area, the committee declined to advance funds (consistent with prior requests).
 - b. Hamline Law School is looking for persons to attend a luncheon on April 12 from 11:30 – 1 for estate attorneys to discuss their career with students.
 - c. The MSBA has created educational material on judicial impartiality and selection and encourages members to review and circulate the materials.

- d. A request was made that the Section encourage the passage of a statute of limitations for malpractice claims in the probate area. The matter was referred to the legislation committee.

The next meeting is scheduled for April 17, 2008.

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

Federal Tax Update

Bundled Fees/Knight. In IRS Notice 2008-32, the IRS has stated that for tax years beginning before January 1, 2008, nongrantor trusts and estates will not have to "unbundle" a fiduciary fee into costs that are fully deductible and those that are subject to the 2% Floor. Instead, you can deduct the full amount of the bundled fiduciary fee without regard to the 2% floor. This can be relied upon until the IRS issues final regulations consistent with the Supreme Court's holding in Knight, which requires that the fees "be uncommon (or unusual or unlikely) for an individual to incur" in order to not be subject to the 2% of AGI limitation.

§7520 Annuity Tables. The tables are generally used for valuing annuity interests at death. In Anthony v. U.S. (5th Cir, 03/04/08), the Court determined that the Estate must use the tables to value structured settlement payments (such as you typically see for a personal injury settlement). The case points out that the statute does allow deviation from the tables if (1) an annuity is expected to exhaust the fund before the last possible payment is made, (2) where the trust corpus may be invaded without the beneficiary's consent, or (3) where an individual who is a measuring life is terminally ill.

UBTI on CRT's. The IRS issued proposed regulations on the tax effect of unrelated business taxable income recognized by a charitable remainder trust. These changes were made as part of the Tax Relief and Health Care Act of 2006. The regulations would be effective for UBTI recognized in tax years beginning in 2007. The proposed regulations clarify that, consistent with Treas. Reg. §1.664-1(d)(2), the 100% excise tax imposed upon a CRT with UBTI is treated as paid from corpus, and the UBTI is income of the trust for purposes of determining the character of the distribution made to the beneficiary. Prop. Treas. Reg. §1.664-1(c). This is still somewhat better than the old rules that would have disqualified the tax-exempt status of the trust altogether.

Post-death stock restrictions. In IRB 2008-9, the IRS issued a nonacquiescence in the case of Herbert Kohler Jr (TC Memo 2006-152), in which the court had said that post-death restrictions on stock as part of a tax-free reorganization could be considered when valuing the stock under §2032 (alternate valuation). The restrictions were placed on the stock between the date of death and the six-month alternate valuation date, and the Court decided that the stock should not be treated as "sold" on the date of the reorganization (about 2 months after the date of death) because of its tax-free design.

E-Postcard for Small Tax-Exempts. The IRS has announced a simple online filing system that small tax-exempt organizations can use to comply with a new law. Tax-exempt organizations that normally have annual gross receipts of \$25,000 or less must file an electronic Form 990-N, "*Electronic Notice (e-Postcard) for Tax-Exempt Organizations not Required to File Form 990- or 990-EZ*," for tax years beginning in 2007. The Service has also launched a disclosure website where the public can view an organization's e-Postcard, located at <http://www.irs.gov/app/ePostcard/>.

Private Foundations. In Ltr. Ruls. 200808042 and 200808043, the Service has ruled privately that a transfer of assets from one private foundation to another pursuant to a court-approved settlement agreement will not jeopardize the tax-exempt status of either foundation, will not subject the transferring foundation to a private foundation termination tax under section 507, and will not violate any of the private foundation excise tax rules under sections 4941 - 4945.