

**MINUTES**  
**TRUST AND ESTATE DIVISION SUBCOUNCIL MEETING**  
**The Westin, Minneapolis, Minnesota**  
**11:45 a.m. - 1:30 p.m.**  
**Friday, October 19, 2007**

**Attendance: Section Officers: Steve Akers (Chair-Elect), Alan Rothschild (Division Vice-Chair), Tina Portuondo (Secretary), Gideon Rothschild (Finance and Corporate Sponsorship Officer); Council Members: Marc Bekerman, Dominic Campisi, David Dietrich, Jo Ann Engelhardt, David English (Delegate), Christopher Gadsden, Steven Gorin, Bernard Kearse, Barbara Sloan; Members: Karen Boxx, Anta-Cisse Green, Michelle Clayton, Chris Cline, Susan Gary, T. Randy Harris, Chuck Hodges, Carol Kroch, Carlyn McCaffrey, John McCaffrey, Ed Koren (Past Section Chair), Julie Kwon, Stephanie Loomis-Price, Ed Manigault, Richard Nenno, Elizabeth Ochoa, Susan Porter, Robert Sacks, Nancy Shurtz, Robert Steele, Bruce Tannahill, Aen Webster, Kalimah White, Terry Franklin (Assistant Secretary)**

Welcome and Introduction – A. Rothschild: Welcomed attendees, thanked Steve Akers for his past leadership and asked attendees to introduce themselves

1. Overview of meeting and weekend activities re hot topics, group breakouts, updates. General group reports would be reserved until the next day.
2. Action Items
  - a. Approve August 11, 2007 Minutes – Terry Franklin. A motion to approve the minutes from the last meeting of the Probate and Trust Division Sub-Council Meeting at the St. Regis Hotel, on Saturday, August 11, 2007 was made and seconded. The minutes were approved by voice vote subject to revisions submitted to the Assistant Secretary as follows: Attendance: David English is a Delegate; Discussion Item 1.a.: Only the President or President-Elect of the ABA may express an opinion on behalf of the ABA; Discussion Item 5: a Tax Section Council agreed with the IRS position and voted to oppose our resolution; Discussion Item 10: One state has adopted the Uniform Power of Attorney Act; Discussion Item 11: Regarding TOD Real Property Act, Tom Gallanis; Uniform Trust Code Commissioners approved moving forward with insurable interests in trusts.
3. Discussion Items
  - a. Group Conference Calls: Mr. Rothschild acknowledged that the Group conference calls for the last two years have been very beneficial for the Division; Groups will try to meet at least quarterly and not just talk about

activities, but also about substantive legal issues. Bunny Lee is in charge of coordinating Group Conference calls from RPTE staff.

b. Best Practices --Chris Gadsden

Mr. Gadsden noted that at the Colorado Springs Fall Leadership Meeting in 2005, the Division talked about best practices. Last year the Committee on Groups and Substantive Committees collated ideas that might be considered. The 2007 Leadership Meeting Materials include a two-page document attempting to help new and experienced Group leaders. These should help Committee and Group leaders feel more effective in their roles

c. Government Submissions – Susan Porter

Ms. Porter directed attention to the meeting materials at p. 83 which includes the Section policy statement regarding government submissions. There are two types: Blanket authority which we don't have to follow very often (though Carol Kroch earlier this year did comments under this policy); the second type is for normal or technical comment authority, which is a far less onerous procedure. The formalities for the comments are in the materials. Once generated, it is circulated to the Tax Section (aspirationally) for their input. We have a COGS (Committee on Governmental Submissions) committee, which conducts the final review authority for anything that we'll be submitting. They would like ten days to review any proposed submissions, if possible. The actual final submission comes through Robin Roy, on staff who knows how it flows from there.

- (1) Mr. Koren: Please get any submission to COGS as soon as possible
- (2) Mr. English: The lead time for House of Delegates for ABA approval is at least six months
- (3) Mr. Rothschild: We have an informal agreement with the Tax Section to discuss common topics but not take a contrary position on any issue
- (4) Ms. Kroch: The Charitable Group has had to do a number of comments and struggled with what is technical and what is policy and how far the Group can go. With each set of comments we're getting braver.
- (5) Mr. Rothschild: With such great intellectual resources here, we have so much to offer. We shouldn't have to spend time trying to figure out how to get the comments out. That's why we so appreciate the work Susan has done in getting this together.
- (6) Mr. Akers: Compliments the Charitable Group for its comments in last six months particularly
- (7) Ms. Porter: Asks for additional volunteers because the work

is so important

- (8) Mr. Rothschild: Asks that we get the plea for more help on submissions in the magazine and in our e-publications

4. Activity and Projects Reports

a. CLE

i. Review of 2007 Fall CLE Meeting – Stephanie Loomis-Price

- (1) Though the Real Property Division hasn't been as pleased with the Fall Joint Meetings, we were very pleased with the attendance and quality of programs
- (2) Mr. Rothschild: Our division believes each meeting gets better as we work with the Tax Section. This leads to the question, if the Real Property Division decides to discontinue its participation in the Joint meeting, how do we feel on the Trust and Estate Division continuing its participation?
- (a) Ms. Porter: Loves collaborating with the Tax Section
- (b) Ms. Sloan: This year the integration was 100%. Believes both sections came out very well – the best program we've ever seen
- (c) Mr. Koren: A financial aspect – if we don't have the Real Property Division, the cost will drop substantially because of brochures, etc. In light of the success, even if Real Property drops out, Trust and Estates should not
- (d) Ms. Kroch: the Charitable Group was very pleased with the program and would urge continuing
- (e) Mr. Nenno: As vice-chair of Non-Tax Planning Considerations Group, it is harder to partner with Tax Section on programs
- (f) Ms. Sloan: Expressed the opinion that it is a good thing to have non-tax programs; the Joint Meeting is one of the times the Tax Section gets a chance to attend some non-tax programs
- (g) Mr. Rothschild: On the financial side, the Real Property section would probably connect with another section so the staff would have an additional burden
- (h) Mr. Koren: That shouldn't impact our Division's decision
- (i) Mr. Rothschild: It appears our Division enthusiastically supports the continued Joint meeting

- b. Review of 2008 Spring Meeting– Aen Webster
  - i. We are gearing up. We have requested materials earlier so we can get our promotional materials together. We had great attendance in Spring 2007 and hope to keep it up
  - ii. Mr. Rothschild: Great turnout recently and will continue to have good attendance, easy access. The CLE committee would be interested in hearing of other good locations or let Alan know about Fall 2010
  
- c. Update on YLI eCLE Series– Marc Bekerman
  - Successful program and we expect the same this year
  
- d. Preview of 2nd Annual YLI – Stephanie Loomis-Price
  - Last year’s focus was on pre-death, this year’s is on post-death, post mortem planning; looking for speaker on ethics and representing a fiduciary, perhaps a professor
  
- e. CLE Results and Upcoming Programs – Bruce Tannahill
  - i. Outstanding year – see Tab 9C; revenues of \$126,000, with over 2900 registered attendees; if have suggestions for speakers or programs, let the committee know
  - ii. Mr. Bekerman: If a hot topic comes up, let us know, we can be flexible despite the great schedule we’ve done
  - iii. Mr. Gorin: Think of creating E-CLE based on prior live programs
  - iv. Mr. Rothschild: Since so much CLE is group driven, SCMs and Groups should continue to encourage and submit programs
  
- f. Probate and Property Magazine – Tom Featherston
  - i. Mr. Rothschild: Tom is not present, but we need more content; There is a January 2 deadline for the May issue; We rely on SCMs and Group chairs to solicit articles. We’d like a minimum of one article per Group per year; style is not as formal as the journal. There have been two staff changes: Elaine Waterhouse Wilson is stepping down, Stevie Casteel taking her place; Dan Evans is stepping out, to be replaced by Jim Boring
  - ii. Ms. Engelhardt: Encourages fellows to contribute articles
  - iii. Mr. English: Articles needn’t be long; only ten pages, double spaced
  
- g. RPTE eReport – Rob Steele
  - i. Background: Electronic publications have all been merged into eReport. We have a critical mass starting, but we need more content. Here it is even easier than the magazine or the journal. The

key is to get it out quickly. Our motto is to use the internet for what it is for: getting it out quickly. Steve Akers (with Bessemer) is great about providing materials. We'd like to get more material from more Groups; we're green – we recycle and re-use. Just because someone else has published doesn't mean it's been read by all relevant constituencies. We'll link to others' materials. Please encourage discussion with Group Chairs and Vice-Chairs to provide content. If you have not been receiving e-Report it may be that you have chosen to opt out of some ABA materials. Technically if you opt out of some ABA materials, you may lose the ability to receive any of them.

– Mr. Rothschild: You can check your profile to see what mail you're getting

- h. Skills Training for Estate Planning Lawyers --Bill LaPiana
  - i. Mr. Rothschild: Bill had a conflict and can't be here. This relates to Jeff Pennell's "mid-career" program that he ran for 10 years which Bill LaPiana has now taken over.
  - ii. Mr. Bekerman: We had around 80 attendees; comments were mostly fairly positive; NY Law school would be happy to host next year
  - iii. Mr. Akers: Section would like this to continue. This has been a great program in the past; we're looking at whether to continue to do it with ALI-ABA or not
  
- i. Synergy Summit – Jo Ann Engelhardt for David Neufeld
  - i. Dave Neufeld has prepared comments: The Synergy Summit is in its third year, becoming focal point for Section interacting with related organizations. It should be a unified think tank and voice of ABA-RPTE, AICPA (American Institute of Certified Public Accountants), Tax Section, NAELA (National Association of Elder Law Attorneys), Society of Financial Service Professionals
  - ii. Tannahill – Programs from the Fall Joint Meeting are on website
  - iii. Mr. Rothschild: Thanks David and others for work on this
  
- j. National Conference of Lawyers and Corporate Fiduciaries Susan Porter
  - i. Joint Committee not unlike Synergy Summit; people from this Section, and the American Bankers Association get together to exchange ideas and best practices. It's especially helpful for Uniform Laws people to be involved, so Michelle Clayton has joined. It's an exciting meeting; there has been no meeting since the last Council meeting

- ii. Mr. Gadsden: Was on that committee for a long time; one struggle was getting ideas out to everyone participating
  - iii. Ms. Porter: Minutes should be circulated and made part of Council Book
  - iv. Mr. Kearse: Maybe in eReport or elsewhere we could occasionally mention some of these
- k. NCCUSL Update and Discussion David English
- i. Section gets involved in drafting uniform laws in two ways: Joint Editorial Board (JEB) (Mr. Kartiganer and Ms. McCaffery) which acts as a sounding board, suggesting ideas for uniform acts, to coordinate with ACTEC on uniform laws. At end of Tab 9E is annual report of JEB, which will be included in Council Book; second way is that when a new uniform law is proposed a drafting committee seeks help from constituent groups. The Section has played a key role in assessing those acts. Uniform Laws are usually a two to three- year project;
    - (1) re recent acts: Uniform Adult Guardianship was approved by Conference. As reported, Karen Boxx was section advisor; Transfer on Death of Real Property, Susan Gary is ABA advisor; Project to revise intestate succession provisions of UPC; Two new projects just approved: Act re insurable interests in Trusts – Neufeld nominated as advisor; Regulation of Charities – Susan Gary will be nominated as advisor on that project; Michelle Clayton is great, helping to facilitate;
    - (2) Two action items:
      - (a) Uniform Adult Guardianship Act was approved – complete except for final review by style committee; Karen Boxx was the reporter. Mr. English was the advisor. We ask the Section to support and endorse the act as it proceeds toward House of Delegates. The Act tries to minimize conflicts between jurisdictions, to facilitate transfers from one state to another, and deals with recognition of court authority from one state to another.
        - (i) A motion was made to ask Council to endorse the proposed act; the motion was then seconded and approved by voice-vote.
      - (b) Couple of issues in principal and income act need to be

considered. Steve Gorin has looked at the issue, contacted the AICPA, and has a great idea. is now bigger and can do more

- (c) Uniform Principal and Income – Gorin
  - (i) Tab D: Two bullet points. Asking subcouncil to ask Council to approve: Clarification re distribution from entities and pass-through entities ambiguous provisions. Resolution asks that we approve looking at and modifying it. Solution will be subject of further discussion; Other issue is when retirement plan distributions come up and right of spouses to pull out income. Asking Council to approve further discussions at JEB re changes to UIPA.
  - (ii) A motion was made, seconded and approved by voice vote to as Council to approve further discussions at the Joint Editorial Board and to pursue changes to the UIPA
  
- (d) Ms. Kroch: My experience helped me learn how NCCUSL and ABA divide up responsibilities; suggest ABA advisor appointed to Regulation of Charities – some substantive knowledge in development of committee’s charge would greatly help. Don’t want a charge that has to be changed over time.
  - (i) English: Agrees
  - (ii) Clayton: Trying to be better with getting constituents involved in study and drafting, staff
  
- ii. Model Act on Assisted Reproductive Technology (David English)
  - (1) Individual rights and responsibilities wanted act to be gender neutral; Section has become more visible at the House Delegates; Exec. Committee may want to take up issue of endorsing this act

5. Adjournment – Rothschild

- a. There being no further business of the Subcouncil, the meeting adjourned at 1:30pm.

Respectfully Submitted,  
Terry Franklin

Assistant Secretary, T& E Division