THE MACLEAN LAW FIRM, LLC
100 PARK AVENUE, 20TH FLOOR
NEW YORK, NY 10017
T. (212) 682-1555
F. (212) 682-6999
E. INFO@MACLEAN-LAW.COM
W. WWW.MACLEAN-LAW.COM

OFFICE MEMORANDUM

To: EPC, Exec & File
From: IWM
Dated: January 31, 2008
Re: Minutes of the Meeting of the Estate Planning Committee of the Trusts and Estates Law Section on January 31, 2008

The meeting was held at the Sky Lobby of the Marriott Marquis in NYC. Attending were Ian MacLean, *Phil DiGiorgio, Robert Constantine, Peter van Nuys, *Alex Popovich, *Sue Taxin Baer, *Darci Katris, Leroy Wilson, Jr., David N. Milner, Lisa Nam and *Jennifer Weidner. *Denotes vice chair of the Committee.

The meeting was called to order by Mr. MacLean at 9:30am; the following topics were discussed:

1. **Uniform Anatomical Gift Act - Pending Legislation - S5154 (also being reviewed by the Estate Administration Committee):** Mr. MacLean summarized the proposed legislation, how it differed from the UAGA, and the concerns that those differences raised. He advised the committee that Exec had proposed a joint subcommittee be formed from members of the EPC and the Estate and Trust Administration Committee and that such subcommittee would review the proposed legislation and report back to Exec at the March 14th meeting at LaGuardia. Mr. MacLean asked for volunteers to serve on the joint subcommittee.

   There were no volunteers. Volunteers are requested on an immediate basis.

2. **Status of Judge Radigan's EPTL - SCPA Advisory Committee Report on the Adoption of the UTC – "The Sixth Report":** Mr. MacLean reported that Judge Radigan has submitted the first installment of his commission's work on the UTC and that the officers of Exec were considering whether to submit it to existing committees or form an ad hoc committee to review and report back to Exec. **Jen Weidner and Alex Popovich volunteered to work on this matter as members of the EPC or on an ad hoc committee.**

3. **Technical Corrections to the Disposition of Remains Statute (PHL 4201):** Mr. MacLean will prepare draft legislation of technical amendments to the existing statute and for vote at the March or May Exec meeting. The time frame depends to some degree on working with the staffs of Assemblyman Gottfried (Chair of the

Health Committee in the Assembly and Senator Hannon (Chair of the Health Committee in the Senate. **Mr. MacLean is seeking a volunteer to assist him with drafting the legislation and interfacing with both the NYSBA legislative liaisons and the legislators.**

4. **Unmarried Couples' Rights, Recent Topics and Pending/Potential Legislation:** Sue Taxin Baer and Darci Katris are working together as co-leadership of the subcommittee to review and report to the Exec on whether proposed legislation at this time is likely to get support of the Governor and the legislature and if so whether such legislation should be aimed at the enactment of a "marriage" law or a "civil union" law. It was noted that the NYSBA House of Delegates has already voted in support of a "civil union" law. David Stoll and Alex Popovich have volunteered to work on this subcommittee. **Anyone interested in working on this very important matter should contact Ms. Baer or Ms. Katris directly at stbaer@baeresq.com and dkatris@sidley.com, respectively.**

5. **Temporary, Short Term and Stand-by Guardianship Statutes (for minors) in NYS –GOL 15-A & SCPA 17:** Darci Katris recapped her report to Exec on her findings to date. Ms. Katris will have a written report and draft legislation focused on improving how the two statutes interface.

6. **Why You Need a Health Care Proxy and a Durable Power of Attorney:** Darci Katris volunteered to update the NYSBA pamphlet on Health Care Proxies and Durable Powers of Attorney. As part of that update, Darci will consider whether the pamphlet should reference GOL 15-A Temporary Health and Education Guardianships and EPTL 17 Standby Guardianships for children. Both Sue Baer and Ian MacLean suggested that Ms. Katris check with S. Jeanne Hall who may have worked on this pamphlet a few years ago. **Ms. Katris would welcome a volunteer to work with her on this project. Please contact her directly at dkatris@sidley.com if interested.**

7. **Proposed Amendments to EPTL 5-1.1A to Incorporate an Elective Share Qualifying Supplemental Needs Trusts Option:** Mr. MacLean reported that the Exec of the Elder Law Section approved draft legislation on amending EPTL 5-1.1A to incorporate an Elective Share Qualifying Supplemental Needs Trusts Option. An ad hoc subcommittee was formed at Exec by volunteers consisting of Ron Weiss, Lou Pierro, Phil DiGiorgio, and Anthony Enea (the subcommittee will be joined by Linda Hirschson and Sharon Gruer). Because the goal of both Elder Law and T&E is to have the proposed legislation included in the spring legislative session, the subcommittee is working on an expedited basis. Please direct inquiries to Ian MacLean at ianwmaclean@maclean-law.com.

8. **Secretary of the Committee:** A volunteer seeking to act as secretary of the EPC is sought. Please contact Ian MacLean if interested.

9. **Culling the Committee:** At last count, there were approximately 171 members of the EPC. Approximately a dozen EPC members have participated at any one meeting in the last three years and less that half dozen members have worked on any committee issues in the last three years. Current inactive members are

respectfully requested to advise the committee chair and the NYSBA (lbataille@nysba.org) if they have any interest in being active members of the EPC or if they would like to be dropped from the committee.

10. **Other Topics:** The chair asked if any members had other topics or concerns that they would like to see either the EPC or another committee address. Peter van Nuys and David Milner raised the question whether **a state QTIP election** was still alive. Others raised the issue of legislation to do away with **fiduciary income tax on trusts**. The general consensus on both issues was that, notwithstanding the fact that NYS is hemorrhaging non-grantor trusts, until Albany indicates that revenue negative legislation has a chance at consideration, the issues were probably not worth pursuing at this time. Mr. MacLean summarized some of the hot issues raised at Exec by other committees; these included **potential will depository legislation**; **efiling** is coming; **hedge fund investments** in trust by corporate fiduciaries is dead; **charitable commissions** was vetoed; and the way **interest** is calculated under EPTL 11-1.5(d) is being reviewed.

11. **Date and Place of Next EPC Meeting:** By teleconference on March 3rd at 10am. The TOLL FREE call in number is **1-866-210-1669 and the passcode is 1222531. All are welcome and encouraged to attend.**

The meeting adjourned at 11:00am.

Respectfully submitted,

Ian W. MacLean