

# Trusts and Estates Law Section Newsletter

A publication of the Trusts and Estates Law Section of the New York State Bar Association

## A Message from the Chair

Each Fall, the New York Bankers Association holds a trust and investment conference in upstate New York. This year’s conference was held at the Otesaga Resort Hotel in Cooperstown.<sup>1</sup> While famous as the home of the Baseball Hall of Fame, Cooperstown is a beautifully preserved village filled with charming houses, including several fine examples of Second Empire architecture, a style of architecture popular in the 1870s. And for a conference held in early October, the hills around Cooperstown were ablaze with autumn colors.



Ronald J. Weiss

The Cooperstown area has special memories for me. The first estate I handled when I was a young trust officer with a bank in Albany was in Richfield Springs, a village about 25 miles north of Cooperstown. The decedent was a widow who had a life estate in a farm. The remainder was left to her husband’s children from his first marriage. Besides the usual issues in an estate involving a second marriage, the widow had permitted a neighbor to mine gravel on the property, an activity about which the remaindermen had not been entirely pleased. Also, in the barn was a vintage (1952) Mercury coupe that I was told (and from the condition of the car believed) was literally only driven to church on Sundays. It was an interesting introduction to the world of trusts and estates.

I was invited to speak to the Bankers Association to explain our Section’s goals and our legislative agenda for the coming year. The speaker before me included in her remarks an update on the bills that had

recently passed the New York legislature. It was quite satisfying to hear her presentation, since our Section had drafted most of the bills that she discussed. The few that we had not drafted were bills that our Section had commented favorably upon. That record goes to demonstrate the wealth of activities the various committees of the Section perform, not only for the benefit of our members, but for the public in general. If you are not currently serving on a committee, I urge you to look at the list of committees in this *Newsletter*, and contact the Chair of the committee with which you would like to become involved.

In my remarks to the Bankers, I too went over our legislative accomplishments and the need for us,

## Inside

Editor’s Message.....	3
(Jaclene D’Agostino)	
Minimizing New York Income Taxes on Trusts After the 2014-2015 Budget Bill.....	4
(Richard W. Nenno)	
IRS Loses Summary Judgment Motion in Tax Court Estate Tax Case Involving Madoff Account.....	17
(Stephen J. Krass and Lee A. Snow)	
Hearsay Issues in Surrogate’s Court Proceedings.....	19
(John R. Morken)	
The Basics of Gifts and Gifting in Surrogate’s Court Litigation.....	24
(Gary E. Bashian)	
Recent New York State Decisions.....	28
(Ira M. Bloom and William P. LaPiana)	
Case Notes—New York State Surrogate’s and Supreme Court Decisions.....	31
(Ilene Sherwyn Cooper)	
Florida Update.....	36
(David Pratt and Jonathan Galler)	

the Bankers and other interested constituents to work together to develop common goals and bring those goals to fruition. One of those goals, and one I recently charged the Elderly and Disabled and Estate and Trust Administration Committees to review, is to develop ways to improve the administration of supplemental needs trusts (“SNT”).

Perhaps the decision that is emblematic of the issues a trustee of a SNT can face is Surrogate Glen’s 2012 decision in *Matter of JP Morgan (Marie H.)*,<sup>2</sup> a case that, to quote Surrogate Glen, “raises important questions about the obligations of fiduciaries, including institutional trustees, to beneficiaries, with disabilities, of trusts that seek to provide for the welfare of those beneficiaries.” While the Court’s findings made it clear that the trustees—an institution and attorney—had failed to make themselves knowledgeable about their beneficiary’s condition and needs, it also demonstrates some of the practical issues facing the trustee of a SNT. For example, how does a trustee who is not also the beneficiary’s guardian gain access to the beneficiary’s medical records? In addition, many trustees (both individuals and institutions) may not have the specialized knowledge needed to evaluate the beneficiary’s medical and social needs and bring to bear the multitude of services required by a developmentally disabled beneficiary, such as was the situation in *Matter of JP Morgan (Marie H.)*. Should the trustee be permitted to retain the servic-

es of a social worker or other health care professional to assist the trustee of a SNT? Are the charges of those services a proper expense of the trust? Should the courts require that SNT trustees undergo specialized training? What will be the effect of all of this on the continued willingness of individuals, and especially institutions, to take on the trusteeship of a SNT? I think that these are important questions that our Section, together with our colleagues in the Elder Law and Special Needs Section and banking community, should begin to address.

For those of you who attended the Fall meeting in Rochester, it was great seeing you and I look forward to seeing you all at the Annual Meeting in New York City this coming January.

Ronald J. Weiss

### Endnotes

1. Trivia questions (one for upstate and downstate members).  
 Question 1: Cooperstown is situated on the south end of what lake?  
 Question 2: The Otesaga was developed by Edward and Stephan Clark. What famous apartment house in Manhattan did the Clark family also develop?  
 Answer to Question 1: Lake Otsego.  
 Answer to Question 2: The Dakota.
2. 38 Misc. 3d 363, 956 N.Y.S.2d 856 (Sur. Ct., N.Y. Co. 2012).

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