

ABA Task Force on Attorney-Client Privilege

On Friday, February 11, the ABA Task Force on Attorney-Client Privilege held public hearings in Salt Lake City to obtain comments and suggestions relating to the protection of communications between client and lawyer, as embodied in the attorney-client privilege. The Task Force invited comments on the attorney-client privilege and its exceptions and sought specific examples regarding circumstances in which challenges to the privilege are being asserted by regulatory agencies and others. The Task Force is seeking recommendations as to how to strike the appropriate balance between the purposes of the privilege and competing objectives. Terry Franklin and Jerry Hoenig attended the hearings on behalf of the Section and will report on the proceedings at the Spring meeting in Washington.

UTC News

The Uniform Trust Code (UTC), already enacted in 10 jurisdictions, is currently introduced in six states and is on the Governor's desk in Virginia. Several other states will introduce UTC bills later this year. Amendments to the UTC were approved by the National Conference of Commissioners on Uniform State Laws (NCCUSL) in August 2004 and January 2005. They are now available (with comments) at www.nccusl.org and www.utcpoject.org.

Don't Overlook E-State

E-STATE is the Section's on-line newsletter for estate planners. Its goal is to provide substantive and timely articles about probate and trust law and to provide useful information on RPPT Section activities, such as upcoming meetings and events. E-STATE is looking to focus more on "Recent Developments," such as tax cases, legislation, private letter rulings and revenue rulings. It is seeking additional authors who would report to the editors

on various substantive topics. If you are interested in contributing to E-STATE, please contact its Managing Editor, Robert Steele, at Steele@whafh.com.

MJP Debates in Florida

The Florida Bar is proposing rule changes to the Florida Supreme Court that would address MJP issues. The proposals allow out-of-state lawyers to come into the state to handle transactions and arbitration, mediation and other dispute resolution matters as long as there is a "nexus" -- a client who resides in or has a business where the lawyer is admitted or if the matter relates to an area of the lawyer's practice. Both proponents and opponents of the rules changes expressed their views to the Court in 90 minutes of oral argument presented on February 10. A video of the oral arguments as well as a transcript can be found on the Supreme Court's website at www.floridasupremecourt.org.

Review of IRC § 6166 in Light of Changes in American Job Creation Act of 2004.

One of the Tax Counsels for the Senate Finance Committee is reviewing § 6166 of the Internal Revenue Code in light of changes made to the American Jobs Creation Act of 2004. Code § 6166 provides for estate tax deferral regarding closely-held businesses, including real estate used in such businesses. She has asked our Section to comment. The Section would like to provide feedback from as many people as possible. We have a web page on the Business Planning Group Web Site (<http://www.abanet.org/rppt/cmtes/pt/c-group>) at which you will find the survey being conducted, as well as the results. This effort is co-sponsored by the Business Planning Committee of the American College of Trust and Estate Counsel. It is also being done with the cooperation of our Section's Estate and Gift Tax Committee. Anyone who would like to actively participate may indicate so in the survey or may e-mail

Steve Gorin, chair of the Section's Business Planning Group of Committees, at sgorin@thompson-coburn.com.

Uniform Power of Attorney Act

Prof. Linda Whitton, Reporter for the National Conference of Commissioners on Uniform State Laws Drafting Committee on the Uniform Power of Attorney Act, has produced a new interim draft that has been posted to the web page of the Committee on Uniform Acts for Probate and Trust Law. Comments are welcome and can be sent to Prof. Whitton at linda.whitton@valpo.edu, to the ABA advisor, Bill LaPiana, at wlapiana@nyls.edu or to the Section advisor, Abigail Kampmann, at agkammann@estplanning.com. While comments on all aspects of the drafting project are welcome, subjects which are of particular concern include provisions for insuring the portability of powers of attorney (sec. 107); the scope of the statutory power dealing with personal and family maintenance (should it include payment of educational and medical expenses within IRC sec. 2503(e) and contributions to 529 plans); the scope of the gift-giving power in sec. 216 (should it include the power to split gifts under IRC. Sec. 2513, to make marital deduction gifts, and gifts to 529 plans); should the power to incur indebtedness on behalf of the principal be added to the list of powers in sec. 108(b) which require an express grant of authority; is there a problem created by the separation of banking powers in sec. 207 from the personal property powers in sec. 204? The Drafting Committee is scheduled to meet again in mid-April and the draft produced at that meeting will be discussed at the Spring meeting of the Section in Washington later in April.

Unauthorized Practice of Law

A federal district court in Washington, D.C. *sua sponte* ordered stricken from its docket a motion for a preliminary injunction filed by a lawyer not licensed

to practice in the District of Columbia. In *Blackman v. District of Columbia*, D.D.C., No. 97-1629, 1/3/05, the court held that even though the lawyer was licensed to practice law in Texas and Louisiana and was authorized to practice before the D.C. district court pursuant to the court's reciprocity rule, the lawyer forfeited that privilege by setting up a law office in the District of Columbia and not becoming licensed to practice there. The court's liberal reciprocity rule was not designed to allow out-of-state lawyers to establish offices in the District of Columbia and routinely practice law there.

The Section tracks current developments relating to the unauthorized practice of law (UPL). You can see summaries of cases, statutes and articles concerning UPL at the Section website at http://www.abanet.org/rppt/section_info/upl/home.html.

Update on Uniform Environmental Covenants Act

In the last Bulletin, we reported on the adoption of the Uniform Environmental Covenants Act (UECA) by the National Conference of Commissioners on Uniform State Laws and the Section's participation, through Roger Schwenke, in its passage. UECA, as adopted by the Commissioners, can be viewed on a Web site maintained by the National Conference. It can be located at: "UNIV. ENVTL. COVENANTS ACT" (Final Act-adopted at the 2003 Annual NCCUSL Meeting), available at <http://www.environmentalcovenants.org>. This same website provides a direct link to current newsletters, maps and charts showing the state-by-state consideration or enactment.

UECA was recently adopted in Ohio, and has now also been introduced in nine other states: Connecticut, Hawaii, Kentucky, Maryland, Minnesota, Nebraska, New Mexico, South Dakota and West Virginia. It has also been introduced in the District of Columbia. Introduction of UECA is also expected this year in Colorado, Iowa, Maine, Nevada, Oregon, Pennsylvania and Texas. The National Conference anticipates that other states - perhaps as many as a total of 25 (including those already listed) will consider or anticipate introduction in 2005. To date, in the evaluation that UECA has received, many state environmental regulatory

agencies, including the Iowa DEQ, have either supported or are studying its adoption. However, other state regulatory agencies, such as in Massachusetts, have expressed some concerns with it.

UECA is important because it confirms the legal validity and enforceability of recorded use restrictions negotiated in connection with what are called "risk-based cleanups" of contaminated real estate. Over time, it is hoped UECA would encourage a substantial reuse of properties that have otherwise been abandoned or left in distressed conditions. Anyone interested in learning more about UECA, or in participating in their state's evaluation of it, should feel free to contact Roger Schwenke at rschwenke@carltonfields.com, (813) 229-4152.

Section News

Applications for Section Fellowships

The Section is seeking young lawyers interested in applying for a Section fellowship for 2005-2007. Complete details are available on the website at http://www.abanet.org/rppt/section_info/fellows/home.html. The application deadline is June 4.

Spring Symposia

Registration is still open for the April 27-29 16th Annual Spring Symposia in Washington, D.C. Complete details and a registration form may be found at <http://www.abanet.org/rppt/2005>.

Can't make it to D.C.? Several of the programs are being simulcast via teleconference. More info will be available on the section calendar at www.abanet.org/rppt/meetings_calendar.html.

Writing Contest

The annual Jacques T. Schlenger student writing competition is open for entries. The winner of the competition will receive \$2,000. Complete details are available at <http://www.abanet.org/rppt/publications/journal/writingcontest/home.html>. The deadline for entries is June 15.

National Health Care Decisions Week

During the five years the Section sponsored the campaign to educate the public about health care advance directives and organ and tissue donation, over 90 bar associations hosted programs for more than 13,000 attendees. Although we are at the end of our funding commitment from the US Department of Health and Human Services, we hope that bar associations throughout the country will continue to provide public education about these important topics. All of the materials made available for the programs are still available: organ and tissue donation cards are available at no charge by contacting Venus Walker [vwalker@hrsa.gov] at the Health Resources and Services Administration of the US Department of Health and Human Services; and complimentary copies of our organ and tissue donation brochure, A Legacy for Life (available in both English and Spanish) can be obtained by contacting the Section office at rppt@abanet.org, or 312.988.5824. Copies of the "Lawyer's Tool Kit for Health Care Advance Planning", which helps lawyers prepare advance directive documents are also available by calling or e-mailing the Section.

Thanks to the commitment and hard work of bar associations and Section members, the National Health Care Decisions Week campaign was a resounding success.

See you in D.C April 27-30!!



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