

**ESTATES, TRUSTS AND PROBATE LAW SECTION
WINTER 2010
NEWSLETTER**

GREETINGS FROM THE STEERING COMMITTEE CO-CHAIRS

We hope that you enjoyed the holidays and that 2010 brings each of you health, professional satisfaction, and gracious abundance.

We are in a new year with new beginnings! We congratulate Judge Rhonda Reid Winston on her promotion to Presiding Judge of the Probate Division; we welcome Judge John M. Campbell to the Probate Division as Deputy Presiding Judge; and we wish Judge A. Franklin Burgess, Jr. all the best in his return to the Civil Division. We hope you were able to join us at December's Bench Bar Conference. The Section presented Judge Burgess with a Waterford crystal paperweight and John Feinstein's book, "A Good Walk Spoiled."

Many thanks to Section member Andrea Sloan for chairing our Second Annual Holiday Gift Drive and to all of you who donated gifts to make it a resounding success! Andrea delivered over 450 gifts to the residents of Rock Creek Manor and JB Johnson nursing facilities. Thank you for sharing the spirit of the season and spreading cheer among the appreciative residents. For many, your gift was the only one received.

Our third "Planning Ahead: Preparing for disability and death" community outreach program will be held in April at IONA Senior Services. We are grateful to Morris Klein, Barbara Miller, and Ed Varrone for volunteering to speak at this program, as well as for the support and participation of Judge Rhonda Reid Winston and Judge John M. Campbell. Plans are already underway for a Planning Ahead program for First Responders in May.

The Estates, Trusts and Probate Law Section is pleased to continue its support of The Wills Project. You may recall that the Register of Wills launched this project in February 2008. A copy of one page of the Will or Codicil to the Will of select famous Washingtonians is framed and displayed in the Probate Division, including those of Frederick Douglass, Oliver Wendell Homes, President Woodrow Wilson, First Lady Dolly Madison, Alexander Graham Bell, and Edwin Stanton. Excerpts from the Wills of other notable Washingtonians **were** unveiled at a special reception in mid-February.

In addition to our monthly luncheon programs and various CLE courses, we have a special educational program coming up on May 13th from 6-8 pm at the DC Bar Conference Center. Agnes Powell, Esquire and Gene Shipp, Esquire will discuss "Planning for the Solo or Small Firm's Lawyer's Temporary or Permanent Exit from Practice." This program will provide practical advice to help the practitioner plan for retirement, disability, and death. Registration information will be circulated in the upcoming weeks.

Our annual Judicial Reception will be held in late April. We will release further information as it becomes available through the listserv so that you may save the date.

We hope that you have joined our Section listserv. If not, please go to http://www.dcbbar.org/for_lawyers/sections/listserv/listserv_definition.cfm or contact David Itkin at ditkin@dcbbar.org to enroll. The listserv provides an invaluable resource to tap into the knowledge of colleagues and to disseminate information on Section events and other matters of interest.

In conjunction with the Tax Section's Estate Planning Committee, we are hard at work on a task force to explore the possibility of proposing legislation to address the effect of Federal estate tax repeal on the formula clauses used by many estate planners. Such a proposal has been introduced in Virginia and is under consideration in Maryland.

Nominations are now being accepted for membership to our Section's Steering Committee. Elections will be held in May. If you are interested in being considered as a candidate for next year's Steering Committee, please complete the Candidate Interest Form available online at http://www.dcbbar.org/for_lawyers/sections/section_elections/index.cfm. If you have any questions about the process, please contact our Nominating Committee Chair, Morris Klein (morrisklein@netzero.com; 301-652-4462).

We look forward to seeing you at our upcoming events. If you have an idea for a topic for next year's luncheon series or educational programs or would like to be a speaker at either, please let us know!

Warm regards,

Kimberly Kyle Edley and Catherine Mary Rafferty,
Co-Chairs, Steering Committee of the Estates, Trusts and Probate Law Section

SAVE THE DATES FOR THE 2009-2010 PROGRAM SERIES!

To keep members abreast of legal concepts and current developments, the Estates, Trusts and Probate Law Section offers a luncheon program series.

All of the programs will be held in the D.C. Bar Conference Center, 1101 K Street, NW, Washington, D.C, from 12:00 p.m. to 1:45 p.m. EST. A light lunch will be served at each.

This year's programs are as follows:

Tuesday, September 17, 2009

Navigating the Metadata Minefield

Speakers: Michael Maschke, Director of Computer Forensics, Sensei Enterprises, Inc.

Jesse Lindmar, Assistant Director of Computer Forensics, Sensei Enterprises, Inc.

Saul Singer, Esquire, D.C. Bar, Senior Legal Ethics Counsel

Moderator: Catherine Mary Rafferty, Esquire, Law Offices of Catherine Mary Rafferty

Thursday, October 15, 2009

Funding Revocable Trusts

Speaker: Julia O'Brien, Esquire, Furey, Doolan & Abell, LLP

Moderator: Ellen Klem, Esquire, ABA, Commission on Law and Aging

Thursday, November 19, 2009

Anomalies in the Law and the Nuts & Bolts of Old Law Probate Practice

Speakers: James Larry Frazier, Esquire, Law Offices of James Larry Frazier

William E. Davis, Esquire, Jackson & Campbell, P.C.

Nicholas D. Ward, Esquire, Law Office of Nicholas D. Ward

Thursday, December 17, 2009

Intimacy Issues in Elder Law

Speakers: Arnetta S. Wright, Esquire, Wright Law Group, P.C.

Marie Therese Connolly, Esquire, Woodrow Wilson Center Senior Scholar; Coordinator, Elder Justice and Nursing Home Initiative US Department of Justice; and Senior Trial Counsel, Civil Division

Mattie Labrador, Director of Nursing, The Specialty Hospital of Washington – Hadley Skilled Nursing Facility

Moderator: James Larry Frazier, Esquire, Law Offices of James Larry Frazier

Thursday, January 21, 2010

The New D.C. Vacant Property Tax

Speakers: Nicholas Majett, Chief, Exemption Section, D.C. Tax Office

Mark G. Griffin, Esquire, Griffin & Murphy LLP

Roy L. Kaufmann, Esquire, Jackson & Campbell, P.C.

Moderator: Leroy M. Fykes, Jr., Expert Legal Services Chartered

Co-sponsoring Sections: D.C. Affairs & Real Estate, Housing and Land Use

Thursday, February 18, 2010

Dealing with Mentally Ill and Aging Clients & Capacity Issues

Speakers: Charlie Sabatino, Esquire, Director, American Bar Association Commission on Law and Aging

Carol Cole Kleinman, MD, JD, DFAPA

Moderator: Kate M.H. Kilberg, Esquire, Law Offices of Virginia A. McArthur

Thursday, March 18, 2010

Community Property for the East Coast Practitioner

Speakers: Deborah Y. Luxenberg, Esquire, Founder and Senior Partner, Luxenberg, Johnson & Dickens PC

Jane Moretz Edmisten, Esquire, Trusts and Estates Professor, The George Washington University Law School

Moderator: Paul D. Pearlstein, Esquire, Attorney at Law

Thursday, April 15, 2010
Representing Estate and Trust Beneficiaries
Speaker: Robert Bunn, Esquire, Law Offices of Robert Bunn

Thursday, May 20, 2010
Ask the Register of Wills
Speaker: Anne Meister, Esquire, D.C. Register of Wills
Moderator: Kimberly Kyle Edley, Esquire, Attorney at Law

Thursday, June 17, 2010
D.C., MD & VA Update
Speakers: William E. Davis, Esquire, Jackson & Campbell, P.C.
Charles S. Abell, Esquire, Furey, Doolan & Abell, LLP
Kimberly Martin Turner, Esquire, Law Office of Kimberly Martin Turner, PLLC
Moderator: Morris Klein, Esquire, Attorney at Law
Co-sponsoring Section: Taxation

Fees for Individual Programs:
\$28.00 Section Members and Subscribers
\$35.00 Non-Section Members
\$25.00 Government and Non-profit Employees
\$15.00 Law Students

Registration

Online registration for individual programs is available on the D.C. Bar Estates, Trusts and Probate Law Section Web site,
http://www.dcb.org/for_lawyers/sections/estates_trusts_and_probate_law/index.cfm.

UPCOMING CLE PROGRAMS

The Estates, Trusts and Probate Law Section along with the Family Law Section are sponsoring a continuing legal education (CLE) program titled, "What You Need to Know About Domestic Partnerships and Same-Sex Marriage in DC, MD, and VA." This three (3) credit-hour CLE will take place at the D.C. Bar Conference Center, 1101 K Street NW, Washington DC 20005 on Tuesday, March 23, 2010 from 6:00 – 9:15 p.m. The program costs \$89.00 for members of the Family Law Section and the Estates, Trusts and Probate Law Section. DC Bar members pay \$99.00 and all others pay \$129.00. For more information and to register for this program, visit http://www.dcb.org/for_lawyers/events/event_Detail.cfm?eventCD=850372&isPackage=0&showAllButtons=1.

The Estates, Trusts and Probate Law Section will sponsor its annual three-part CLE program titled, "Basic Estate Planning Series." Each session constitutes three (3) CLE credit hours and will take place at the D.C. Bar Conference Center, 1101 K Street NW, Washington DC 20005 on Monday, April 26, 2010; Monday, May 3, 2010; and Monday, May 10, 2010 from 6:00 – 9:15

p.m. The series costs \$159.00 for members of the Estates, Trusts and Probate Law Section; \$179.00 for D.C. Bar members; and \$239.00 for all others. Each program costs \$89.00 for members of the Estates, Trusts and Probate Law Section; \$99.00 for D.C. Bar members; and \$129.00 for all others. For more information and to register for this program, visit http://www.dcbbar.org/for_lawyers/events/event_Detail.cfm?eventCD=850457&isPackage=0&showAllButtons=1.

NEW EDUCATIONAL PROGRAM ON MAY 13, 2010: Planning for the Solo or Small Firm Lawyer's Temporary or Permanent Exit from Practice

Agnes Cowan Powell, Esquire, of Law Offices of Agnes C. Powell, P.C., and Wallace E. “Gene” Shipp, Jr., Bar Counsel, will discuss the practical and ethical considerations for every attorney (especially solo practitioners and members of small firms) regarding temporary or permanent exit from the practice of law due to disability, retirement, or death. Learn what steps you should take now to prepare for the future and to comply with the DC Rules of Professional Conduct. Whether you are a new lawyer or on the verge of retirement, this class offers something for everyone concerned with protecting themselves and their clients. The class will be held on Thursday, May 13, 2010, from 6-8 pm at the DC Bar Conference Center, 1101 K Street NW., Washington DC 20006. The class costs \$55.00 for members of the Estates, Trusts and Probate Law Section and the co-sponsoring Sections; \$70.00 for Non-Sponsoring Section Members; \$50.00 for Government and Non-Profit Employees; and \$50.00 for Law Students.

To register for this program visit

http://www.dcbbar.org/for_lawyers/events/paperRegistration.cfm?eventCD=080912&isPackage=0.

COMMUNITY OUTREACH AND PRO BONO OPPORTUNITIES

Community Outreach Program for the Public

The D.C. Bar Estates, Trusts and Probate Law Section will host “Planning Ahead,” a series of seminars for the public to provide guidance in protecting assets in the event of illness or death. The first program featured a panel of estate planning attorneys (James Larry Frazier and Kimberly Martin Turner) who shared information about wills, powers of attorney, and other estate planning documents. The program was held at THEARC in Ward 8 on October 13, 2009. A second panel (Archie L. Palmore, Paul D. Pearlstein, and Catherine Mary Rafferty) presented the program at The Church of the Annunciation in Ward 3 on February 24, 2010. The next program with Morris Klein, Barbara Miller, and Edward G. Varrone, will be held at Iona Senior Services, 4125 Albemarle Street NW, on April 7, 2010 from 7- 9 p.m. Plans are underway for a program for First Responders in May. The goal is to disseminate information to as many District of Columbia residents as possible. If you are interested in volunteering to speak to the public at one of the seminars, please contact James Larry Frazier at (202) 544-9455 or frazieresq@aol.com or Catherine Mary Rafferty at 202-244-0608 or cm.rafferty@verizon.net.

D.C. Bar Pro Bono Program Advice & Referral Clinic

Section members are encouraged to participate in the D.C. Bar Pro Bono Program's Advice and Referral Clinics held on the second Saturday of each month from 10:00 a.m. to 12:00 noon

(orientation at 9:30 a.m.) at Bread for the City, 1525 Seventh Street, N.W. The D.C. Bar Pro Bono Program Advice & Referral Clinic is designed to provide brief services by offering *pro se* individuals the opportunity to discuss with volunteer attorneys certain kinds of matters governed by D.C. or federal law, including bankruptcy/debt collection, consumer law, employment law, family law, health law, housing law, immigration/asylum, personal injury, probate, public benefits, and tax law. All services are provided free of charge. The D.C. Bar Pro Bono Program's Advice and Referral Clinic is limited to providing general information, advice, and brief services, and does not provide representation.

Generally, a member of the Estates, Trusts and Probate Law Section's Steering Committee serves as the volunteer resource attorney for probate matters each month. However, everyone is welcome to volunteer and volunteers are especially needed for May and June. Participation is very rewarding, and can be very interesting and even fun. This is a good way to make a positive contribution to indigent persons who often desperately need legal advice and who are always very grateful for the assistance you can provide. To volunteer, contact Ed Varrone at (202) 861-3150 or edv@varronelaw.com, or the D.C. Bar Pro Bono Program at (202) 737-4700, ext. 380.

D.C. Bar Pro Bono Program's Probate Resource Center

The Probate Resource Center is operated by the D.C. Bar Pro Bono Program to provide free legal services to unrepresented parties or potential parties in the Probate Division of D.C. Superior Court. The Probate Resource Center represents a continuum of services currently offered by the Pro Bono Program's Advice and Referral Clinics, with the capacity to provide customers with an extended level of analysis and brief services, including assistance with the Petition for Probate, explanation of the distribution of assets and general help navigating the probate process. Volunteer attorneys are not expected to retain clients served through the Resource Center. Volunteers should have experience in estate administration. Volunteer attorneys sign up to staff the Probate Resource Center (in Building A of D.C. Superior Court) on a Tuesday afternoon, 12:30-4:30 p.m., and receive pre-screened customer packets (for the appointments scheduled for that day) that the volunteer attorney can review in advance. Attorneys interested in volunteering for the Probate Resource Center should contact Elizabeth R. Campbell, Esq., at ecampbell@dcb.org, or (202) 737-4700 ext. 3295.

SUPERIOR COURT NEWS

Amendments to the Superior Court Rules of the Probate Division

On October 19, 2009, the Board of Judges of the Superior Court approved amendments to the Superior Court Rules of the Probate Division 311, 321, 322, 324, 325 and 350, regarding aspects of guardianship, conservatorship, and protective proceedings. The changes will affect the service of petition and notice of hearings by consolidating the requirements into one rule. They also modify procedures for proceedings appointing and terminating guardianships or conservatorships. The amendments, which became effective on January 4, 2010, are available online at <http://www.dccourts.gov/dccourts/docs/order09-06.pdf>.

New Legislation Allows Domestic Partners to Take Title as Tenants by the Entirety

Bill 18-66, the "Domestic Partnership Judicial Determination of Parentage Amendment Act of 2009" became effective on July 18, 2008. The law (L18-0033) amends D.C. Code § 42-516 and

§ 46-601 to establish that domestic partners may hold real property, as well as personal property, as tenants by the entirety.

Wills Project Reception Celebrates the Addition of Four New Documents!

On February 17, 2010, a reception was held at the Probate Division, Third Floor, Building A, 515 5th Street, N.W., from 4:00 to 6:00 p.m. to celebrate the addition of three wills, including the will of Charles Hamilton Houston, and one apprenticeship contract to the exhibit of famous Washingtonians that graces the halls of the Office of the Register of Wills. The exhibit is designed to provide information about historical figures and insights into the laws at the time the wills were drafted. Currently, the exhibit contains the wills of former Presidents James Madison, James Monroe, Franklin Pierce, Grover Cleveland, and Woodrow Wilson, First Ladies Julia Dent Grant and Dolly Madison, Frederick Douglass, Daniel Webster, Alexander Graham Bell, Oliver Wendell Holmes, Jr., Euphemia Lofton Haynes, and Edwin Stanton.

In addition to the will of Houston, a former Dean of Howard University Law School and mentor to William Hastie, Spottswood Robinson, William Bryant, and Supreme Court Justice Thurgood Marshall, wills joining the exhibit are Robert Peary, the first person to reach the geographic North Pole and Alice Roosevelt Longworth, the oldest child of Theodore Roosevelt.

An apprenticeship contract to learn the art and mystery of seamanship between John Brunley and an Alexandria sea captain will also be added to the exhibit. Apprenticeship contracts were maintained by the Office of the Register of Wills because the apprentice was a minor. These contracts lasted until the apprentice reached the age of 21.

The Estates, Trusts and Probate Law Section arranged for the framing of the documents, as part of our Section's community outreach efforts. For more information on the exhibit, see the Wills Project information on the [Probate Division Web site](#).

Probate Bench-Bar Conference

The Probate Bench-Bar Conference, coordinated by Judge Burgess and cosponsored by our Section, was held on December 15, 2009 at 4:00 p.m. in the Juror's Lounge on the Third Floor of Superior Court.

Save the Date for the Judicial Reception!

Our Section will be hosting the 20th Annual Judicial Reception in late April 2010. The Judicial Reception is a great opportunity to mingle and chat with the Superior Court judges and other attorneys. We will let you know as more details about this event become available.

OTHER NOTES AND ANNOUNCEMENTS

Join the Estates, Trusts, and Probate Law Section of the D.C. Bar!

Joining the Section can provide you with opportunities to advance your skills and interests and network with colleagues. Section members receive mailings, newsletters, e-mail announcements, and special discounts on events and publications, including our popular lunch programs and CLE courses. Join online at www.dcbbar.org.

2010 Guardianship Conference

The 2010 Guardianship Conference, sponsored by the Office of the Register of Wills, will be held on March 12, 2010 at the Catholic University of America, Columbus School of Law, 3600 John McCormack Road, Washington, D.C. 20064. For more information on the 2010 Guardianship Conference, contact Nana Perry, Program Manager of the Guardianship Assistance Program, at (202) 879-9407, Nana.Perry@dcsc.gov.

Welcome to the new Estates, Trusts and Probate Law Section ListServ!

The DC Bar selected our Section to participate in a ListServ pilot project for all Section members. In only a few months the activity has dramatically increased and proven extremely valuable for the participants.

To join the ListServ, Section members may go on line at <http://tinyurl.com/ETPListserv> or contact David Itkin at DItkin@dcb.org.

After the Listserv has been operating for a reasonable period of time, the DC Bar will decide whether to continue it. Let's use this new service and convince the Bar that it should remain an important membership benefit for all of our Section members.

Guardian and Conservator Support Group Announces New Meetings!

The Guardian and Conservator Support Group will meet from noon to 2:00 p.m. on March 19, 2010 and May 7th in the third-floor conference room at the Office of the Register of Wills. For more information, on the Guardian and Conservator Support Group, contact Leroy M. Fykes, Jr. at lfykes@mba1971.hbs.edu, or Archie L. Palmore at alpalmore@juno.com.

Thank You, Volunteers!

The Steering Committee thanks the following individuals who gave presentations at our October, November, December, January and February lunch programs:

Julia O'Brien, Esquire, Furey, Doolan & Abell, LLP

William E. Davis, Esquire, Jackson & Campbell, P.C.

Nicholas D. Ward, Esquire, Law Office of Nicholas D. Ward

Arnetta S. Wright, Esquire, Wright Law Group, P.C.

Marie Therese Connolly, Esquire, Woodrow Wilson Center Senior Scholar; Coordinator, Elder Justice and Nursing Home Initiative U.S. Department of Justice; and Senior Trial Counsel, Civil Division

Mattie Labrador, Director of Nursing, The Specialty Hospital of Washington – Hadley Skilled Nursing Facility

Nicholas Majett, Chief, Exemption Section, D.C. Tax Office

Mark G. Griffin, Esquire, Griffin & Murphy LLP

Roy L. Kaufmann, Esquire, Jackson & Campbell, P.C.

Charlie Sabatino, Esquire, Director, American Bar Association Commission on Law and Aging
Carol Cole Kleinman, MD, JD, DFAPA

We also thank the following individuals who volunteered for the D.C. Bar Pro Bono Program's Probate Resource Center in October, November, December, and January:

Barbara Betsock, Attorney at Law
Susan G. Blumenthal, Counsel, Bryan Cave LLP
Kimberly Fahrenholz, Associate Attorney, The Law Offices of Phyllis J. Outlaw & Associates
Kiran Hassan, Attorney at Law
Kenneth Rosenau, Attorney at Law

We also thank the following individuals who volunteered as probate mentors for the D.C. Bar Pro Bono Program's Advice and Referral Clinics in October, November, December, January and February:

Archie Palmore, Attorney at Law
Leroy M. Fykes, Jr., Expert Legal Services Chartered
James Larry Frazier, Law Offices of James Larry Frazier
Kimberly Kyle Edley, Attorney at Law
Kate M.H. Kilberg, Attorney at Law

We also thank the following individuals who volunteered to teach CLE in February:

George P. Levendis, Levendis Law Group PLLC
Paul D. Pearlstein, Law Office of Paul D. Pearlstein
Lewis J. Saret, Moore & Bruce, LLP

We also thank the following individuals who volunteered as speakers at our "Planning Ahead" community outreach programs in October and February:

James Larry Frazier, Law Offices of James Larry Frazier
Archie L. Palmore, Attorney at Law
Kimberly Martin Turner, Law Office of Kimberly Martin Turner, PLLC
Paul D. Pearlstein, Law Office of Paul D. Pearlstein
Catherine Mary Rafferty, Law Offices of Catherine Mary Rafferty

RECENT PROBATE COURT DECISIONS

The Steering Committee thanks William E. Davis, Esq. of Jackson & Campbell, P.C. for providing the following case summaries for publication in this edition of our newsletter:

Intervention Proceedings

In Re ESTATE OF RUBY McDOUGALD, An Adult, INT No. 63-2008 (J. Burgess, August 26, 2009). An objection was filed to the conservator's request for compensation in the amount of \$54,056.35. The objector contended that the value of the real estate should be excluded from the subject's assets for purposes of determining the compensation of the conservator. The Court disagreed, however, and held that the proper basis for determining the relationship of requested compensation to the subject's assets includes all the subject's assets, not just the intangible personal property. The Court observed that there is no statute, rule or appellate authority stating what compensation, as a percentage of estate assets, would be reasonable compensation for a

conservator. The Court did note, however, that there are guideposts which are useful such as the Superior Court Probate Rule 124(c) governing compensation for an attorney acting as personal representative and attorney for an estate and observed that the compensation request in the instant case was within the range set forth in that Rule. The Court also noted Superior Court Probate Rule 225(d) which provides for a 5 percent commission of amounts disbursed during the course of administration for guardians of the estates of minors and other fiduciaries whose services are not based on the time spent and the rate charged. In In re Orshansky, the trial court awarded compensation that was 4 percent of estate assets for work done as guardian, conservator and attorney. In ruling on the objection the Court first considered the hourly rate charged which was \$187.50, a discount from the conservator's usual \$250.00 rate. The Court again cited Orshansky in which a rate of \$185 for administrative work was found to be "relatively low." The Court next examined the services expended in light of the objector's specific objections and finding some services more appropriately performed by a guardian and weekly visits, for which the conservator billed, to ensure the vacant house was kept in good order to be excessive, the Court reduced the claimed compensation by \$3,207.50.

In Re Estate of THELMA BOURKE, An Adult, INT. No. 221-01 (J. Burgess, September 15, 2009). The Conservator filed requests for compensation totaling \$43,620.00, at an hourly billing rate of \$300, for services provided during a five and one-half month period. The compensation requested was 13 percent of estate assets. The Court denied the hourly rate for services it characterized as either clerical or administrative, noting that such work is ordinarily considered part of the overhead of a lawyer and not separately compensated. The Court then reduced the hourly rate by \$100.00 for services administrative in nature. The total amount claimed was reduced by \$6,230.

In Re Estate of ADELE YOUNG, An Adult, INTVP No. 187-09 (J. Burgess, September 29, 2009). Court appointed counsel for the subject sought compensation for his services and the response argued that the compensation should be paid from the guardianship fund. The intervention proceeding had been dismissed by the Court on the ground that the subject, when competent, had granted a springing power of attorney. The power was not effective until the subject's incapacity had been certified as provided in the instrument but once it was perfected, the court dismissed the petition. The opposition argued that the person who brought the intervention proceeding, or her counsel, should pay counsel's compensation as the petition should never have been brought under prevailing law. The Court found that that the applicable statute does not provide that the Court may require the petitioner in the original proceeding to pay the fee if the petition "should never have been brought." In the instant case, the power of attorney was not effective when the petition was brought and the Court could not find that the petition was frivolous or otherwise brought in bad faith. The Court granted the Petition for Compensation and ordered that the fees be paid from the subject's funds. It did find, however, that the \$300 private rate charged by the attorney to be high and awarded fees based on an hourly rate of \$275.00.

Estate Administration Proceedings

ALLEN V. SCHULTHEISS, ET AL. D.C. App. No. 06-CV-1445 (October 1, 2009) 137 DWLR 2233 (October 26, 2009). The Appellant filed a complaint to quiet title and for ejectment against Appellees, who were in possession of a parcel of residential real property, claiming that she had a life interest in it pursuant to a deed. The trial judge granted Appellees' motion for summary judgment upon determining that the deed purporting to grant appellant an interest in the property was void because, as a matter of law, a life estate cannot be held as tenancy by the entirety. The Court of Appeals held that a life estate may be held as a tenancy by the entirety, reversed the grant of summary judgment, and remanded the case to the trial court for further proceedings to determine the proper interpretation of the deed on which appellant based her claim.

While living, the Appellant's parents conveyed a deed to the property to the Appellant, Rae Nero Allen ("Rae") in which they reserved, as tenants by the entirety, a life estate, and upon the death of the survivor of them to the Appellant for the term of her natural life, as to an undivided two-thirds interests and a fee simple interest in the remaining one-third interest. (the "1982 deed"). That deed also conveyed the remainder interests in the two-thirds share subject to the life estate in six undivided one-ninth interests to their other six children (Alberta, Lois, Jimmy Curtis, Ronald, and Catherine).

Following the death of the father, the mother recorded another deed for the same property in which she conveyed an undivided eight-ninths interest in fee simple to herself and an undivided one-ninth interest in fee simple to another daughter (Catherine) (the "1992 deed"). Upon the mother's death, her will admitted to probate devised a one-third interest in the property to Appellant (Rae) and a one-ninth interest to each of her other five children, excluding Catherine, (Alberto, Lois, Thomas, Jimmy, Curtis, and Ronald). The Personal Representative of the Estate and Catherine signed a deed conveying the property to the Appellees. Following settlement on the property, Appellant (Rae) demanded that Appellees vacate the property to allow her to exercise her rights under the 1982 deed; namely a one-third interest in fee simple and a life estate in the other two-thirds of the property.

The Court of Appeals held that the law permitted the parents to convey to themselves a life estate held as a tenancy by the entirety. If they did so in the 1982 deed, the 1992 deed executed by the mother would have been a nullity insofar as it purposed to convey an estate greater than the one she owned. For the same reason, no interest in the property would have passed under the mother's will and therefore the Personal Representative of her estate would have had no interest in the property to convey to the Appellees. *Reversed and Remanded.* The full opinion can be found online at: http://www.dcappeals.gov/dccourts/appeals/pdf/06-CV-1445_MTD.PDF.

RICHARD, ET AL. v. MCGREEVY, D.C. App. No. 06-CV-1056, 06-CV-1057 & 07-PR-1411 (October 15, 2009) 137 DWLR 2545 (December 3, 2009). The Decedent died in the state of Maryland and on July 6, 2005, the Appellee opened a probate estate in Montgomery County, Maryland and was appointed Personal Representative of his Estate. On December 7, 2005, four creditors, claiming they had provided medical and legal services to the Decedent, presented their claims to the Personal Representative and the estate issued a notice of disallowance on January 10, 2006. On March 6, 2006, the Personal Representative opened an ancillary probate estate in

the District of Columbia with respect to the real property located in D.C., and on March 13, 2006, without knowledge of that the ancillary estate had been opened, the Creditors filed a complaint in the Civil Division of Superior Court seeking money damages in the amount of \$295,000 for breach of contract and seeking the removal of Appellee as Trustee of the Decedent's revocable trust and as Personal Representative of his estate. Two days later they filed a second action seeking money damages in the same amount and seeking a declaratory judgment that the decedent was domiciled in the District of Columbia at the time of his death.

In April, 2006, the creditors filed thirteen Notices of *Lis Pendens* with the D.C. Recorder of Deeds and referenced the first civil action filed as the action that formed the basis for each of the notices. The Personal Representative filed a Motion to Dismiss the Complaint in the first lawsuit and also a Motion to Strike the Filing of the Notice of *Lis Pendens* on May 10, 2006 in the Civil Division. On June 6, 2006, the Civil Division trial judge granted the Personal Representative's Motion to Strike and ordered the Recorder of Deeds to strike all thirteen Notices of *Lis Pendens*. The Recorder of Deeds filed a Motion to Intervene and to Vacate the Court's Order to strike because it contended that the order exceeded the Recorder of Deeds' authority because the Recorder of Deeds was not authorized to remove any of the Notices of *Lis Pendens* that had been recorded. The Creditors filed a Notice of Appeal of the June 6th Order striking the thirteen Notices of *Lis Pendens*. At the scheduling hearing in the second lawsuit, the trial judge *sua sponte* consolidated both cases. On September 8, 2006, the Civil Division granted the Personal Representative's Motion to Dismiss on the grounds that the Creditors were barred from asserting their claims in the District of Columbia because they had failed to comply with the Maryland statute requiring lawsuits be filed in Maryland after the disallowance of their claims and ordered that the consolidated complaints be dismissed. On September 21 and 25, 2006, the Creditors presented their claims against the ancillary probate estate in the District of Columbia. These claims were denied by the estate on October 26, 2006. The Probate Division granted the estate's motion to dismiss the Creditors' complaints, which were filed after the disallowance of their claims, on June 27, 2007, and the Creditors appealed.

The Court of Appeals held that the creditors' complaints were not barred in the District of Columbia. In dismissing those complaints, both the Probate Division and the Civil Division relied on Maryland law. Both Divisions reasoned that because the estate had been opened in Maryland, the Creditors' claims had been denied there, and no subsequent lawsuit had been filed there challenging the denials, the Creditors were barred from presenting their claims and subsequent lawsuits in the District of Columbia. Both the Probate Division and the Civil Division of Superior Court erred by applying the Maryland statute, which would have barred their claims against the ancillary estate in the District of Columbia. The District of Columbia estate, which applied in this instance, would not have barred those claims. Furthermore, since the Creditors did not file an action in the Maryland courts to contest the disallowance of their claims by the domiciliary estate, as was their right, there was no final judgment from Maryland, to which the D.C. Court would be required to afford Full Faith and Credit. The Appeals Court concluded that the Creditors had stated claims upon which relief could be granted because their claims are not "forever barred" and may be litigated in the District of Columbia. *Reversed and Remanded to the Probate Division*. The full opinion can be found online at: <http://www.dcappeals.gov/dccourts/appeals/pdf/06-CV-1056+ MTD.PDF>.

In Re ESTATE OF AUGUSTUS F. HAWKINS, Adm. No. 236-08, (J. Burgess, November 13, 2009). An interested person in the estate objected to the fees taken by the personal representative and fees paid to the estate's accountant. No objection was made to the fees taken by the attorney for the estate. The personal representative claimed fees in the amount of \$45,000, based upon 511.75 hours administering the estate. She did not have a "usual hourly compensation" rate but she was earning a salary of \$70,000 at the time of her retirement. The court calculated her hourly rate, based upon the number of hours claimed, at \$88. The personal representative admits that she did not calculate her fee by multiplying hours spent by a reasonable rate; rather, in combination with her attorney's fee, she tried to reach a figure that would amount to 4 percent of the estate assets and she argues that considering all the statutory factors, the fee is reasonable. In this case, the Court was of the opinion that, upon analysis of the statutory factors, the compensation claimed is too high; it is not reasonable in relationship to the nature of the work performed because much of the work was not particularly complex or difficult. The Court was of the opinion that compensation in the amount of \$30,000 was reasonable analyzing the statutory factors, which results in an hourly rate of \$59. The Court found that, in the absence of some opinion by another accountant that the fee was excessive, the fees paid the accountant were not excessive.

In Re ESTATE OF SARAH G. KPODI, Adm. No. 1279-06 (J. Burgess, October 2, 2009). This matter was before Court on objections filed to the fees claimed by the Successor Personal Representative. The Court found that travel time to court hearings should be compensated at half the hourly rate; the Court also found that charges for clerical tasks are part of an attorneys overhead and are not compensable. The fees claimed were adjusted accordingly.

In Re ESTATE OF JAMES C. GRAY, JR., Adm. No. 461-2006 (J. Burgess, October 23, 2009). Six of the Interested Persons consented to the Account; one filed an objection to the compensation taken by the personal representative on the ground that it was unreasonable and that the personal representative did not state his time and services. The Court ordered the Personal Representative to do so and he filed and served his statement of time and services on all interested persons. No further objection was filed. The objection stated no specific grounds for determining that the claimed compensation was unreasonable and on the record before it, the Court found the compensation, at a \$35 hourly rate, to be reasonable. The fees of the Personal Representative and his counsel amounted to approximately 5.5 percent of the value of the estate.

In Re ESTATE OF CORA MEADERS, Adm. No. 1065-1999 (J. Burgess, October 27, 2009). This matter was before the Court on the Motion of the Successor Personal Representative to Set Aside a Conveyance from Troy Meaders-Bey, as Personal Representative of the estate to himself. Cora Meaders executed a will on December 31, 1996, naming Verna Tillery and Eula Pollard personal representatives of her estate and the beneficiaries under her will. In 1999, Troy Meaders-Bey petitioned for abbreviated probate, alleging that he was the decedent's son and that she had died without a will. Tillery and Pollard were not listed as interested persons on the Petition for Probate. On June 11, 1999, Troy Meaders-Bey was appointed Personal Representative. On October 15, 2002, Meaders-Bey, as PR, executed a deed conveying to himself the real property in the estate and recorded the deed on December 23, 2002. On January

14, 2003, Tillery and Pollard filed the December 31, 1996 Will. On January 31, 2003, Meaders-Bey, in his individual capacity, transferred the property to Fetene Legesse. On March 27, 2003, Fetene Legesse transferred the property to Network Ventures Capital, LLC, which deed was recorded on April 3, 2003. Also, on March 27, 2003, Network Ventures Capital conveyed the property to Cherrie M. Haywood. Haywood mortgaged the property to National City Mortgage Company, which foreclosed on the property. It then sold the property to Teresa Miller and Jacqueline Swift. That deed was executed on November 30, 2004 and recorded December 14, 2004. Meaders-Bey was removed as personal representative and the successor Personal Representative petitioned the Court to admit the 1996 will to probate and appoint Tillery and Pollard as personal representatives. The Court refused to admit the will given the finality provisions of D.C. Code § 20-331(a) but did appoint Tillery and Pollard as successor personal representatives. Tillery and Pollard filed a Motion to Set Aside Conveyance which the Court denied since notice had not been given to the present title holders. In the instant motion the Court found that the Personal Representative still had not given proper notice since the present title holders, Mueller and Swift, had not been served. The Court was of the opinion that the successor Personal Representatives were in error in the manner in which they proceeded with their claim and that they should have proceeded by way of Superior Court Probate Rule 413. The instant motion was denied without prejudice.

Carpenter v. Avery, et al., In Re ESTATE OF ELIZAS JANE SCOTT, Adm. No. 43-2009, 2009 LIT 8 (December 7, 2009, J. Burgess). This matter was before the Court on cross motions for summary judgment. Rita Avery filed a petition for probate seeking admission to probate of a one-page, typewritten will. Diane Carpenter filed a verified complaint asking the Court to invalidate that will. The decedent/testatrix, Eliza Jane Scott, signed the will which had only one “witness signature” line on which Lizzie Maupin signed as a witness. But a notary public, Ethel R. Poteat, also signed her name in a space right under that of the testatrix’s signature and affixed her jurat. Since Poteat did not call herself a witness, the question became whether her signature constitutes the signature of a witness for purposes of § 18-103 of the D.C. Code. The Court held that it would not matter if Poteat believed she was acting as a notary public rather than a witness. The Court entered an order admitting the will to probate as a validly executed will.

In Re: Estate of Thomas B. Holly, Deceased, Adm. No. 1317-2007, **In Re: Estate of Frances Marie Holly**, Adm. No. 161-2008 (Judge Burgess, July 24, 2009). Bonita and Vanessa Holly filed a complaint in the Civil Division to quiet title to real estate scheduled on the Petition for Probate filed by Lorena Richards for the estate of Thomas B. Holly. The complaint alleged that the decedent, Thomas B. Holly, had executed a deed to himself and Bonita and Vanessa Holly making all three joint owners of the property and that Bonita and Vanessa Holly became owners of the property after the decedent’s death. The Personal Representative of the Thomas Holly Estate then filed a Petition for a Rule to Show Cause in the Probate Division seeking an order requiring Bonita and Vanessa Holly to show cause why they should not be required to surrender title and possession of the property. Thomas Holly, Jr., the Personal Representative of the Estate of Frances Marie Holly (Thomas Holly Sr.’s spouse who had survived him) simultaneously petitioned the Probate Court to issue an order requiring Vanessa Holly to show cause why she should not surrender possession and control of \$800,000 and certain bank accounts on which Vanessa Holly’s name had been added, allegedly for convenience only. Subsequently, counsel

for both sides in the civil action filed a praecipe requesting the clerk to dismiss the case with prejudice and mark the same as settled. A praecipe, signed by counsel for both sides, was filed in the Probate Division requesting the clerk to dismiss with prejudice the pending Petition for Order to Show Cause and the withdrawal of the Summary Judgment motion filed by Bonita and Vanessa Holly. An Order was entered by the Probate Court dismissing the Petition for Order to Show Cause and vacating the scheduled trial. The Personal Representatives of the two estates then filed a Petition to Enforce Settlement Agreement, alleging that the interested parties had entered into a settlement agreement which, after being reduced to writing, Bonita and Vanessa Holly refused to sign. Bonita and Vanessa Holly then filed a Motion to Dismiss contending that the Probate Court did not have jurisdiction to grant the relief requested because there was no case pending before the Probate Court. The proper pleading, they argued, was a new Complaint for breach of contract in the proper branch of the Court. The Probate Court granted the Motion to Dismiss Petition to Enforce Settlement Agreement and denied the Petition to Enforce Settlement Agreement finding that the litigation commenced against Bonita and Vanessa Holly by the Petition for Order to Show Cause (the functional equivalent of a civil complaint) had ended and ruled that it had no jurisdiction to entertain the Motion to Enforce Settlement Agreement.

In Re Estate of BERNICE EVELYN GREAVES, Deceased, 2009 ADM 85 (J. Burgess, July 7, 2009). Following an February 3, 2009 Order appointing the Personal Representative and admitting the Decedent's December 8, 1995 Will to probate, a later will of the Decedent, executed on January 28, 2008, was filed with the Court. The Personal Representative was notified by the Register of Wills Office of the filing of the later Will and advised that if no action was taken regarding the will within thirty days of the notice, the matter would be brought to the attention of the Court for further action. In response to that notice, the Personal Representative filed a Petition to Exclude Later Will from Consideration by the Court requesting the Court to take no action respecting the January 28, 2008 will. That Petition was unopposed and no Petition was filed to admit the later will to probate. The question before the Court was whether the Court should order the personal representative to institute a standard probate proceeding or institute one itself. The Court held its ruling admitting the December 8, 1995 will to probate and appointing a personal representative was final unless an interested person requests standard probate or someone files a verified complaint to contest the validity of the will. The Petition to Exclude Latter Will from Consideration by the Court was granted.

Dolphin & Evans Title Insurance Agency, Inc., v. Renee E. Johnson, PR, et al., LIT 9-09, *In re ESTATE OF MARGARET JOHNSON*, Adm. No. 171-05 (J. Burgess, August 28, 2009). This matter involved a fee dispute between the Personal Representative of the estate and the attorney for the Personal Representative. The Personal Representative challenged some of the billable time recorded by the attorney, alleging that the attorney created make-work in order to increase her fees. After reviewing the attorney's invoices and retainer agreement entered into by the attorney and the Personal Representative, the Court noted that the compensation claimed was within the range estimated by the attorney; that the compensation was reasonably related to the work performed; that the time spent was reasonable and the rate claimed was reasonable; and that time and services were supported by contemporaneously kept records. The Court held that the attorney was entitled to the compensation claimed.

Marion Mitchell v. Estate of Charles I. Bryant, Adm. No. 731-05 (July 22, 2009). The Plaintiff moved for Summary Judgment on her complaint which alleged that the estate owed her \$21,919 based on her loan of \$10,000 to Charles Bryant in 1996 at an interest rate of 12 percent. The estate opposed the Motion for Summary Judgment and filed its own motion relying on the argument that any debt was discharged in Bryant's bankruptcy proceeding. Plaintiff proved by clear and convincing evidence, with her own affidavit, that of the notary public, and exhibits attached, the terms of the promissory note and the unpaid balance. Since the Plaintiff produced evidence that she did not receive timely notice of the bankruptcy proceeding, her debt was not discharged in the Decedent's bankruptcy proceeding. The Plaintiff's Motion for Summary Judgment was granted.

RECENT COURT OF APPEALS DECISIONS

The Steering Committee thanks Renee I. Fox, Esq. of Renee I. Fox Law Office for providing the following case summaries for publication in this edition of our newsletter:

IN RE: ESTATE OF MARY H. NETHKEN, D.C. App. No. 06-PR-1600, August 29, 2009. (J. Kramer for the Court) The issues on appeal were whether the trial court erred in determining that the administrator of Mary Nethken's estate had committed fraud by not disclosing all of her heirs, and had further erred by refusing to dismiss the action as untimely, consequently holding the surety liable. The trial court found: (1) the nieces and nephews of the decedent who were omitted on the probate petition filed in December 1979 were entitled to recover on the surety bond issued to the administrator of the decedent's estate, concluding that the administrator had committed fraud by not disclosing two additional heirs who filed suit against the estate and the surety on December 22, 2004, (2) the surety company was jointly and severally liable on the bond, and (3) additional claims were not barred by the statute of limitations. Citing D.C. Code § 12-301(6) (1973) the Court of Appeals stated it had previously held that the statute of limitations for a claim on a personal representative's bond begins to run when the final account is filed and approved by the Probate Division of the Superior Court. *In re Estate of Green*, 816 A.2d 14, 15 (D.C. 2003). The final account in this case had been approved in 1983. The Court of Appeals addressed and dismissed the trial court's finding that the complaint had been timely filed because the statute of limitations does not begin to run until the plaintiff knows of, or reasonably should know of, his or her claim. The Court of Appeals agreed that the discovery rule would apply if the trial court correctly found that in failing to discover and name the additional heirs, the administrator had committed fraud, but stressed that the record did not contain sufficient proof of fraud which required a showing of clear and convincing evidence. Based upon the facts of the case, the Court of Appeals found no evidence of fraudulent intent, one of the requirements of a showing of fraud. Accordingly, the Court of Appeals reversed the lower court's decision holding that the claims against the surety was barred by D.C. Code § 12-301(6) and further concluded that it would be unnecessary to consider the other issues. The full opinion can be found online at <http://www.dcappeals.gov/dccourts/appeals/pdf/06-PR-1599+ MTD.PDF>.

IN RE SALLY JUMPER D.C. App. No. 08-PR-995 & 08-PR-1006, December 10, 2009, amended December 24, 2009 (J. Oberly for the Court). The issue on appeal was whether the trial court abused its discretion by sanctioning the decedent's friend and his counsel for the manner in

which they conducted litigation over the decedent's assets. A full examination of the need for a guardian and conservator was conducted by the trial court which employed a full complement of requisite participants including but not limited to a conservator, a guardian, and examiners. After the court vacated the appointments of a guardian and conservator, the individual who initiated this petition and his counsel engaged in activities designed to obtain control of the ward's assets specifically by undoing a trust executed by Ms. Jumper in 2001. The former conservator filed a motion seeking Rule 11 sanctions against both persons arguing that such sanctions were appropriate because the two persons had filed the original guardianship petition without disclosing the existence of documents in place providing for Ms. Jumper's care and by acting inappropriately after the guardianship had been vacated by attempting to have Ms. Jumper sign documents to undo her 2001 trust. After three days of hearings, the trial court granted monetary sanctions against the two parties. The appellate court reversed the award, holding that sanctions under Rule 11 were unavailable "due to non-compliance with the Rule's 'Safe Harbor' provision." *In re Jumper*, 909 A.2d 173, 174 (D.C. 2006). The Court of Appeals noted that sanctions could be awarded in certain circumstances pursuant to the court's inherent authority and remanded the case to the trial court to determine whether such an award was justified. On remand, the trial court acting under its inherent authority, reinstated the sanctions award on July 1, 2008. The trial court set forth a lengthy explanation of its reasoning. The attorney who had served as the conservator was awarded sanctions based upon attorney's fees incurred after February 15, 2003 which the trial court found had been incurred "as a result of the efforts of the [appellants] going beyond the Court's order to attempt execution of a new estate plan" Appellants were found jointly and severally liable.

A second attorney who represented a former financial advisor to Ms. Jumper also was awarded compensation for opposing the fee petition of Ms. Jumper's court appointed counsel and litigating the sanctions issue (the latter from which he later withdrew by motion)

The Court of Appeals recognized that a review is limited in determining whether sanctions are warranted because a trial court is better situated to marshal pertinent facts and apply fact-dependent legal standards. It added that the predicate of bad faith *vel non* is a factual one which the Court of Appeals reviews under the clearly erroneous standard, reversing award of fees only for abuse of discretion. A full discussion of the American Rule for attorney's fees which prevails in the District of Columbia followed, the Court emphasizing that "[A]" finding of bad faith must be supported by clear and convincing evidence." *Fischer v. Flax*, 816 A.2d 1, 12 (D.C. 2003). The Court affirmed the award of sanctions for the conservator against both appellants stating that it was satisfied the appellants' post-filing conduct justified such award and because the fees were incurred after the appellants engaged in sanctionable conduct. It countered the appellant attorney by detailing his inappropriate conduct including perceived violations of the Code of Professional Responsibility. With regard to the second appellant, the attorney's client, the Court determined he was a strategist behind the law suit, was animated by animus, and had been focused on his own interests.

On the other hand, the Court of Appeals vacated the award to the attorney for Ms. Jumper's former financial adviser because it could not determine from the record any rationale on which the fees were based. The trial could first held open the possibility that those fees would come

from Ms. Jumper's estate if it could be shown a benefit was provided to that estate. It later found none of the attorney's services had benefited the estate and ruled the fees would come from the appellants as sanctions but did not explain its reasoning. Accordingly, the order was vacated and remanded for further proceedings. The full opinion can be found online at http://www.dcappeals.gov/dccourts/appeals/pdf/08-PR-995+AMENDED_MTD.PDF.

IN RE ESTATE OF MARY MUNAWAR, D.C. App. No. 07-PR-588, September 17, 2009. (J. Kramer for the Court). The issue on appeal was whether the trial court committed reversible error in reforming a deed to show appellee as an owner of certain real property with rights of survivorship. The trial court found clear and convincing evidence that the deed conveying a certain multi-unit real property did not reflect the parties' intent when it had been signed and accordingly reformed the deed to reflect what it determined the intent at the time of signing. The reformed deed made the decedent's brother a joint owner with right of survivorship contrary to the allegation of the decedent's husband that the property was solely owned by the decedent who had died intestate and accordingly belonged to him. The appellee argued that when the property had been purchased the decedent approached him to assist her with the purchase of the property because she believed she could not qualify alone, which she actually did. Witnesses testified that the decedent during her lifetime had told them that her brother was on the deed with her and would receive the house when she died. The appellee's name was on the deed only on the second page which appeared to be a cover sheet and provided mailing information. He was not listed as a grantee, nor had he provided any of the purchase price, nor attended the settlement and signed the deed or the deed of trust given to the grantor. The trial court found the existence of the appellee's name on the cover sheet to indicate ambiguity on its face and accordingly found clear and convincing evidence that the deed did not express the parties' mutual intent. The Court of Appeals reversed, stating that the findings of fact by the trial court were clearly erroneous and while not without basis, they did not amount to clear and convincing evidence that the deed did not express the parties' mutual intent. Accordingly, reformation was not available for the deed. The Court thoroughly examined the requirements to reform a written agreement, in this case the deed, concluding that "there is a 'presumption that a deed is what it purports to be on its face, and one who seeks to establish the contrary has the burden of doing so by clear and convincing evidence.'" *Smart v. Nevins*, 298 A.2d 217, 219 (D.C. 1972). The full opinion can be found online at http://www.dcappeals.gov/dccourts/appeals/pdf/07-PR-588_MTD.PDF.

IN RE D.M.B.; IN RE DION BAKER SPECIAL NEEDS TRUST, D.C. App. Nos. 06-PR-1064 & 07-PR-207; 06-PR-1379, August 20, 2009 (J Kramer for the Court). The issue in 06-PR-1064, the D.M.B. Supplemental Needs Trust, was whether the trial court judge erred in denying the trustee's request for compensation expressed as a percentage of trust assets and had abused his discretion in sanctioning the trustee and amending the trust (07-PR-207). The issue in 06-PR-1379, the Dion Baker Special Needs Trust, decided by a different trial judge, was whether the trustee's fees should have been reduced in accordance with an analysis of the facts and calculations. Language in both trusts provided for trustee compensation and, although worded differently, that compensation should be reasonable and consistent with industry standards which could be expressed as a percentage of trust assets. Appellant proposed that one percent of trust assets was a reasonable fee. Reviewing the cases, each judge questioned the reasonableness of the fee sought and determined in each matter that the requested fee of one percent of trust assets

was not reasonable as sufficient detailed information was lacking about services provided for each trust. In the D.M.B. Supplemental Needs Trust, the trial judge adjusted the one percent total by deducting payments made from the trust to an investment adviser as well as a CPA and charged the trustee to repay funds to the trust which the court determined exceeded the amount the trustee should be paid. The same judge, in the next accounting which was accompanied by a compensation petition in accordance with the court's previous orders, disallowed \$8,700.00 worth of the requested fees finding that the trustee used that time working for his own, not the trust's benefit, in challenging earlier court rulings. The judge then reduced the resulting amount by 15 percent and amended various provisions of the trust with respect to service of court filings, on-going court supervision, moving the situs of the trust to another state, bonding of the trustee, trustee compensation, successor trustees, and trustee liability for breach of duty. In the Dion Baker Special Needs Trust (06-PR-1379), the trial judge found the trustee had provided insufficient information to determine whether the requested fee was reasonable, calculated that the fee was unreasonably high based upon his experience reviewing over 1,500 compensation petitions in probate matters and held that a reasonable fee would be \$210.00 per hour (assigning 50 percent of the time to the trustee at \$300.00 per hour and 50 percent of the time to appellant's staff at an average of \$120.00 per hour). The Trustee who had petitioned for \$17,264.18 was awarded \$8,400.00 for 40 hours of work.

The Court of Appeals affirmed all three cases. Citing the Uniform Trust Code, D.C. Code 319-1301 - 1311 (Supp 2008), the Court of Appeals stated that trustees are entitled to reasonable compensation and pursuant to the Restatement of Trusts which was not altered by the District of Columbia adopting the UTC, the fairness of a trustee's compensation is left to the sound discretion of the court according to the circumstances of the case. The Court of Appeals stated the issue isn't whether a percentage of assets is or is not reasonable compensation, but a variety of factors including the amount, type and quality of services provided. It found that neither judge abused his discretion in calculating fees having taken into consideration the facts of each case which led to the decisions. The Court also upheld the lower court's amendments to the D.M.B. Supplemental Needs Trust citing D.C. Code 19-1304.12(a) (Supp 2008) which allows modification under specific circumstances. The Court held the incorporated modifications all administrative holding the court has administrative powers to assure trust administration represents the settlor's directions. The full opinion can be found online at http://www.dcappeals.gov/dccourts/appeals/pdf/06-PR-1064+_MTD.PDF.

Save the Date for the Judicial Reception at the Greek Embassy!

Our Section will be hosting the 20th Annual Judicial Reception on Tuesday, April 27, 2010 at the Embassy of Greece. The Judicial Reception is a great opportunity to mingle and chat with the Superior Court judges and other attorneys. We will let you know as more details about this event become available.

ESTATES, TRUSTS AND PROBATE LAW SECTION STEERING COMMITTEE 2009-2010

The Steering Committee welcomes your comments and suggestions on the operation of the Section and its programs and newsletter. Our contact information is listed below:

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The Estates, Trusts and Probate Section Newsletter is produced up to four times a year and is available online at the Section's [Web site](#). The Newsletter always welcomes material and suggestions for material on recent developments in D.C., Maryland and Virginia law. Contact Ellen M. Klem, Editor at kleme@staff.abanet.org for more information.