

YEAR IN REVIEW

To state the obvious, 2001 was a tumultuous year. We started with a new president, but only after the most bizarre election in our history. Then we had the push to repeal the "death tax," which left estate planners and their clients in a quandary. What to do? As it turned out, the rumors of the death of the estate tax were greatly exaggerated and planning resumed, largely unchanged. The events of September 11 forever changed the way Americans view our country's safety from foreign attack, and served as a reminder that life is fragile and fleeting. Many of us have reevaluated priorities and become more appreciative of things heretofore taken for granted.

I appreciate the fact that our practice helps individuals—our clients and friends—in an important way. I appreciate the collegiality of our section's membership. We can be adversaries while respecting each other. As colleagues, we work together to promote the common good, sharing lessons learned and new insights. In my view, what we do is important. How we do it and relate to each other are as important. On that score, Georgia's cadre of fiduciary lawyers is unparalleled. I appreciate each of you for that.

Jack Sawyer
Section Chair

SECTION NOTES

New Officers

At the Section's annual meeting in January, the following new officers were elected for 2002-03:

John W. Spears, Decatur
Chair

Neal A. Creasy, Savannah
Vice Chair

Melissa P. Walker, Atlanta
Secretary-Treasurer

Fiduciary Law Institute

The annual Fiduciary Law Institute will be held at The King & Prince Beach & Golf Resort on St. Simons Island from Thursday, July 18, to Saturday, July 20, 2002.

Legislation

In response to the Georgia Supreme Court's decisions in *Linkous v. Candler*, 270 Ga. 284, 508 S.E.2d 657 (1998), and *Wetherbee v. First State Bank & Trust Co.*, 266 Ga. 364, 466 S.E.2d 835 (1996), the Georgia General Assembly has adopted H.B. 646, which amends section 53-1-20(f)(1) of the Official Code of Georgia Annotated to read as follows (old language

is struck out and new language is underlined):

(f)(1) Except as otherwise provided by the will or other governing instrument, a renunciation shall cause the renounced property to pass as if the person renouncing had predeceased the decedent or, in the case of property passing upon exercise of a power of appointment, as if the person renouncing had predeceased the holder of the power; provided, however, that, even if the acceleration of a contingent remainder or other interest results. A will or other governing instrument may otherwise provide expressly or by implication, but the fact that a remainder or other future interest following a renounced interest is conditioned upon surviving the holder of such renounced interest shall not, without more, be sufficient to indicate that such conditioned interest should not accelerate by reason of such renunciation. Notwithstanding the foregoing, solely for the purposes of the last clause of paragraph (5) and the last clause of paragraph (7) of subsection (b) of Code Section 53-2-1, any individual renouncing who is the only sibling or the only aunt or uncle surviving the decedent shall not be deemed to have predeceased the decedent.

Those interested in tracking new legislation are encouraged to access the Georgia General Assembly's official website at www.legis.state.ga.us for the full text and up-to-date status of all bills.

Verner F. Chaffin Career Service Award

On July 19, 2001, during the Fiduciary Law Institute on St. Simons Island, the Verner F. Chaffin Career Service Award was presented to William J. Linkous, Jr. (Powell, Goldstein, Frazer & Murphy LLP, Atlanta).

The Award, which is named for Professor Verner F. Chaffin of the University of Georgia (the first recipient of the Award in 2000), is to be presented occasionally "in recognition of a distinguished career of outstanding, unselfish and dedicated service

to the Fiduciary Law Section of the State Bar of Georgia, its members and the citizens of Georgia."

Guardianship Code Revision

The Guardianship Code Revision Committee continues its work on rewriting Title 29 of the Official Code of Georgia Annotated. The Committee has almost finished a draft of the provisions that relate to guardianships and conservatorships for adults and for minors. The draft will be presented for discussion at the Fiduciary Law Institute on St. Simons Island in July.

The Committee hopes to present the revised Title 29 to the State Bar of Georgia Board of Governors in late 2002 and to have the revisions introduced in the 2003 session of the Georgia General Assembly.

Total Return Trust

The Fiduciary Law Section has created a new committee chaired by Donna Barwick (The Arden Group, Inc., Atlanta) to study whether Georgia should adopt one of the legislative approaches to total return trusts that some other states have been adopting.

The Total Return Trust Committee has begun its work, and is currently studying the provisions of the Uniform Principal and Income Act (1997) that give the trustee of an income-only trust a conditional power to adjust between principal and income to achieve a total-return strategy.

The other members of the Committee are Timothy Agnew (Smith & Howard, Atlanta), Stevie Casteel (Bank of America, Atlanta), Nick Djuric (Sutherland Asbill & Brennan, Atlanta), Professor Anne Emanuel (Georgia State University, Atlanta), Faryl

Moss (Faryl S. Moss & Associates, Atlanta), Professor Mary Radford (Georgia State University, Atlanta), Jeff Scroggin (John L. Scroggin & Associates, Roswell), and Judge Susan Pierce Tate (Probate Court of Clarke County, Athens). If you have any questions, please contact Donna Barwick at 404-231-2340.

Secretary-Treasurer

As of January 31, 2002, the Section had 784 members and a balance of \$61,092 in its treasury.

Ethical Standards

On August 21, 2001, the Assistant General Counsel of the Formal Advisory Opinion Board responded to the requests for formal advisory opinions on three questions relating to the practice of fiduciary law that were submitted on behalf of the Fiduciary Law Section by Joe W. Gerstein, chairman of the Ethical Standards Committee. (The reports of the three subcommittees of the Ethical Standards Committee were printed in the Winter 2000 edition of the Fiduciary Law Section Newsletter.)

The following is the text of the letter:

State Bar of Georgia
Formal Advisory Opinion Board
August 21, 2001

Mr. Joe W. Gerstein, P.C.
6485 Peachtree Industrial Boulevard
Doraville, Georgia 30360

Re: Request No. 01-R3 -- Who does the attorney for a decedent's "estate" represent -- the fiduciary, the heirs or beneficiaries, or both? To whom does the attorney owe the duty of loyalty? Whose communications must be kept confidential and from whom?

Request No. 01-R4 -- After the estate planning documents are signed and related transfers are made, does the representation of the client by the lawyer become dormant? If so, is the lawyer obligated to send any reminders to the client or advise the client of changes in the law or the clients' circumstances that might affect the estate plan?

Request No. 01-R5 -- Must an estate planning attorney who represents both spouses or other close relatives, such as parent and child, keep the confidences expressed to the attorney by either client confidential from the other?

Dear Mr. Gerstein:

As you will recall, the Formal Advisory Opinion Board of the State Bar of Georgia determined that it would treat the three Subcommittee Reports submitted for their review as three separate requests for formal advisory opinions. The Formal Advisory Opinion Board has considered each request.

The Board determined that the issue raised in Request No. 01-R3 (Subcommittee Report C) does not regard matters that invoke the jurisdiction of the Formal Advisory Opinion Board. The issue raised is a matter of law rather than a matter of interpretation of the Georgia Rules of Professional Conduct. In accordance with Preamble [15] of the Rules, "... for purposes of determining the lawyer's authority and responsibility, principles of substantive law external to the Rules determine whether a client-lawyer relationship exists." Accordingly, the Board has declined to render a formal opinion on the subject matter of this request.

The Board also determined that the issue raised in Request No. 01-R4 (Subcommittee Report A) does not regard matters that invoke the jurisdiction of the Formal Advisory Opinion Board. The issue raised is a matter of the terms of the client-lawyer contract/engagement letter rather than an interpretation of the Rules. Accordingly, the Board has declined to render a formal opinion on the subject matter of this request.

The Board accepted Request No. 01-R5 (Subcommittee Report B) for the drafting of a proposed opinion; however, the Board will not accept Subcommittee Report B as the proposed opinion. The question presented will be changed and the proposed opinion will be drafted to address the issue raised on a broader scope in order to provide

guidance for all members of the Bar regardless of their area or practice. Upon the Board's approval of a proposed draft for publication in the Georgia Bar Journal, we will forward a copy to you for your review. The Board thanks you for bringing this issue to their attention.

Sincerely,

John J. Shiptenko
Assistant General Counsel

Newsletter

The Fiduciary Law Section Newsletter welcomes the submission of publication notices, press releases, and other announcements that would be of interest to the members of the Section.

Please send all material to Nikola R. Djuric, Editor, by fax to (404) 853-8486 or by e-mail to nrdjuric@sablaw.com.

NOTICES

Georgia Senior Legal Hotline

The Georgia Senior Legal Hotline is seeking attorney volunteers. The Hotline offers legal advice by telephone (along with brief services and necessary referrals to other attorneys or services) to older Georgians. Many of the Hotline's callers have questions about Georgia fiduciary law issues, such as wills, powers of attorney, and guardianship.

If you are interested in volunteering time to staff the Hotline or to serve as a back-up consultant for the attorneys who do so, please call Ellie Crosby at 404-657-0217.

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Fiduciary Law Section Newsletter

Nikola R. Djuric, *Editor*