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The Mortmain

A Publication of the Atlanta Bar Association, Estate Planning & Probate Section - Summer 2007

Section Hosts Fiduciary Law Reception; Members Have Leadership Role at Conference

By Jacquelyn H. Saylor, *The Saylor Law Firm LLP*

The Welcome Reception of the Fiduciary Law Conference is from 5:30 p.m. to 7:00 p.m. on Wednesday, July 11, 2007 in the Solarium of the King & Prince Hotel, St. Simon's Island, and all attendees and their guests are welcome to attend. The Reception is hosted and sponsored by the Estate Planning & Probate Section of the Atlanta Bar Association. Be sure to leave Atlanta on time to attend this event.

Members of the EP & P Section have leadership roles during the Fiduciary Law Conference, State Bar of Georgia, on July 11-14. **Adam Gaslowitz** of *Gaslowitz Frankel, LLC*, who is Program Chair and Chair of the Fiduciary Law Section, is Past Chair of the EP & P Section. **Mark Williamson** of *Alston & Bird*, who is Chair Elect of the Fiduciary Law Section and is presiding on Friday, July 13th, is also Past Chair of the EP & P Section.

From left, **Al Caproni**, *Cohen & Caproni, LLC*; **Benjamin H. Pruett**, *Bessemer Trust*, Estate Planning & Probate Past Section Chair; **Mary B. Galardi**, *Mary B. Galardi, P.C.* and **Ruth Caproni** at the Estate Planning & Probate Section Reception of the 2006 Fiduciary Law Conference. Pictures by C. Murray Saylor, Jr.

From left, **Adam R. Gaslowitz**, *Gaslowitz Frankel, LLC*, Estate Planning & Probate Past Section Chair; **Don DeLoach**, *Frantz, Gratten & DeLoach* and **Shelly DeLoach** at the Estate Planning & Probate Section Reception of the Fiduciary Law Conference in 2006 at the Solarium of the King & Prince Hotel.

Our section members are also serving on panels or speaking at the conference. **Mark Williamson** is the first speaker. His topic is "U.S. Tax Payers: Beware of Foreign Tax Shelters!" **Craig Frankel** of *Gaslowitz Frankel, LLC* will speak on "Expanding Causes of Action Over Intervivos Transfers." **Julie Childs** of *McLain & Merritt, PC*, who is the 2007-2008 Chair of the EP & P Section, and **A. Kel Long** of *A. Kel Long, III PC*, serve on a panel which discusses Professional Client Counseling. Mr. Long also lectures on the "Rule Against Perpetuities." The topic of **Russell Love** of *McKenna, Long & Aldridge, PC* is "Planning for the Resident and Non-Resident Alien." **Rebecca Godbey** of *Bird & Godbey* will speak on Planning for Blended Families while **William Anthony Turner** of *Cohen Pollock Merlin Axelrod & Small PC* will talk about what estate planners should know about recent developments in certain types of life insurance.

Current Status of Donor Advised Funds is Topic of Breakfast Panel

By Francis M. Bird, Jr., *Bird & Godbey*

Donor Advised Funds are alive and well, and still a good option for making charitable gifts according to a panel of Section members **Marshall Sanders** and **Margaret Scott**, attorneys with *Alston & Bird*, and attorney and Section member **Olen Earl** with *The Community Foundation for Greater Atlanta*. The three person panel made their presentation at the February 14th Breakfast Meeting, where they told us about the origins and use of donor advised funds, how they may be successfully used in programs of charitable giving, and practices to watch for and avoid.

Marshall Sanders gave us an overview of "Donor Advised Funds," how they originated, and how they may be used by persons who are charitably motivated. The idea originated with community foundations to "raise funds and maintain endowments to support charitable organizations and projects within … [their geographical areas]." The principal advantages of these to donors is the fact that a donation is a completed gift when it is made, and since the donee (the community foundation) is a public charity, the donor may obtain the maximum charitable donation for the tax year in when the gift is made. Restrictions which apply to private foundations do not apply to these as public charities. By giving the donor "advisory" privileges regarding the distribution of the funds to the local (or other) charities or projects, the donor may be able to favor specific charitable endeavors which appeal to the donor.

Not to be outdone, a number of investment firms, including notably Fidelity, Vanguard and Schwab, have capitalized on a good thing, and have gone into the public market with their own versions of donor advised funds. According to Olen Earl, these "stripped down" versions work very well for those who want the basics and nothing more.

Opportunities for creative abuse have been exploited, according to Margaret Scott. Much of the abuse has been where donations have been made to tax-exempt organizations significantly influenced (if not in fact controlled) by the donors, with the not too surprising result that the donors or their family members have received significant benefits from the use of the proceeds of supposedly tax-deductible gifts. Payment for college tuition has never been income tax deductible, but the creative use of "scholarship" funds has been attempted more than once, using a donor advised fund maintained by a controlled charity. The result has been increased IRS scrutiny and regulation. Also victims of abuse and affected by this reaction are the flexible and low-maintenance "Supporting Organizations," tax-exempt organizations which operate as though they were public charities. A supporting organization has the hallmark of being in a close relationship with a public charity; three types are defined in the IRS regulations. One type of supporting organization is legally controlled by the public charity which it is organized to support.

Ms. Scott advised that the IRS has been particularly interested in situations where the donors and persons related to the donors have received more benefits than charitable deductions from donations, including payment of a donor's obligations. The IRS has also given attention to the practice of "parking" assets with a charitable donee, where the assets are not consumed or distributed.

Practical Planning from a Probate Perspective

By David L. Watson, *Gomel & Davis*

Attendees at the November 8, 2006 breakfast meeting enjoyed a presentation from **Allen Venet**, *First Vice President of SunTrust Bank* here in Atlanta, and immediate Past Chair of the Section, **Ben Pruett** of *Bessemer Trust*. They approached the topic of probate from the viewpoint of the fiduciary that has to administer estates and trusts in accordance with wills and trust documents prepared by attorneys. Their presentation and written outline were full of tips for drafting documents that enhance the administration process, including the following:

- Develop and adhere to good drafting habits, such as careful use of forms and careful proofreading. Allen mentioned that if a corporate fiduciary is designated, it will usually offer to review and provide comments on the administrative provisions in documents (especially if they are still in draft form).
- Clearly identify beneficiaries.
- Use survivorship language to clarify contingencies. For example:
  - "$__ to my brother if he survives me", or
  - "$__ to my brother, if he survives me, or otherwise to his descendants who survive me, per stirpes…"
- Include provisions that deal with family members who are adopted and those born out of wedlock.
- Consider provisions that deal with investments. If the client owns a major concentration of a single investment and wants it retained after his death, the fiduciary should be specifically directed to do so. Otherwise, the fiduciary will want to sell and diversify.
- Language authorizing encroachment on principal is of critical importance. Is it restrictive ("accident, illness, emergency"), moderate ("care and reasonable support"), or liberal ("comfort")? Does the language qualify as ascertainable standards for tax purposes and, if so, is that desired?
- Devote particular attention to provisions that address division of personal property. Generally, avoid a long list of specific items in the will, which can create a burden on the executor to locate and correctly identify each item. Also, remember that when an executor seeks to be discharged, each named beneficiary in a will – even a recipient of a minor piece of jewelry or furniture - must consent or be served. (The outline included a sample Acknowledgement that a recipient could sign to expedite this process.)
- Also carefully consider provisions for residences. Use life estates with caution. If instead a residence is left in trust, you may need to also provide cash funds for expenses.
- Always consider whether the tax allocation language in the document works in the particular client's situation.
- If multiple fiduciaries are named, give strong consideration to overriding state law that requires unanimous consent with a majority rule provision.

We certainly appreciate Allen's and Ben's time and effort in putting together this informative presentation.

Recognizing Volunteer Lawyers for Their Work during Law Week and at PIC

By Jacquelyn H. Saylor, *The Saylor Law Firm LLP*

On May 1 and 3, 2007 of **Law Week**, there were twenty-four lawyers who offered their time at the Fulton County Law Library to successfully assist 128 Fulton County residents with Living Wills and Durable Powers of Attorney for Health Care. These lawyers, recruited by the Estate Planning and Probate (EP & P) Section, were assisted by forty paralegals under the direction of Atlanta Volunteer Lawyers Foundation's **Christina Weeks** and **Tamara Caldas, Esq.** and The Atlanta Bar's **Carla Brown**. **David Watson**, *Gomel & Davis*, was the supervising attorney; he also added the HIPAA language to the statutory forms to update them.

The following EP & P section members donated their time and effort to this project during Law Week:
David Watson, Emory Schwall, Laurin McSwain, Julie Childs, David Reed, Janelle Jones, Rebecca Godbey, Greg Studdard, Tim Phillips, Mary James, Walter Cohen, Stephanie Campanella, Katrenia Collins and Jackie Saylor.

EP & P members were also Fulton County Probate Information Center (PIC) volunteers for the months of February, March & April, 2007. The lawyers who dedicated their time were: **Tim Phillips, Bruce H. Gaynes, John Spears, Julie Childs, Walt Hamberg, Jackie Saylor** (volunteered twice).

Additional volunteers for PIC are needed for the coming months. Please call or e-mail Chrissy Weeks at AVLF to volunteer, cweeks@avlf.org, 404-532-0790.

The EP & P Section was also instrumental in forming a probate information center in DeKalb County. The **Honorable Jeryl Rosh**, DeKalb County Probate Judge, attended the May meeting of the EP & P Section to thank the section for their help.

Left: **Katrenia R. Collins**, *Katrenia R. Collins & Associates, LLC*, Estate Planning & Probate member, assists a Fulton County resident with a Living Will and a Durable Power of Attorney for Health Care at the Fulton County Law Library during the Atlanta Bar's 2007 Law Week. Picture by Carla Brown.

Section Supports Pro Bono Efforts

By David Watson, *Gomel & Davis*

In addition to sponsoring our monthly breakfasts, continuing legal education programs, and the publication of *The Mortmain*, the Section also supports pro bono activities. For example, the Section donated $1,500 to the Atlanta Volunteer Lawyers Foundation fund-raising event held on November 2, 2006, at King & Spalding. The Section also donated $1500 to the inaugural Pro Bono March Madness team.

The Section annually sponsors an intern under the Atlanta Bar Association's Summer Law Internship Program. This allows a student from a local high school to work under a mentor in a legal setting for six weeks.

The Section also supports the Fulton County Probate Information Center (PIC) and was a lead participant in Law Week volunteer efforts. (See accompanying article on PIC and Law Week.)

Additionally, the Section is discussing the possibility of providing a stipend to a Georgia State law student to research a relevant issue in the area of trusts and estates, and produce a written study. This would be done under the guidance of **Professor Mary Radford**.

We are proud of the important contributions the Section makes to the community and the profession.

Right: **Emory A. Schwall**, *Law Offices of Emory Schwall*, Estate Planning & Probate member, assists a Fulton County resident with a Living Will and a Durable Power of Attorney for Health Care at the Fulton County Law Library during the Atlanta Bar's 2007 Law Week. Picture by Carla Brown.

Robert C. Port Educates Our Section on Variable and Equity Index Annuities

By Loraine M. DiSalvo, *Morgan and DiSalvo, PC*

Robert C. Port, a securities litigator with *Cohen Goldstein Port & Gottlieb, LLP*, helped our Section get the New Year off to an informative start by educating us about Variable Annuities and Equity Index Annuities on January 10, 2007. Mr. Port encouraged our Section members to help our clients avoid the many pitfalls which exist with regard to both Variable Annuities ("VAs") and Equitable Index Annuities ("EIAs"). As Mr. Port explained, a VA is an investment product which combines mutual funds with an insurance wrapper, and an EIA is an investment product which uses an equity-linked investment (such as an exchanged-traded index fund) in combination with the same type of insurance wrapper.

According to Mr. Port, VAs and EIAs are usually promoted as providing tax deferral, a guaranteed minimum death benefit, an investment benefit (either through mutual funds or an equity-linked investment), and the right to eventually annuitize the contract and begin receiving a guaranteed income stream. However, these features are "oversold," since they are often detrimental, rather than beneficial, and since they are accompanied by generally high costs and surrender charges which can effectively wipe out the promised benefits.

Mr. Port began his presentation by stating that the North American Securities Administrators Association ("NASAA") listed the typical sales practices used to sell VAs as one of the Top 10 Threats to Investors for 2005. In addition, many reputable investment advisors and media have described VAs as "always inappropriate" and "defective" products which are sold through "criminally fraudulent" practices. In general, VAs and EIAs are often sold during "retirement planning" or "estate planning" dinner or luncheon seminars put on by a would-be annuity seller. Mr. Port noted that one agent who puts on such seminars refers to his seminar attendees as "plate-lickers." The discussion of investments which occurs during such seminars often focuses almost exclusively on annuities, presenting a biased picture designed to sell annuity products rather than to provide real information.

Mr. Port pointed out some of the drawbacks inherent in the purported "benefits" of VAs and EIAs. As for tax deferral, Mr. Port noted that a VA or EIA successfully converts investment income which would have been long-term capital gains and qualified dividends if the investments were held outside the annuity into ordinary income, which tends to be taxed at higher rates for higher income investors. He also pointed out that, due to the high costs associated with VA and EIA products, the typical investor would have to hold the annuity for 20 to 30 years before the benefits of income tax deferral would outweigh the costs of the annuity, whereas the use of a "buy and hold" investment strategy in a normal taxable investment account would successfully defer a great deal of capital gains taxes, without the costs associated with an annuity. Finally, he mentioned that the investor's eventual beneficiaries would receive a step up in basis for income tax purposes on investments held outside an annuity at the investor's death, while the annuity receives no such step up.

As for the value of a guaranteed death benefit, Mr. Port noted that the probability that non-annuity investment accounts would be "under water" at an investor's death was very low (a near-zero percent probability for a cash and bonds portfolio and a less than 7% probability for a mixed portfolio featuring equities, cash, and bonds). In addition, the guaranteed death benefit is taxed to the beneficiaries at ordinary income rates, while a normal life insurance policy would be received income tax free, and normal term life insurance is typically much cheaper than the charge for the guaranteed death benefit associated with an annuity. Finally, Mr. Port points out that the guaranteed death benefit disappears if and when the investor elects to annuitize the VA or EIA.

With regard to the value of the right to annuitize a VA or EIA contract, Mr. Port stated that most investors never elect to annuitize because the rates offered are generally very low, often around 1%, and the guaranteed death benefit is lost. He also pointed out that an investor could frequently purchase an immediate, fixed, no-load annuity with a minimum payout period for a much lower cost than a VA or EIA contract, and that an investor could also obtain an annuity-type payout using a laddered bond portfolio rather than any annuity contract.

As for the high costs, Mr. Port explained that VAs and EIAs usually have surrender charges (also known as contingent deferred sales charges), which apply if the annuity contract is cashed out within an initial period, usually a number of years. They also carry mortality and expense risk charges which average 1.35% per year of the annuity's average value. These charges pay for the guaranteed death benefit and the right to annuitize the contract in the future. VAs and EIAs also normally carry subaccount fees which average about 1% per year (as compared to average S&P 500-based index fund charges of approximately 0.25% per year), and administrative fees which are typically around $30 per year. The various fees and charges add up quickly, and can result in a large dent in the actual return generated by the investment component of the annuity, which makes VAs and EIAs an expensive way to invest.

Mr. Port concluded his presentation on VAs and EIAs by noting that such contracts, if very carefully selected to ensure that costs can be minimized, may be suitable in two fairly rare situations: one being a case where the investor has 20 to 30 years before retirement age and he or she will be able to consistently make the maximum possible contributions to other available tax deferred retirement savings options, and the other being a case where the investor has a terminal illness, is uninsurable, and wants to maintain participation in the equities market. In general, however, Mr. Port stated that VAs and EIAs are likely to be unsuitable investments for most people.

Mr. Port recommended that we, as estate planning attorneys, encourage our clients to take advantage of IRAs, 401(k) accounts, and other tax deferred retirement savings options. He said we should also encourage them to consider investment strategies to minimize the current taxes generated by investments held outside tax deferred savings accounts. Finally, if our clients are interested in a VA or EIA, we should help them consider the actual costs as well as the purported benefits, to ensure that they are able to make truly informed decisions.

We offer our thanks to Mr. Port for his informative and useful presentation.

Young v. Williams, ____ Ga.App.___ , ___ S.E.2d ___ (2007) (A07A0030 April 17, 2007).

Miscue in preparation of a will – attorney liability. The defendant attorney was directed by his client, the testator, to prepare a will leaving the marital home to his wife. The will omitted a provision to accomplish that. The attorney was held liable to the wife for breach of a duty to carry out his undertaking to the deceased, his client.

The defense relied upon lack of privity. This would generally defeat a claim by a person who was not a party to the attorney-client relationship. This was overcome because under these circumstances the surviving spouse was a third party beneficiary of the contract between the attorney and the client.

The Court of Appeals cited *Legacy Homes v. Cole, 205 Ga.App. 34, 421 S.E.2d 127 (1992)* which established that an attorney retained to close a real estate transaction on behalf of one party is not liable to another party who did not retain the attorney, where another person absconded with the closing funds. In *Legacy Homes*, the defendant closing attorney, in an apparent slip into a bit of people-pleasing activity, partially closed the transaction (and issued some checks) in anticipation of the absconder's promise to return with the check immediately after the closing. The plaintiffs, in an apparent hurry, bounced one of these checks (no doubt to their embarrassment). Result: no liability. The Court of Appeals in *Legacy Homes* distinguished an earlier case where liability was found, on the basis that there the attorney's role was directly for the benefit of the party claiming damage – as is the case in *Young*.

The trial court and the appellate court in *Young* both seemed to be impressed by the fact that the will contained no residuary clause. The plaintiff's expert testified that he had never seen such a will, and that this "violated the standard of care expected of attorneys." That fact simply highlighted that the will was less than ideal, but had nothing to do with the result. The notion that the attorney-client contract included a duty to follow the client's specific directions for the benefit of the plaintiff, the violation of which resulted in liability under a third party beneficiary theory, is ample and constitutes the holding of the case. That may have constituted legal malpractice (as well as a violation of a contractual duty), but was not the subject of the expert's testimony in the reported case. The malpractice language, as reported, is dictum. Is this important? It is not hard to imagine an example where the timing of the execution of the will relative to the testator's death sets up a defense based on the statute of limitations. Malpractice? Breach of contract? What about an expert's affidavit?

Practice Note: If you are directed by your client to accomplish a result in a will, trust, or other document for the direct and specific benefit of someone, and fail to do so, you may be liable to that someone for the value of what he didn't get.

Estate Planning Members Who Are Georgia SuperLawyers and Rising Stars

Compiled by Jacquelyn H. Saylor, *The Saylor Law Firm LLP*

Congratulations to our Estate Planning & Probate Section members who are Georgia SuperLawyers 2007 and Georgia Rising Stars 2006! Be sure to consider your fellow members when you receive a SuperLawyer and/or Rising Star ballot. Send your Ballot in!

The primary practice area for those named in SuperLawyers and Rising Stars are listed on the far right

Stephen	C.	Andrews	Bodker, Ramsey, Andrews, Winograd & Wildstein, PC	SuperLawyer	Family Law
Adrienne		Ashby	Atlanta Legal Aid Society, Inc.	Rising Star	Legal Aid & Legal Service
Cassady	V.	Brewer	Morris, Manning & Martin LLP	SuperLawyer	Tax
Harmon	W.	Caldwell, Jr	Caldwell & Watson	SuperLawyer	General Litigation
Julie		Childs	McLain & Merritt, PC	SuperLawyer	Estate Planning & Probate
Thomas	V.	Chorey, Jr	Chorey Taylor & Feil	SuperLawyer	Business/ Corporate
Kimberly	E.	Civins	Powell Goldstein, LLP	Rising Star	Estate Planning & Probate
Nikola	Richard	Djuric	Sutherland Asbill & Brennan LLP	Rising Star	Estate Planning & Probate
Neal	J.	Fink	Ellis Fink, PC	SuperLawyer	Estate Planning & Probate
Mary	B.	Galardi	Mary B. Galardi, PC	SuperLawyer	Estate Planning & Probate
Adam	R.	Gaslowitz	Gaslowitz Frankel, LLC	SuperLawyer	General Litigation
Rebecca	Gibson	Godbey	Bird & Godbey	SuperLawyer, Rising Star	Estate Planning & Probate
David	F.	Golden	Troutman Sanders, LLP	SuperLawyer	Estate Planning & Probate
J.	Mac	Hunter	Morris, Manning & Martin LLP	SuperLawyer	Business/ Corporate
Charles	D.	Hurt, Jr	Sutherland Asbill & Brennan LLP	SuperLawyer	Estate Planning & Probate
Thomas	E.	Jones, Jr	Chamberlain Hrdlicka White Williams & Martin	SuperLawyer	Estate Planning & Probate
Dora	A.	Miller	Lefkoff Duncan Grimes & Miller, PC	SuperLawyer	Estate Planning & Probate
Michael	T.	Nations	Nations,Toman & McKnight LLP	SuperLawyer	Business/ Corporate
Shelly		Nixon	Morris, Manning & Martin LLP	Rising Star	Tax
Benjamin	H.	Pruett	Bessemer Trust	SuperLawyer	Estate Planning & Probate
William	M.	Rich	Holland & Knight	SuperLawyer	Estate Planning & Probate
John	E.	Robinson	McLarty Robinson & Van Voorhies LLP	SuperLawyer	Real Estate
C.	Murray	Saylor, Jr	The Saylor Law Firm LLP	SuperLawyer	Estate Planning & Probate
Jacquelyn	H.	Saylor	The Saylor Law Firm LLP	SuperLawyer	Estate Planning & Probate
Margaret	Ward	Scott	Alston & Bird, LLP	Rising Star	Estate Planning & Probate
James	Dean	Spratt, Jr	King & Spalding	SuperLawyer	Estate Planning & Probate
Robert	Mark	Williamson	Alston & Bird, LLP	SuperLawyer	Estate Planning & Probate
Nicole	Jennings	Wade	Powell Goldstein, LLP	Rising Star	Estate Planning & Probate
Wade	H.	Watson, III	Caldwell & Watson	SuperLawyer	General Litigation
Benjamin	T.	White	Alston & Bird, LLP	SuperLawyer	Non- Profit

Thomas J. Pauloski Does the Math on Total Return Trusts

By Loraine M. DiSalvo, *Morgan and DiSalvo, PC*

Thomas J. Pauloski, Esq., of *Bernstein Investment Research & Management* ("Bernstein") spoke to our Section on "Implementing Total Return Trusts: Solving Three Variable Problems When You're Bad at Math" on September 13, 2006. The presentation was accompanied by detailed and informative written materials, explaining the benefits of adopting a "total return" approach to trust management. Mr. Pauloski also explained that Bernstein can assist Trustees and their advisors in determining the particular approach which best balances the interests of income and remainder beneficiaries in a given trust.

Mr. Pauloski pointed out that the interests of income beneficiaries and remainder beneficiaries in a trust are not the same: income beneficiaries generally want the Trustee to invest for greater income and to maximize distributions to the income beneficiaries, while remainder beneficiaries generally want the Trustee to preserve and grow the trust principal, to maximize the eventual remainder. In addition, income beneficiaries generally prefer stable investments which produce a consistent income stream but little potential for long-term capital appreciation, while remainder beneficiaries tend to prefer more risky and potentially volatile investments that will likely produce greater growth over time and will help protect against inflation devaluing the trust's assets. In general, the Trustee's job is to balance the interests of both types of beneficiaries as well as possible. Georgia law specifically requires that a Trustee be fair and impartial between the beneficiaries of a trust; the law provides Trustees with some ability to make adjustments between principal and income as needed to meet this requirement.

Mr. Pauloski stated that the early years of the 21st century have so far produced a "perfect storm" for Trustees, as the bear market and low interest rates of the early 2000's depleted trust assets and produced low investment yields while changes in tax and other laws tended to produce higher costs for trusts. Lower investment returns and depleted trust assets, combined with higher trust administration costs, have made protecting and balancing the interests of different types of trust beneficiaries more difficult for Trustees. Mr. Pauloski suggests that a Trustee who uses total return investing (Modern Portfolio Theory) to determine trust asset allocations may be better able to carry out the Trustee's duties than a Trustee who uses a different investment allocation theory. In addition, Mr. Pauloski suggests that, where possible, trust distribution provisions may be modified or drafted to allow "income" beneficiaries to receive distributions which are based on something besides the trust's actual income. In order for the Trustee to really determine the best way to balance trust beneficiaries' interests, it is critical for the Trustee to carefully analyze a number of factors.

Mr. Pauloski notified us that Bernstein is ready, willing, and able to assist Trustees and their advisors with the analysis necessary to determine how trust beneficiaries' interests may be best served through a combination of trust distribution provisions and investment decisions. Distribution provisions and asset allocations must be considered together in order to produce the most useful results. The first step in the analysis involves looking at the terms of a particular trust and the state law provisions which apply to the trust to determine the available options with regard to distributions to income beneficiaries. For example, it may be possible to have the trust reformed or amended so that the income beneficiary receives a set dollar amount on a periodic basis, rather than distributions of trust net income, or it may be possible to have the income beneficiary receive a unitrust interest. The second step in the analysis process involves running a huge number of trials, in which different combinations of distribution provisions and asset allocations are tested so that their anticipated results can be compared. Bernstein has proprietary capital markets research and proprietary analysis tools which allow their representatives to determine a range of probability-based results for thousands of trials, even including a wide range of "alternative" investments such as real estate and closely held business interests.

Mr. Pauloski recommends that this analysis process be redone annually, in order to continue to ensure that beneficiaries' interests are balanced and protected. Bernstein will provide both the initial analysis and subsequent annual re-analyses without charge or obligation, although Bernstein also offers an array of investment advice and wealth management services for fee-paying clients. More information regarding the services offered by Bernstein may be found at www.bernstein.com. We are grateful to Mr. Pauloski for his time and for his informative presentation.

The Mortmain Editorial Board meets monthly to plan upcoming issues. Back row from left, **David L. Watson**, *Gomel and Davis*; **Francis M. Bird, Jr.,** Editor-in-Chief, *Bird & Godbey*; **Beverly B. Bates**, *Bates & Baum*; **Jeffrey M. Mangieri**, *Menden, Freiman & Zitron*; **Loraine M. DiSalvo**, *Morgan & DiSalvo, PC*; **Jacquelyn H. Saylor**, Issue Editor, *The Saylor Law Firm LLP*; **Heather Durham Nadler**, Issue Editor, *Ruthann P. Lacey, P.C.* Picture by Jacquelyn H. Saylor, II.