

Message from the Chair

Day in and day out, I am reminded of the wonderful ways in which our Section's members contribute their time and energy toward advancing our Section's objectives, and making trusts and estates practice in New York better for attorneys, our clients, Surrogate's Courts, law students, and members of the public. It is both humbling and awe-inspiring to observe how Section members make policy-based contributions to our practice area, organize Section events, and assist one another (and, thankfully, me) as often as they do. I write to provide you with a small sample of the ways that our members have contributed to the Section in early-2019.

In January, the Supreme Court of the United States granted certiorari in *North Carolina Department of Revenue v. The Kimberly Rice Kaestner 1992 Family Trust*. *Kaestner* addressed the extent to which the Due Process Clause of the Fourteenth Amendment to the United States Constitution permits North Carolina to tax undistributed income earned by a trust that is administered outside of North Carolina, based solely upon the North Carolina residency of discretionary trust beneficiaries to whom no trust distributions were made during the relevant tax years. Shortly after the Supreme Court granted certiorari, the Section's officers and I created a committee consisting of Angelo Grasso, Lois Bladykas, Jeffrey Sheetz, and yours truly to draft an amicus curiae brief in *Kaestner*. In March, we drafted an amicus brief, obtained Bar Association approval for it, and filed the brief with the Supreme Court. On June 21, 2019, the Supreme Court unanimously ruled in favor of the party that our Association supported (finding that North Carolina's tax was unconstitutional), and it appears that our brief made a meaningful contribution in the matter. I would like to thank Angelo, Lois, and Jeff for their excellent work in drafting the brief; former Section Chair Gary Freidman for bringing *Kaestner* to

the Section's attention; former Bar President Michael Miller and General Counsel Kathy Baxter for their assistance in the drafting process; and Nicholas Moneta for cite checking the brief before we filed it.

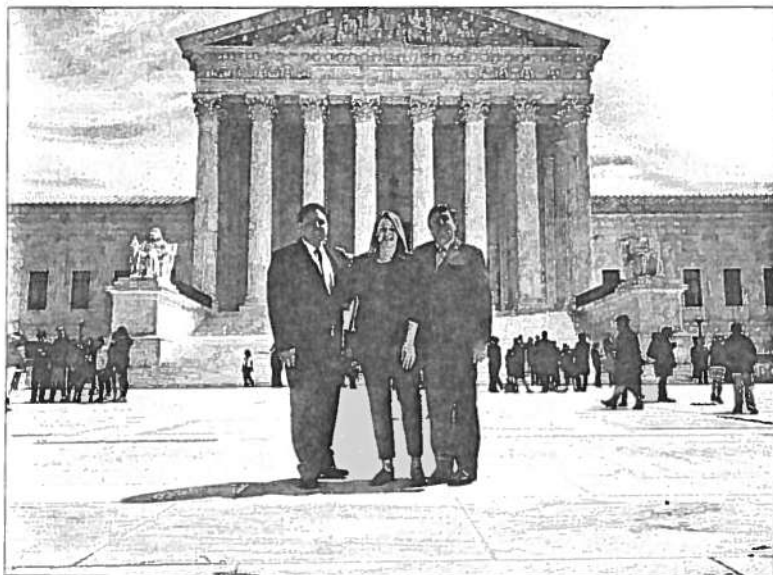


Robert M. Harper

In addition, our Section has advocated for policy changes at both the executive and legislative levels of the New York State government. In February and March, Kevin Matz, Jessica Goldsmith, and the Taxation Committee proposed changes to Governor Cuomo's budget. Thereafter, in March and April, Georgiana Slade and the Legislation and Governmental Relations Committee enjoyed two legislative successes, as the Assembly and Senate passed the following Section proposals: (a) technical amendments to the Estates, Powers and Trusts Law (EPTL) and Surrogate's Court Procedure Act (SCPA) to comport with the provisions of the Marriage Equality Act (as drafted by Darcy Katris); and (b) amendments to SCPA §§ 1001 and 1418 concerning the order of priority for granting Letters of Administration and Letters of Administration c.t.a. (as drafted by Michael Schwartz and Nathan Berti, and lobbied for by Chair-Elect Jill Beier). We hope that the Governor will sign those legislative proposals into law this year.

The officers and I have created a Digital Wills Committee – which Darcy Katris will chair – to study whether, and to what extent, the EPTL should be amended to permit digital wills. Nevada, Indiana, Arizona, and Florida have enacted legislation authorizing the creation of valid digital wills, and courts in Connecticut, Ohio, and Tennessee have addressed whether electronic wills should be admitted to probate (reaching different conclusions). Darcy, her committee, and I welcome any feedback that you have on the issue of whether New York should enact digital wills legislation.

Of course, our Section's members have not limited their efforts to policy-based matters. Michael Schwartz, Tara Pleat, Deborah Kearns, and Eric Penzer organized cocktail receptions in New York City, Albany, and Long Island, which were designed to welcome new members into our Section (and which Surrogate Nora Anderson, Surrogate Rita Mella, Surrogate Stacy Pettit, and Surrogate Brandon Sall graciously took time to attend). Equally important, Section members (including former Section Chair Sharon Wick and Treasurer Laurence Keiser) donated their time to ensure that the Section continues its past practice of supporting summer fellowships for law stu-



Rob Harper, Lois Bladykas, and Angelo Grasso

dents, which Surrogate Pettit, Surrogate Sall, and Surrogate Acea Mosey have graciously agreed to host in Albany County, Westchester County, and Erie County, respectively.

In May, our Section hosted its Spring Meeting at the beautiful Ritz-Carlton Beach Resort in Naples, Florida (as selected by Cris Cioffi). I would like to thank program chairs Angelo Grasso and Brian Corrigan for organizing a wonderful program concerning trusts, and the following speakers for giving excellent presentations (in the order in which they presented): former Section Chair Natalia Murphy, Raymond Joseph, Elisa Shevlin Rizzo, Hon. Acea Mosey, Amy Beller, Michael Schwartz, Hon. John Czygier, Jr., Hon. Peter Kelly, Hon. Stacy Pettit, Hon. Margaret Reilly, Toni Ann Kruse, Angelo Grasso, Hon. Vincent Versaci, Gary Freidman, Frank Santoro, Hon. Theresa Whelan, and Eric

Penzer. Additionally, I would like to recognize Darcy Katris, former Section Chair Ilene Cooper, and Edward Baker for raising more than \$70,000 in sponsorship funds for the Spring Meeting. Working together with our wonderful Bar staff members, Lisa Bataille and Cathy Teeter, the aforementioned individuals contributed to making our 2019 Spring Meeting a tremendous success, and I appreciate their involvement a great deal.

To those of you who already are actively involved in our Section, thank you for your participation. To those of you who are interested in becoming involved in our Section, please do not hesitate to contact me. The officers and I are eager to welcome new members (and those who presently are less involved) into the fold of our Section.

Robert M. Harper

Message from the Editor

You may have noticed that there has been a significant delay in the publication of this issue. NYSBA underwent some staffing changes as we provided content for the Spring issue. Then, we received updates to certain articles to account for the time that had elapsed. So, this year's Spring issue has become a Spring/Summer edition.

One such update has been offered by Albert Feuer, whose article, *How Savings and Retirement Distributions May Prudently be Used to Make Charitable Gifts*, appears at page 7. Mr. Feuer writes:

On May 23, 2019, the US House of Representatives approved H.R. 1994, the Setting Every Community Up for Retirement Enhancement Act of 2019 by a vote of 417 to 3. The bipartisan approval of the bill strongly suggests that the act will become law with few changes in 2019. The act would postpone the required beginning date for distributions from a traditional individual retirement account or individual retirement annuity ("IRA") from the April 1 following the taxpayer's attainment of age 70 ½ to the April 1 following the taxpayer's attainment of age 72. The age 70 ½ requirement for exclusion from a taxpayer's gross income for qualified charitable distributions ("QCDs") that meet the other requirements of IRC § 408(d)(8), as discussed in the article, would not be changed. However, there will be a new limit on the QCD exclusion from a taxpayer's gross income for any year after 2019. This limit will be based on the taxpayer's deductible IRA contributions for years starting with the year the taxpayer attains age 70 ½.

It should similarly be noted that Kevin Matz' article, *The Integrating of Estate Tax and Income Tax Planning Is Now Complete: A View from the Audience at Heckerling (2019)*, appearing on page 22, refers to the possibility that Governor Cuomo's Executive Budget, retroactively extending the three-year "clawback" provision for certain taxable gifts to January 1, 2026, be signed into law. The Governor's Budget Bill was signed since the date of that writing, to include the retroactive extension by way of amendment to Section 954(a)(3) of the New York Tax Law.



Jaclene D'Agostino

Our next deadline for submissions is September 9, 2019. Thank you for all of your worthwhile contributions.

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