Welcome fall! This season brings many changes to our lives, including a palette of amazing colors for our viewing pleasure, cooler temperatures (some days), and the harvest of the crops. Our Section members, through the various committees, are as busy as the farmers bringing in their crops for the fall harvest ahead of the rain.

Our fall Section Council meeting was held at the North Carolina Bar Association (NCBA) in Cary on September 20, 2017. Our Section authorized two additional scholarships for Continuing Legal Education (CLE) to be held in February 2018 for the Basics of Will Drafting and Estate Administration classes. Members, look out for details on how to apply for the scholarships. These scholarships are new and in addition to the scholarships that will be offered for our Annual Meeting to be held in July 2018.

The Ad Hoc Committee is busy contacting and securing sponsors for our Annual Meeting at Kiawah. The Ad Hoc Committee is tasked with fundraising to offset the costs of the Annual Meeting for our membership. The Committee’s efforts subsidize the cost of the CLE, resulting in lower program costs per member while also funding the Wednesday night Speakers’ Dinner and the Thursday night cocktail party for over 450 guests. The sponsorship funds are also used to offset costs involved with breakfast and junk food breaks over the three days for the conference for our 300-plus attendees. Without the


History

A historical perspective provides an intellectual setting that shaped actions in the past. History is always informative, but historical significance is a process often left to each of us to evaluate for ourselves. For a historical perspective regarding the NCUPOAA, the Legislative Committee of the Estate Planning and Fiduciary Law Section formed a sub-committee in 2013 to address concerns related to powers of attorney. The sub-committee had its first meeting in Jan. 2014. In the incipient stage of the project, the concern was the inability to record a power of attorney for durability in North Carolina and other jurisdictions because the power of attorney document did not have witnesses, a notarial certificate, or a notary seal necessary to record the document in the applicable jurisdiction for durability. With a review of the North Carolina law and the rumbling of authors and commentators on durable general powers of attorney, the sub-committee was quickly thrown into the depths of the Uniform Power of Attorney Act (“UPOAA”) completed by the Uniform Law Commission in 2006 and amended in 2008.

The UPOAA establishes a comprehensive legal framework for the creation and use of powers of attorney and furnishes specific guidance to and protections for principals, clarity for agents, and certainty for third parties asked to accept a power of attorney. Effectiveness is particularly important because the aging population is large and growing rapidly, and the older people are disproportionately vulnerable to incapacitating conditions. Another major purpose of the UPOAA is to prevent, identify, and redress the abuse or misuse of a power of attorney by an agent. The abuse or misuse of powers of attorney has been recognized as a serious problem. The UPOAA intends to strike a balance by preserving the durable power of attorney as a private form of surrogate decision making while deterring use of the durable power of attorney as a tool for financial abuse of an incapacitated principal.

The NCUPOAA is the result of many hours of review and discussion of North Carolina law on powers of attorney and revision of the UPOAA to retain, change,
The Chair’s Comments, continued from the front page

dedication of the sponsors and the Committee’s efforts, our Section would not be able to hold such a high quality Annual Meeting.

The Legislative Committee is furiously drafting comments for the recently enacted Uniform Acts that we helped introduce which will be published this fall, working on Technical Corrections for the 2018 Short Session and drafting 2019 Long Session legislation. Members of the Committee have written a series of articles included in this publication on the new Power of Attorney Act, effective January 1, 2018. Check out the General Assembly website to review Session Law 2017-212 (S582) signed by the Governor on October 8, 2017, which features a few more Technical Corrections introduced by our Legislative Committee at the beginning of the 2017 Long Session.

The CLE Committee is planning the CLE programs for the upcoming year. The Survey Course was held recently at the NCBA; it was a thorough review of the law applicable to our practice areas, just in time for the upcoming specialization exam. November 3, 2017 will be a full day course on the new North Carolina Uniform Power of Attorney Act. The CLE program is available live at the NCBA and via the web. We will also host a social hour the night before the CLE on November 2, 2017. Details are forthcoming.

Supplementing our CLE efforts, this issue of “The Will and The Way” includes articles on the new Power of Attorney Act, to provide our Section with the education needed to assist our members in learning the new legislation by its January 1, 2018 effective date. Future editions of “The Will and the Way” will be published in January 2018 and Spring 2018. If you are interested in authoring an article, please contact our editor-in-chief, Lucy Siler (LSiler@jahlaw.com).

Be on the lookout for a new publication from the NCBA which covers Fiduciary Litigation and is currently being written by members of the Fiduciary Litigation Committee. The Estate Administration Manual has been updated by dedicated members of our Section, and is scheduled for publication in February 2018 to coincide with the two planned CLE basics courses referenced above. A huge thank you to our committees and their members for these two resources which support our areas of practice.

Our Ethics Committee is drafting a response on behalf of our Section to the State Bar on FEO2, which addresses an attorney’s duties in advising an executor with regard to the handling of estate funds. We are continuing to support the NCBA in its Pro Bono efforts.

I also want to report to our Section on the fall Board of Governors of the NCBA and Board of Directors meeting of the North Carolina Bar Foundation (NCBF) which was held recently in Blowing Rock. A few highlights from the meeting include, but are not limited to, proposals from the Awards and Recognitions Committee on the naming of awards, the impact of moving CLE from the NCBF to the NCBA, a report from the Foundation Development Program Consultants who are assisting the NCBF with new ideas for development, a Legal Aid of North Carolina report covering the challenges they are facing, the Executive Director’s Report, which included the legislative update, and the Membership Committee report, which covered great ideas on increasing member benefits. I enjoy attending these meetings to understand the workings and activities of all parts of the NCBA and NCBF and to see where our Section fits in the big picture.

I encourage all members of our Section to join our committees and become actively involved. After twenty years of service to our Section in many capacities, I wholeheartedly believe that you receive much more than you give as a Section volunteer.

POWER OF ATTORNEY CLE
2018 NC Uniform Power of Attorney Act
Friday, Nov. 3, 2017 | N.C. Bar Center | Cary

Register today using this link

This program provides a comprehensive review and discussion of the North Carolina Uniform Power of Attorney Act in advance of its effective date on January 1, 2018.