

## Memorandum Urging Approval

### TRUSTS AND ESTATES LAW SECTION

T&E #1-GOV

November 12, 2015

S. 5160  
A. 6024-A

By: Senator Bonacic  
By: M. or A. Weinstein  
Senate Committee: Judiciary  
Assembly Committee: Judiciary  
Effective Date: Immediately

**AN ACT** to amend the estates, powers and trusts law, in relation to payment of interest on delayed legacies to genetic children on the decedent.

**LAW & SECTION REFERRED TO:** Section 11-A-2.1 of the Estates, Powers and Trusts Law.

#### **BACKGROUND**

Until December 20, 2014, when interest was due on a pecuniary legacy, EPTL § 11-1.5 provided that such interest generally would accrue at a fixed rate of six percent per annum. Recognizing the fundamental unfairness of having interest accrue on delayed legacies at a fixed rate and certain other procedural problems associated with EPTL § 11-1.5, as it previously existed, the Legislature passed – and Governor Cuomo signed into law – amendments that our Section proposed with respect to EPTL §§ 11-1.5 and 11-A-2.1, which became effective on December 20, 2014; and provided that interest on a monetary legacy generally would accrue at the target Federal funds rate announced by the Federal Reserve Board (or in the event the target Federal funds rate is a range of rates, the high of that range) less one percent, but in no event less than one-half of one percent.

In 2014, the Office of Court Administration’s Surrogate’s Court Advisory Committee (the “OCA”) proposed well-reasoned amendments to EPTL §§ 4-1.3 and 11-1.5, which concerned the inheritance rights of posthumously-conceived children. The OCA amendments to EPTL § 4-1.3 expanded the class of issue to include certain posthumously-conceived children. Additionally, the OCA amendments to EPTL § 11-1.5 provided that interest on legacies to posthumously-conceived children would accrue at the rate of six percent per annum, as reflected in the then-effective version of EPTL § 11-1.5. Governor Cuomo signed the OCA’s amendments to EPTL §§ 4-1.3 and 11-1.5 into law on November 21, 2014, and they became effective on that date.

Shortly after the OCA’s amendments to EPTL §§ 4-1.3 and 11-1.5 and our Section’s amendments to EPTL §§ 11-1.5 and 11-A-2.1 became effective on November

21, 2014 and December 20, 2014, respectively, it became clear that a chapter amendment to the newly-effective EPTL § 11-A-2.1 was needed to clarify the rights that certain posthumously-conceived children who qualify as issue under the revised EPTL § 4-1.3 have to receive interest on their monetary legacies. The newly-effective EPTL § 11-A-2.1 should be amended to reflect that such posthumously-conceived children are entitled to receive interest on pecuniary legacies payable to them at the target Federal funds rate as announced by the Federal Reserve Board (or in the event the target Federal funds rate is a range of rates, the high of that range) less one percent, but in no event less than one-half of one percent.

This legislation addresses the concerns expressed herein. If enacted into law, this bill would ensure that EPTL §§ 11-A-2.1, 11-1.5, and 4-1.3, as signed into law and effective in late-2014, comport with each other.

### **CONCLUSION**

Based on the foregoing, we respectfully **URGE** Governor Cuomo to approve this bill.

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Section Chair: Marion Hancock Fish, Esq.