



DELBERT HOSEMANN  
*Secretary of State*

## **Probate Code Study Group**

**May 16, 2018**

### **Introduction and Welcome**

The meeting began with the study group members introducing themselves followed by a brief introduction by Secretary Hosemann. Secretary Hosemann then yielded the floor to Brittany Ridinger of the Policy and Research Division of the Secretary of State's office to introduce several topics of concern and facilitate further discussion.

### **Policy and Research Presentation and Discussion**

Brittany Ridinger explained that there is not currently a section of the Mississippi Code which specifically addresses non-probate transfers. She suggested that it would likely be a good thing for Mississippi if the Uniform Probate Code regarding non-probate transfers was adopted in Mississippi. This sparked a discussion of House Bill 806, introduced in 2017, which would have established non-probate transfer laws for Mississippi. Brittany then asked if the other group members thought this was something which needed to be addressed with legislation, thus prompting Bill Brown and Gray Edmondson to bring up a couple of controversial elements of HB 806. Controversial issues brought up by Gray Edmonson included the elective share of the spouse and handling creditors' rights.

Several other probate-related concerns were brought up by various members following the discussion of House Bill 806. Lynne Green noted the importance of looking at the concept of augmented estates. Barry Jones and Richard Young both voiced concerns regarding successor affidavits. Secretary Hosemann asked if we needed to even address augmented estates because of the size of our state. David Marchetti insisted that we do need to address augmented estates in legislation. Secretary Hosemann led the group into further discussion on the issue of augmented estates. David Marchetti suggested that the treatment of gifts of life interest and interests in trusts needed to be addressed. Lynne Green and Floyd Melton both highlighted issues associated with inter-vivos gifts and inter-vivos trusts. The discussion shifted briefly toward the issue of spousal rights. In response to the discussion, Doug Hassell suggested that this group draft a new spousal rights statute. Before moving to the next topic, Lynne Greene mentioned that §91-5-35 needed to be amended.

The next issue to be addressed was transfer on death deeds (TODs). Brittney Batton began the discussion of the topic by emphasizing the importance of the legal description of property in relation to TODs. Brittney spoke about similar statutes in Texas and Arkansas. The Texas statutes are essentially the same as the Uniform Act. Arkansas' version, however, referred to as a "beneficiary deed," is much more basic. Brittney suggests an amended version of the UPC. Gray Edmondson made the point that part of the purpose of the statute is to make things more clear regarding real property which passes outside of the estate and its ability to be brought back into the estate. The public policy issue of "dying your way out of your creditor problem" was raised by David Marchetti. The suggestion to shorten the current statute of limitation was proposed by Lynne Greene. Jamie Houston expressed his agreement that establishing TODs was a good idea, and Ron Loeb expressed his interest in the Texas version.

The conversation then shifted towards small estate affidavits. Secretary Hosemann recommended the current Mississippi law allowing successors to present an affidavit to settle an estate not exceeding \$50,000 be amended to apply to estates not exceeding \$100,000. Len Martin pointed out how our current statute related to this topic does not cover real estate, further noting that property does not go to heirs of law but to successors. Trip Barnes mentioned real estate lawyers would not like adding real estate to the small estate affidavits and also stated that the affidavit does nothing if there are other illegitimate children. The ultimate consensus was to raise the amount but not include real estate.

The final topic of discussion was regarding the amount in bank accounts that can be paid to heirs without administration. Currently, this can be done if the amount does not exceed \$12,500. Brittany Ridinger asked if the group thought this number should be increased. David Marchetti posed the question of what the effect would be if an individual had four or five accounts at a single bank totaling \$50,000 but each account contained less than \$12,000. Brittney Batton was of the opinion that the amount encompasses the sum of all the accounts held by an individual at a single bank. The ultimate consensus was to not raise the amount.

### **Closing Remarks**

At the conclusion of the meeting, it was made clear there would be at least two more meetings about issues related to the Probate Code, and drafts of potential legislation would be provided to the members as soon as it was available. The meeting was adjourned.

## **Probate Code Study Group Minutes**

**May 16, 2018**

### Attendees

1. Mr. Harris Barnes, Barnes Law Firm
2. Justice Dawn Beam, Supreme Court of Mississippi
3. Mr. Bill Brown, Copeland, Cook, Taylor & Bush
4. Mr. Pete Cajoles, Regions Private Wealth Management
5. Mr. Gray Edmondson, Edmondson, Sage, & Dixon,
6. Ms. Lynne Green, Brunini, Grantham, Grower & Hughes, PLLC
7. Mr. Douglas Hassell, Teller Hassell & Hopson, LLP
8. Ms. Misty Heffner, DeSoto County Chancery Clerk (by Video Conference)
9. Mr. Jamie Houston, III, Watkins & Eager PLLC
10. Mr. Larry Lee, Mississippi College School of Law
11. Ms. Nicole Lewellyn, Priority One Bank (by Video Conference)
12. Mr. Ronald Loeb, Butler Snow LLP
13. Mr. David Marchetti, Wells Marble & Hurst, PLLC
14. Mr. Leonard Martin, Baker Donelson
15. Mr. Floyd Melton III, Melton Law Firm, PLLC
16. Ms. Susan Patrick, Desoto County Chancery Court Duty Clerk (by Video Conference)
17. Justice Randy Pierce, University of Mississippi Judicial College
18. Judge Sean Tindell, Court of Appeals of Mississippi
19. Mr. Joseph Tullios, Jackson & Arrington PLLC (by Video Conference)
20. Mr. Joe Warren, Covington County Chancery Court Clerk
21. Mr. Robert Williford, Williford, McAllister & Jacobus, LLP
22. Richard Young, The Elder Law Firm
23. Whitney Griffin, Supreme Court of Mississippi

### Mississippi Secretary of State's Office

24. Brittney Batton, Attorney, Policy and Research
25. Kay Earles Division Coordinator, Policy & Research
26. Jim Ellington, Legislative Lobbyist
27. Delbert Hosemann, Secretary of State
28. Anna Moak, Senior Executive Counsel
29. Brittany Ridinger, Attorney, Policy and Research
30. Laura Sheffield, Capitol Office Coordinator
31. Leah Smith, Attorney and Assistant Secretary of State of Communications
32. Nathan Upchurch, Chief of Staff