



DELBERT HOSEMANN
Secretary of State

Probate Code Study Group

June 27, 2018

Greeting and Introduction

Secretary Hosemann began the study group session with some brief welcoming and introductory remarks. He then yielded to Brittany Ridinger and Brittney Batton to start the discussion.

Foreign Administration (Section 91-7-259)

The first topic that Brittany presented for discussion was the Foreign fiduciaries, lawsuits and debts statute of the Mississippi Code Annotated (§ 91-7-259), the Uniform Probate Code's version of the Foreign Personal Representatives and Ancillary Administration, as well as Florida's Foreign personal representative statute. She explained what our current statute says, providing that Mississippi is possibly the only state without a true ancillary administration statute. Doug Hassel expressed his desire that our statute be as simple as that of other states. There was a brief discussion about the deadline for filing, all being a proponent of a 60-day-limit for filing.

Jamie Houston clarified a portion of Florida's statutory language regarding administrators named in the will. David Marchetti brought up the issue of people being subject to probate in a state simply if they have personal property there and tied that issue into that of an ancillary estate. He asked if we wanted to get rid of the personal property requirement while we're looking at ancillary. Lynne Greene said that's how everyone else in the U.S. does it and asked if we wanted our statutes to differ in that regard.

Joseph Tullos raised considerations for creditors in reference to ancillary administrations. One particular concern he expressed is how creditors would be notified of death of debtors. Secretary Hosemann expressed his thought that notice to creditors is critical. He went on to present an example of a potential issue involving farm equipment owned by a farmer domiciled in Mississippi who also had operations, and thus very expensive equipment in Arkansas.

David Marchetti was a proponent of the UPC version on Foreign Personal Representatives and Ancillary Administration. The ultimate decision was to further study and consider the UPC version.

Property Not to be Removed from State (Section 91-7-257)

Study group members agreed that this statute needs to be updated or repealed based on the previously discussed foreign administration statute. There seemed to be agreement amongst all the study group members that this statute is outdated. David and Lynne both expressly made this assertion. Brittany said that she could not find any other states with similar statutes. Jamie expressed that we should be able to rely on the fiduciary duty of the administrator, thus making this statute irrelevant.

Fiduciary Transfer of Negotiable Paper (Section 91-7-255)

David provided an example of a stock portfolio being liquidated to satisfy debt of an estate and the beneficiaries suing under this statute. The chancellor in that case, however, did not think this statute applied. David suggested that this statute needs to be repealed, and Lynne and several others agreed. Secretary Hosemann said that, at the very least, the last sentence needs to be removed. There was a brief discussion about damages that would result if the statute was maintained and an executor violated the statute.

Abatement

Brittany Batton explained what abatement is and that Mississippi does not currently have a straight forward abatement statute. She further explained that most states follow the UPC. We do currently have six statutes that address pulling in assets to pay debts. One point that would need to be addressed in drafting new legislation is whether preference should be given to personal property over real property. David clearly expressed that he was not in favor of making such a distinction. The group looked at HB 159 from 2015 which would have accomplished this purpose, but did not pass the senate. The consensus was to draft a version adopting the UPC language.

Adoption of the current version of the Uniform Estate Tax Apportionment Act

Mississippi adopted the amended version effective in 1995. There was an update in 2003, which we have not yet adopted. One major difference between the two versions is the definitions portion. Furthermore, the 1995 version only applies to wills. Lynne suggested that we get in touch with the Uniform Law Commission to see what other states are doing. Brittany explained that Alabama and Arkansas have passed the 2003 version. All parties agreed to read over the uniform updated version so that they could have a more in depth discussion on this matter at the next meeting.

Inherited IRAs as exempt property

Brittany introduced this topic and the Supreme Court case addressing this issue. The group discussed that Mississippi currently exempts Individual Retirement Accounts from creditors but does not specifically exempt inherited IRAs (Mississippi Code Section 85-3-1). Bill Brown

raised that “inherited” IRAs needs to be expressly addressed. The study group agreed that specific language should be added to the current statute to clarify that inherited IRAs are not exempt from creditors.

Creditor Protection for Intervivos QTIP Trusts when beneficiary spouse dies and grantor spouse becomes a beneficiary

If the beneficiary of the QTIP passes away before the original settler, certain states allow for the beneficiary to be considered the settlor of the trust. Florida and North Carolina’s comparable statutes were provided and discussed. There was a brief discussion of “Crummy trusts.” The group decided to further study the issue, but proposed legislation should be drafted.

Conclusion

Brittney and Brittany agreed that they would provide rough drafts of proposed legislation and before the next meeting. Secretary Hosemann thanked all of the group members for their attendance and attention and the meeting was adjourned.

Probate Code Study Group Minutes

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Attendees

1. Mr. Cliff Agnew, Trustmark Wealth Management
2. Mr. Harris Barnes, Barnes Law Firm
3. Mr. Bill Brown, Copeland, Cook, Taylor & Bush
4. Mr. Pete Cajoles, Regions Private Wealth Management
5. Ms. Lynne Green, Brunini, Grantham, Grower & Hughes, PLLC
6. Mr. Douglas Hassell, Teller Hassell & Hopson, LLP
7. Ms. Misty Heffner, DeSoto County Chancery Clerk (by Teleconference)
8. Mr. Jamie Houston, III, Watkins & Eager PLLC
9. Mr. Larry Lee, Mississippi College School of Law
10. Ms. Nicole Lewellyn, Priority One Bank
11. Mr. Ronald Loeb, Butler Snow LLP
12. Mr. David Marchetti, Wells Marble & Hurst, PLLC
13. Mr. Leonard Martin, Baker Donelson
14. Ms. Susan Patrick, Desoto County Chancery Court Duty Clerk (by Teleconference)
15. Justice Randy Pierce, University of Mississippi Judicial College (by Teleconference)
16. Mr. Joseph Tullos, Jackson & Arrington PLLC
17. Richard Young, The Elder Law Firm
18. Whitney Griffin, Supreme Court of Mississippi

Mississippi Secretary of State's Office

19. Brittney Batton, Attorney, Policy and Research
20. Jordan Brumbelow, Legislative Liaison
21. Kay Earles Division Coordinator, Policy & Research
22. Jim Ellington, Legislative Lobbyist
23. Delbert Hosemann, Secretary of State
24. Anna Moak, Senior Executive Counsel
25. Brittany Ridinger, Attorney, Policy and Research
26. Leah Smith, Attorney and Assistant Secretary of State of Communications
27. Nathan Upchurch, Chief of Staff