



DELBERT HOSEMANNN
Secretary of State

Probate Code Study Group

July 26, 2018

Greeting and Introduction

Secretary Hosemann began the third meeting of the Probate Study Group by welcoming all of the attendees and giving a quick summary of some current events related to the Mississippi Secretary of State's office.

Discussion of Legislation

Small Estates (Section 9-7-322)

Secretary Hosemann yielded the floor to Brittney Batton who introduced the first draft legislation for discussion, Small Estates (Section 91-7-322), and noted the three potential changes to be addressed by amendment: 1) include real property, 2) increase the amount of the small estate from \$50,000-\$100,000, 3) define "successors" as "heirs at law." The first question was raised by Doug Hassel who voiced his concerns about including real property. Len Martin said he thought there was a consensus that we not include real estate, and the majority agreed. The group quickly addressed the term, "entire estate", and the group agreed it should read "entire probate estate." Secretary Hosemann suggested it read "entire probate estate located in the state of Mississippi." Several other members expressed concern about including "in the state of Mississippi." The group agreed to not include "in the state of Mississippi" to limit confusion.

The next issue addressed was the definition of "successors." Doug suggested that the definition include only the spouse. David appreciated the idea of making a hierarchy in an effort to prevent a race by the heirs at law. Nicole Lewellyn raised some concern about how changing the definition of "successor" in this statute would affect other statutes.

The discussion then shifted to the potential increase in the amount of the small estate. Several group members reconsidered and again discussed the issue of increasing the amount to \$100,000. David expressed his thoughts that \$100,000 would be a lot of money in the state of Mississippi. Trip Barnes suggested that \$100,000 really isn't that high, but we did need to specifically define how the hierarchy should be set up. Secretary Hosemann stated there should be no question about increasing the amount from \$50,000 to \$100,000. Ron Loeb suggested the group look at the hierarchy outlined in the wrongful death statute as a rough outline.

David again brought up the wording of “entire estate.” Floyd Melton, III, thought that “entire estate” would encompass real estate, and that we should not change the wording in the current statute. Lynne spoke about the implications on life insurance policies and that she did not want life insurance policies to be included in the \$100,000. Secretary Hosemann put the language to a vote, and it was concluded that the statute should read “entire probate estate.”

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

The next topic of discussion was Section 91-7-255, Fiduciary Transfer of Negotiable Paper. The question was posed if we should either repeal the entire statute or remove the last sentence of the statute. Brittney Ridinger directed attendees attention to the UPC alternative language included in the materials. Everyone voted to amend the current statute by incorporating portions of the UPC.

Property Not to be Removed from State

Property Not to be Removed from State (section 91-7-257) was the next issue addressed by the group. Brittany asked if we should limit it to the state of Mississippi or simply repeal it as a whole. David suggested we repeal it, and several other members agreed. Secretary Hosemann wanted to clarify how this would allow individuals to take things out of the state without the consent of a chancellor. Thereafter, a vote was taken on the matter, and with no objections to repealing the statute, the group elected to do so and proceed to the next topic.

Foreign Administration

Foreign Administration (Section 91-7-259) was the next matter on the agenda. Brittany introduced the topic and first addressed the wording that individuals had previously discussed to be included in the statute. David suggested that the statute simply be repealed and replaced by the ancillary administration statute included in the materials. Jamie Houston asked David if an ancillary probate statutory change would create more requirements, and the two agreed to move forward with the discussion of ancillary estates to resolve that question.

Ancillary Administration

The group then shifted their attention to the topic of Ancillary Administration. Brittany Ridinger discussed the provided UPC, and Secretary Hosemann suggested the group dissect it section by section. Gray suggested providing a definition of “foreign personal representative” in Section 1. Brittany explained out Sections 3-5 spell out the authority granted to foreign administrators in Section 2. Lynne asked about how the duties of a foreign personal representative would affect real estate. David clarified, and Brittany echoed, that this statute would give no more and no less power to a foreign administrator than to a local administrator. Several members, including Secretary Hosemann, were concerned about an individual’s ability to transfer, for example, a home in Mississippi by simply filing in an Alabama court. Len emphasized that we are the only

state without a true ancillary estate statute. There was extensive discussion about Section 7 and how the processes outlined in the section should function. Bill Brown posed the question of why we need to do a full probate if an estate has been properly administered in a foreign jurisdiction. Several people, including Len, Lynne, and Justice Pierce, agreed that we should make our statute clear in regards to Mississippi's recognition of an estate probated in another state in the context of "full faith and credit." The group agreed to reconsider the proposed bill at the next meeting.

Abatement

The next topic was abatement. Brittney Batton highlighted the verbatim UPC version included in the provided materials. David had a question about the meaning of the first line and how renunciation fit in with abatement. Gray directed the group's attention to lines 8, 9, and 10 of the UPC version of the law, and expressed his concern about the use of the term "devise." Brittany noted how the law proposed to the Mississippi legislature in 2015 included that term "devise" and "bequeath," suggesting the same two terms should be included in any draft produced by this group, and the group agreed.

Inherited IRAs Excluded as Exempt Property

Inherited IRAs, specifically lines 50 and 51 in the provided statute were highlighted with the intention of clarifying that inherited IRAs are not considered property exempt from creditors. There was a brief discussion of the tax implications. Lynne clarified what she thought the term inherited IRA should be clearly stated within the statute, and that it should not include spousal rollover IRAs. David pointed out that Section C did not need to be amended, but that Section E should be the section which is amended.

Creditor Protection for Intervivos QTIP & Crummey Trusts

The conversation then shifted to the complex issue of Creditor Protection for Intervivos QTIP & Crummey Trusts. As an expert on the topic, Gray led the discussion. The group went line-by-line through the Texas version of the law. There was some discussion about how lapse should affect the power of appointment and the settlement of a trust. Jamie and Lynne thought the qualifications of becoming a settlor should be more restrictive. A beneficiary as a settlor was briefly addressed. There was also a brief discussion regarding how this statute would affect marital trusts. The group concluded that the draft should be revised and considered at the next meeting.

The Uniform Estate Tax Apportionment Act of 2003

The group quickly reviewed the Uniform Estate Tax Apportionment Act and the group's interest in adopting the act. Brittney explained that the only two states in our region who have adopted the Act are Alabama and Arkansas, which have both adopted the UPC version verbatim. Lynne suggested that we look at what revisions have been made to the 2003 version and look to those

updates for direction in drafting a statute of our own. Due to time constraints, this topic was tabled for further discussion at the next meeting.

Elective Share and Augmented Estates

The last topic was Elective Shares and Augmented Estates, which Brittney introduced and asked the members to review the UPC version of Elective Share and Augmented Estates for an in-depth discussion at the group's next meeting.

Conclusion

At the conclusion of the meeting, Secretary Hosemann thanked all of the attendees for their time and attention and reminded them of our next meeting, August 23, 2018. 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. Justice Dawn Beam, Supreme Court of Mississippi
4. Mr. Bill Brown, Copeland, Cook, Taylor & Bush
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 Teleconference)
9. Mr. Jamie Houston, III, Watkins & Eager PLLC
10. Mr. Barry Jones, Pettis, Barfield, & Hester PA
11. Mr. Larry Lee, Mississippi College School of Law
12. Ms. Nicole Lewellyn, Priority One Bank
13. Mr. Ronald Loeb, Butler Snow LLP
14. Mr. David Marchetti, Wells Marble & Hurst, PLLC
15. Mr. Leonard Martin, Baker Donelson
16. Mr. Floyd Melton III, Melton Law Firm, PLLC
17. Ms. Susan Patrick, Desoto County Chancery Court Duty Clerk (by Teleconference)
18. Justice Randy Pierce, University of Mississippi Judicial College
19. Judge Sean Tindell, Court of Appeals of Mississippi
20. Mr. Joseph Tullos, Jackson & Arrington PLLC (by teleconference)
21. Richard Young, The Elder Law Firm
22. Whitney Thrasher, Supreme Court of Mississippi

Mississippi Secretary of State's Office

23. Brittney Batton, Attorney, Policy and Research
24. Jordan Brumbelow, Legislative Liaison
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. Leah Smith, Attorney and Assistant Secretary of State of Communications
31. Nathan Upchurch, Chief of Staff